SEVENTY-EIGHTH REPORT
of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1988, through December 31, 1988

Robert O. Wells, Chairman

Dr. Robert K. Koger, Commissioner[1]

Sarah Lindsay Tate, Commissioner

Edward B. Hipp, Commissioner

Ruth E. Cook, Commissioner

Julius A. Wright, Commissioner

William W. Redman, Jr., 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.

Compiled and Edited By Donna Bayless

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1 Dr. Robert K. Koger retired September 19, 1988. No appointment has been made; the position remains vacant.

LETTER OF TRANSMITTAL

December 31, 1988

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, 1988, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1988, and ending December 31, 1988.

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

Sarah Lindsay Tate, Commissioner

Edward B. Hipp, Commissioner

Ruth E. Cook, Commissioner

Julius A. Wright, Commissioner

William W. Redman, Jr., Commissioner

Sandra J. Webster, Chief Clerk

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DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Tax Reform Act of 1986	)))	ORDER ALLOWING TARIFFS TO BECOME EFFECTIVE AND APPROVING REFUND PLAN

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.

The Public Staff presented at the December 7, 1987, Staff Conference, its findings and recommendations regarding the LECs' filings in accordance with the October 20, 1987, and November 6, 1987, Orders. All interested parties were allowed until December 16, 1987, to file written comments on the concerns raised by the Public Staff.

On December 22, 1987, the Commission entered an Order Requiring Tariff Filings and Modifying Previous Orders in which it denied certain LECs' proposals to consider CPE changes outside the test year as offsets to TRA-86 tax reductions, approved the Public Staff's proposal to reduce EAS additives due to TRA-86 tax savings, and approved the Public Staff's proposal to relate test period tax savings only to rates being reduced. The Commission required the LECs affected by this Order to file tariff reductions and

supporting workpapers no later than January 11, 1988, to be effective no later than February 1, 1988.

As a result of these Orders, General Telephone Company of the South (General) has filed tax savings calculations and proposed tariff reductions to be effective February 1, 1988. Additionally, General has filed a refund plan effective February 1, 1988, that returns to its customers tax overcollections related to the period January 1, 1987 to January 31, 1988.

On January 11, 1988, the Public Staff filed a Motion wherein it was recommended that the Commission approve the rate reduction filed by General. Additionally, the Public Staff recommended approval of the proposed refund amount, including interest.

The Attorney General has orally notified the Commission that the filed rate reductions should be approved, as recommended by the Public Staff.

Based on the foregoing, the Commission concludes that the rate reductions noted above should be allowed effective February 1, 1988. These rate reductions will result in General's tariffs reflecting the current 34% corporate federal income tax rate. Therefore, the Commission concludes that beginning February 1, 1988, General no longer needs to add dollars to the deferred account required by the Order of October 23, 1986, related to rates charged after February 1, 1988. The Commission notes that the balance in the deferred account at January 31, 1988, should include the tax overcollections since January 1, 1987, calculated in accordance with prior orders in this docket.

General's refund plan proposes to apply two separate credits to all customers' bills beginning with the first billing cycle in February. The first credit applied will refund the $768,713 of calendar year 1987 tax overcollection. In addition, this credit will refund to customers $67,816 of interest on tax overcollections for the period January 1, 1987, to January 31, 1988. The second credit will provide for retroactive treatment to January 1, 1988, of the proposed tariff changes referenced above.

The only matter unresolved by the parties is the proposed refund plan's methodology. General proposes to refund the tax overcollections to applicable customers based on said customers' billings during the overcollection period. The Public Staff disagrees with this methodology. The Public Staff recommends that the tax overcollections be refunded based on current customers, consistent with the methodology proposed by other telephone LECs. The Public Staff agrees that General's methodology is theoretically fair but is concerned with the inconsistency of this methodology, when compared to the plans proposed by other LECs. Based on review of General's proposed refund plan, the Commission concludes that it should be approved as filed. The Commission further concludes that General should file monthly reports on the progress of the refund process with the Chief Clerk until the refund process has been completed.

IT IS, THEREFORE, ORDERED as follows:

1. That the tariffs filed by General Telephone Company of the South are hereby allowed to become effective February 1, 1988.

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

3. That the January 31, 1988, balance in the deferred account established in accordance with decretal paragraph No. 2 of the Commission Order of October 23, 1986, shall include the tax overcollections during the overcollection period, calculated in accordance with Commission Orders in this docket.

4. 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.

5. That the refund plan filed by General be, and hereby is, approved.

6. That General be, and hereby is, ordered to file monthly reports with the Chief Clerk on the status of the refund process, until said process is completed.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of January 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Tax Reform Act of 1986) ORDER ALLOWING TARIFFS
) TO BECOME EFFECTIVE AND
) APPROVING REFUND PLANS

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.

The Public Staff presented at the December 7, 1987, Staff Conference, its findings and recommendations regarding the LECs' filings in accordance with the October 20, 1987, and November 6, 1987, Orders. All interested parties were allowed until December 16, 1987, to file written comments on the concerns raised by the Public Staff.

On December 22, 1987, the Commission entered an Order Requiring Tariff Filings and Modifying Previous Orders in which it denied certain LECs' proposals to consider CPE changes outside the test year as offsets to TRA-86 tax reductions, approved the Public Staff's proposal to reduce EAS additives due to TRA-86 tax savings, and approved the Public Staff's proposal to relate test period tax savings only to rates being reduced. The Commission required the LECs affected by this Order to file tariff reductions and supporting workpapers no later than January 11, 1988, to be effective no later than February 1, 1988.

As a result of these Orders, the following telephone LECs have filed tax savings calculations and proposed tariff reductions to become effective on the dates shown:

Company	Date of Filing	Effective Date of Tariffs
1. Carolina Telephone and Telegraph Company	January 11, 1988	January 1, 1988
2. Central Telephone Company - North Carolina	January 5, 1988	January 1, 1988
3. Citizens Telephone Company	January 4, 1988	January 1, 1988
4. Ellerbe Telephone Company	January 14, 1988	-
5. Heins Telephone Company	December 31, 1987	February 1, 1988
6. Mebane Telephone Company	December 31, 1987	-

On January 19, 1988, the Public Staff filed a Motion wherein it was recommended that the Commission approve the rate reductions as filed by the above noted companies.

The Attorney General has orally notified the Commission that the filed rate reductions should be approved, as recommended by the Public Staff.

Based on the foregoing, the Commission concludes that the rate reductions noted above should be allowed. The Commission notes that the rate reductions proposed by Ellerbe and Mebane are zero due to the fact that these companies have realized greater toll reductions than TRA-86 tax savings, calculated in accordance with the Commission's October 20, 1987, Order.

These rate reductions will result in each company's tariffs reflecting the current 34% corporate federal income tax rate. Therefore, the Commission concludes that once these tariff reductions are effective then these companies no longer need to add dollars to the deferred account required by the Order of October 23, 1986, related to rates charged after the effective date of the tariff reductions. The Commission notes that the balance in the deferred account at said date should include the tax overcollections since January 1, 1987, calculated in accordance with prior orders in this docket.

The following telephone LECs have filed refund plans designed to return to customers tax overcollections plus interest consistent with prior Commission Orders issued in this docket:

	Company	Date of Filing
1.	Carolina Telephone	January 11, 1988
2.	Central Telephone	January 15, 1988
3.	Southern Bell Telephone	January 19, 1988
4.	Citizens Telephone	January 14, 1988
5.	Ellerbe Telephone	January 14, 1988
6.	Mebane Telephone	December 31, 1987

On January 19, 1988, the Public Staff filed a Motion wherein it was recommended that the Commission approve the refund plans as filed by the above noted companies.

The Attorney General has orally notified the Commission that the filed refund plans should be approved, as recommended by the Public Staff.

Based on the foregoing, the Commission concludes that the refund plans noted above should be allowed. The Commission notes that the plans filed by Mebane, Ellerbe, and Citizens telephone companies include zero refunds, due to the fact that these companies have realized greater toll reductions than TRA-86 tax savings for the calendar year 1987, calculated in accordance with the Commission's October 20, 1987, Order. Since these companies have no tax overcollections, after consideration of toll rate reductions, then they are no longer required to maintain the deferred account ordered in the Commission Order of October 23, 1986. The Commission further notes that the Southern Bell plan was provisionally placed into effect during January, 1988.

IT IS, THEREFORE, ORDERED as follows:

1. That the tariffs filed by the companies noted herein this Order be, and hereby are, allowed to become effective on their proposed effective dates.

2. That additional deferrals related to rates charged for service rendered after the effective dates of the rate reductions approved in ordering paragraph No. 1 above and required by ordering paragraph No. 2 of the Commission Order of October 23, 1986, are no longer necessary.

3. That the refund plans filed by the companies noted herein this Order be, and hereby are, allowed to become effective on their proposed effective dates.

4. 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.

5. That Carolina, Central, and Southern Bell telephone companies be, and hereby are, ordered to file monthly reports with the Chief Clerk on the status of their refund plans, until said refund process is completed.

6. That Citizens, Ellerbe, and Mebane telephone companies are no longer required to maintain the deferred account ordered in the October 23, 1986, Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of January 1988.

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 APPROVING LANGUAGE FOR WATER AND SEWER FRANCHISE ORDERS RELATED TO RECOVERY OF TAXES ON CONTRIBUTIONS IN AID OF CONSTRUCTION

BY THE COMMISSION: At the Commission Staff Conference on Monday, December 7, 1987, the Public Staff recommended certain language related to taxation of contributions in aid of construction (CIAC) to be included in orders granting franchises to water and sewer companies. After responses from several water and sewer companies, the Commission voted to allow all interested parties to file written comments on the Public Staff's proposal within ten days.

By Order of December 15, 1987, the parties were given an extension to December 22, 1987, to file said comments.

Written comments were filed by Heater Utilities, Inc. (Heater Utilities), North State Utilities, Inc. (North State), Carolina Water Service of North Carolina (Carolina Water Service), and the Public Staff. Generally, the

companies requested that the Commission reject the proposed language of the Public Staff. The Public Staff proposed language, as modified in the comments filed December 22, 1987, is as follows:

> "No ratemaking treatment will be allowed in a future proceeding for taxes on Contributions in Aid of Construction if the appropriate tax authority or court rules at some future date that taxes are due."

In its Order of August 26, 1987, the Commission ordered all water and sewer companies to use the full gross-up method with respect to collection of taxation associated with 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. In addition, ordering paragraph No. 3(d) of said Order provides:

> "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 charges to customers."

The Public Staff expressed concern in its Commission Staff Conference agenda item that water and sewer utilities were engaging in transactions that <u>may</u> be deemed to be CIAC by the Internal Revenue Service (IRS). Two examples of transactions causing Public Staff concern are the purchase of utility systems at a market price below the original cost of the systems and the purchase of a utility company's stock at a price below book value. The Public Staff expressed concern that this difference between fair market value and cost in these instances <u>may</u> be deemed to be CIAC by the IRS and therefore subject to taxation under TRA-86.

Generally, the responding companies assert that the above noted transactions do not constitute CIAC subject to income taxation under the Tax Reform Act of 1986 (TRA-86). These companies cite the opinion of the Staff of the United States Congress Joint Committee on Taxation as presented in the "blue book" that the value of property transferred for income tax purposes is its fair market value. If this is the case, then no CIAC exists in the above noted transactions because the systems or companies are reportedby being purchased at fair market value.

Conversely, the Public Staff cites the recently issued Internal Revenue Service Advance Notice 87-82 that states in part the following:

> "Absent any unusual circumstances, normally the value of such property provided to a utility is the "replacement cost" of the property; i.e. the cost that another party would incur to construct the property that is functionally similar to the subject property and thus could replace such subject property in the performance of the property's intended function."

This citation seems to indicate that in the Internal Revenue Service's view an element of CIAC generally exists in the above noted transactions.

In coming to its conclusions in the August 26, 1987, Order requiring full gross-up for water and sewer companies the Commission gave much consideration of the evidence placed into the record as to the financial weakness generally

experienced by most water and sewer companies. This evidence was initially presented by the companies and was uncontested. Further, these companies generally supported full gross-up procedures for the water and sewer industries. Consequently, as noted above, the Commission concluded in its August 26, 1987, Order that absent prior approval for an exception all water and sewer companies must use full gross-up procedures. This Order was not appealed by any party.

The Public Staff is now asking the Commission to include in all franchise orders language prohibiting the recovery of taxes related to CIAC under TRA-86 should the full gross-up procedures of the August 26, 1987, Order not be followed. The companies have resisted this language in cases where the initial transaction is structured to not include a contribution element, when the transferred property's fair market value is taken under consideration. The question then becomes one of whether or not the proposed prohibitive language should be included in franchise orders where the transfer has been conducted with consideration to the transferred property's fair market value.

Both the companies and the Public Staff note that there is uncertainty as to the proper CIAC valuation contemplated under TRA-86. Additionally, the Public Staff and the companies note that the Commission does not have the absolute authority to interpret TRA-86 on this valuation issue. In fact, the Commission notes, as pointed out by North State, that there is much support in the historic record, as it relates to Internal Revenue Code application of general valuation principles, for fair market value application to transferred property transactions.

After reviewing the many references cited by the companies in their written comments, the Commission concludes that the appropriate valuation for CIAC should be fair market value. However, the Commission is concerned, particularly in view of Internal Revenue Notice 87-82, that this CIAC valuation basis may not ultimately be accepted by appropriate tax authorities and courts. This concern is greatly intensified by the realization that should the fair market valuation not be accepted then the company would probably be prohibited from fulfilling the full gross-up methodology because the previous owner of the property would probably be unavailable and unwilling to rewrite the original transfer contract. Being unable to fulfill the full gross-up procedures, then the company or its ratepayers would be burdened with supporting any additional income tax burden. Based on evidence of record, generally water and sewer companies or their customers cannot financially sustain this burden. Therefore, the Commission must take the precautionary position of placing the risk of incorrectly assessing the taxability of these transfer transactions on the utility rather than its customers. Consequently, absent a strong, clear, and convincing showing of exceptional cause, no ratemaking treatment will be allowed in a future proceeding for taxes on Contributions in Aid of Construction if the appropriate tax authority or court rules at some future date that taxes are due. The Commission further concludes that this view should be expressed in all water and sewer companies' franchise orders for newly acquired systems issued after the date of this Order, provided that the acquisition contract was not executed prior to February 3, 1987.

Carolina Water Service requested a hearing on the Public Staff's proposed language, should the Commission consider adopting said language. The Commission concludes that the language adopted herein is fully supported by the

evidence placed into the record in this docket at the public hearing on May 12, 1987, and by the written comments filed by the parties in response to the Public Staff's agenda item of December 7, 1987. Therefore, the Commission further concludes that hearings on this matter are unnecessary at this time.

Heater Utilities asserted in its written comments that one of its pending franchise applications, filed in Docket No. W-274, Sub 41, is for three separate new water systems. Heater Utilities further stated that contracts related to the acquisition of two of these systems, Langston Estates and Tyndrun, were executed prior to February 3, 1987. Since the Commission's initial Order of February 3, 1987, and subsequent Orders on the CIAC taxation issue applied the gross-up procedures to CIAC not under contract prior to February 3, 1987, Heater Utilities asserted that these systems should not be subject to the language proposed by the Public Staff. After reviewing this matter, the Commission concludes that the language adopted herein this Order should not apply to the Langston Estates and Tyndrun systems.

IT IS, THEREFORE, ORDERED as follows:

1. That each order granting franchise for newly acquired water or sewer systems issued after the date of this Order shall include the following language, provided that the acquisition contract was not executed prior to February 3, 1987:

> Absent a strong, clear, and convincing showing of exceptional cause, no ratemaking treatment will be allowed in a future proceeding for taxes on Contributions in Aid of Construction if the appropriate tax authority or court rules at some future date that taxes are due.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of January 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 115

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Revision of Rule R2-36(a) of the Rules and Regulations of the North Carolina Utilities Commission	)))	ORDER AMENDING RULE R2-36(a)

BY THE COMMISSION: On June 15, 1987, the General Assembly of North Carolina ratified House Bill 1035 (Chapter 374 of the 1987 Session Laws) to make certain changes in G.S. 62-268 with regard to liability insurance requirements for bus companies operating solely within North Carolina and exempt from regulation under the provisions of G.S. 62-260(a)(7).

Upon consideration thereof, the Commission, acting under the power and authority delegated to it for the promulgation of rules and regulations

pursuant to G.S. 62-31, concludes that Rule R2-36(a) should be amended in accordance with Exhibit A attached hereto.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R2-36(a) is hereby revised in accordance with Exhibit A attached hereto and made a part hereof, effective upon the date of this Order.

2. That a copy of this Order shall be mailed to all bus companies exempt from regulation under the provisions of G.S. 62-260.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of February 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

EXHIBIT A

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

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

SCHEDULE OF LIMITS
Motor Carriers--Bodily Injury Liability--Property Damage Liability

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

Passenger Equipment:

The minimum levels of financial responsibility are as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. § 10927(a)(1),

which are $5,000,000 for vehicles with a seating capacity of 16 passengers or more and $1,500,000 for vehicles with a seating capacity of 15 passengers or less. Provided, however, that a passenger carrier providing transportation of passengers exclusively for or under the control of a local Board of Education operating under the authority of the State, or the State Department of Education, or the United States Department of Defense, to the extent that said arm of the United States Government maintains local boards of education in the State of North Carolina, shall obtain and keep in force at all times public liability and property damage insurance in the minimum amounts provided for in 49 U.S.C. § 10927(a)(1) or in a minimum amount greater than or less than said limits as may be specified and approved by the local Board of Education or State Department of Education, or the United States Department of Defense contracting with said passenger carrier, provided, however, that in no event shall the minimum level of financial responsibility be less than $1,000,000.00. Provided, further, that no bus company operating solely within the State of North Carolina and which is exempt from regulation under the provisions of G.S. 62-260(a)(7) shall be required to file with the Commission proof of the financial responsibility in excess of one million five hundred thousand dollars ($1,500,000).

DOCKET NO. M-100, SUB 116

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Request to Determine Whether Unmanufactured	)	ORDER INTERPRETING
Tobacco is Included in Group 1, General	)	RULE R2-37
Commodities, Pursuant to Rule R2-37	)	

BY THE COMMISSION: On May 26, 1988, the Commission received a letter from Mr. Ralph McDonald, Bailey & Dixon, Attorneys at Law, Raleigh, North Carolina, on behalf of a motor carrier which holds a certificate authorizing motor carrier transportation of general commodities, except commodities in bulk in tank vehicles, statewide, seeking a determination by the Commission as to whether unmanufactured tobacco is included in the definition of general commodities as set forth in Group 1 of Rule R2-37 of the Commission's Rules and Regulations.

On June 3, 1988, Mr. David H. Permar, Hatch, Little & Bunn, Attorneys at Law, Raleigh, North Carolina, filed a response to Mr. McDonald's letter on behalf of several certificated carriers of Group 19, unmanufactured tobacco, stating their position that authority to transport general commodities does not include authority to transport unmanufactured tobacco.

By Order dated June 27, 1988, the Commission initiated a rulemaking investigation to consider whether the transportation of unmanufactured tobacco is included in Group 1, general commodities pursuant to Rule R2-37.

The Order of June 27, 1988, was mailed to all motor carriers holding general commodities authority and tobacco authority issued by this Commission and to Mr. McDonald and Mr. Permar.

The Order provided that parties desiring to file comments should do so on or before July 28, 1988, with reply comments due not later than August 12, 1988, 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 opinion that unmanufactured tobacco is included in the definition of general commodities in Group 1 of Rule R2-37 were timely filed with the Commission by Everette Contract Carrier, Incorporated; McGee Trucking Company, Inc., d/b/a C.N. Trucking Company; Topco Enterprises, Inc., Overnite Transportation Company and Mr. Ralph McDonald, Attorney at Law, representing English Trucking Company and McGee Trucking Company, Inc., d/b/a C. N. Trucking Company.

Comments in opposition to the opinion that unmanufactured tobacco is included in the definition of general commodities in Group 1 of Rule R2-37 were timely filed by Aaron Smith Trucking Company, Inc.; Mr. Harvie A. Carter; Mr. G.E. Martin, Jr., of Burton Lines, Inc.; Mr. Vance T. Forbes and Mr. Vance T. Forbes, Jr., of Forbes Transfer Company, Inc., and Mr. David H. Permar, Attorney at Law, representing the Tobacco Transporters Association.

Based upon a careful consideration of prior Commission Orders and the comments filed in this proceeding, the Commission reaches the following

CONCLUSIONS

I. Other Commodity Groups Which Do Not Require Special Vehicles or Equipment Are Subsumed Under Group 1.

The primary issue before the Commission in this docket was conclusively determined by prior Commission Order issued on February 17, 1960. See Amendment to Group 1 of Rule 10 of the North Carolina Truck Act of 1947, Docket No. 4066-I, 51 North Carolina Utilities Commission Reports (July 1, 1958-June 30, 1960) at page 28. A discussion of that Order and the proceedings which led to its issuance follows.

On May 20, 1947, the Commission adopted rules and regulations effective June 1, 1948, for the administration and enforcement of the Truck Act of 1947. Rule 10, Description of Commodities, provided for 22 commodity groups.[1] The provisions of the rule pertinent to this discussion were:

> "Rule 10, DESCRIPTION OF COMMODITIES. An applicant who proposes to transport commodities included in any one or more of the following commodity groups must definitely indicate in his application the group or groups to be included. Any other commodities to be included in the application must be set out under the caption OTHER SPECIFIC COMMODITIES, as indicated in Group 22.

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1 Current Rule R2-37, which is substantially similar to Rule 10 in most other respects, has only twenty-one groups. Family Moving which was included under Rule 10 is not included under the current rule.

> Group 1. GENERAL COMMODITIES. This group includes property the transportation of which does not require special vehicles or special equipment for hauling, loading, or unloading or any special or unusual service in connection therewith. This group does not include any of the following groups." (Emphasis added)

The last sentence of Group 1 under Rule 10 was the subject of three Commission dockets in 1959 and 1960. Docket No. T-825, Sub 28, involved tariffs filed by the Southern Motor Carriers Rate Conference and the North Carolina Motor Carriers Association which contained new charges covering services in trucks equipped with mechanical refrigeration units. The Commission suspended the tariffs and assigned them for public hearing. On the same date, March 26, 1959, the Commission entered an Order in Docket No. 4066-H directing an investigation to determine whether vehicles with temperature controls were special equipment. Carriers authorized to transport general commodities, except those requiring special equipment, were made respondents and given notice of hearing. After a public hearing, the Commission issued an Order on September 22, 1959, which held that vehicles equipped with temperature controls were neither special vehicles nor special equipment. The Order of September 22, 1959, also held that authority for the transportation of general commodities (Group 1) did not, as a matter of course, include authorities described in Group 5 (solid refrigerated products).

Several carriers of general commodities excepted to the Order of September 22, 1959, and requested that the matter be reopened. After conference with counsel for all parties, the Commission issued an Order on November 16, 1959, reopening the docket for further investigation and hearing. The Commission opened a second docket, 4066-I, the same day to consider deleting the last sentence from Group 1 under Rule 10.

The public hearing in Docket No. 4066-I was conducted on January 14, 1960. On February 17, 1960, the Commission issued an Order amending Group 1 of Rule 10 by deleting the last sentence.

A fair reading of the Order of February 17, 1960, can lead to but one conclusion. By deleting the last sentence of Group 1 of Rule 10, the Commission intended to include within the definition of general commodities all commodities not requiring special vehicles, equipment, or service. The Commission's findings and conclusions are unequivocal. In particular, the following portion of the conclusions expresses the Commission's intent:

> "...Group 1 of Rule 10 as now written tends to eliminate many commodities from the description of general commodities by reason of the restrictive sentence under consideration in this proceeding, and has the effect of creating two interpretations of general commodities which we believe, and the carriers unanimously concur, produce confusion and misunderstandings among carriers and the shipping and receiving public.
>
> "It is our opinion and we conclude that the public interest will be best served if that sentence, 'This group does not include any of the following groups,' now included as a part of the definition of general commodities, Group 1, Rule 10 of the Commission's Rules and Regulations for the Administration and Enforcement of the Truck Act,

should be eliminated and stricken from said commodity description. We further conclude and hold that this action should in no way be construed as having the effect of removing any other restriction imposed on the operating authority heretofore granted and as now shown on the formal certificates of common carriers of general commodities operating in intrastate commerce."

In this case, the tobacco carriers base their opinion at least in part on the following language in the Commission's motor freight application form:

"(NOTE: Applicant should mark only the groups he is qualified to transport and proposes in good faith to transport. Only the groups marked will be considered as a part of the application. For example, if the applicant marks Group 1 only, that will be taken to mean that he does not propose to transport any of the commodities described in other groups. If he marks Group 1 and also Groups 6 and 10, those three groups will be considered the limit of his proposed operation. Group 21 should be used for describing specific commodities that do not fall in any other group.)" Form F-1 (1964).

It appears that the language cited above was inadvertently carried forward from the time before the Commission's rule defining general commodities was amended. In any event, instructional language contained in Commission forms should not control over Commission rules duly promulgated after notice and hearing. Henceforth, the application forms will be amended to reflect current Commission Rules and Regulations.

Upon consideration of all the comments and the entire record in this matter, the Commission is of the opinion, finds, and concludes that unmanufactured tobacco is included in Group 1, general commodities, pursuant to Rule R2-37.

II. Transportation of Unmanufactured Tobacco Does Not Require Special Vehicles, Special Equipment, or Special Service.

General commodities as defined in Group 1 in Commission Rule R2-37 include property the transportation of which does not require special vehicles or special equipment for hauling, loading or unloading or any special or unusual service in connection therewith.

Those in opposition to including unmanufactured tobacco in the general commodities group contend that unmanufactured tobacco requires special handling because of its valuable and sometimes perishable nature and also special and additional equipment other than the flatbed vehicle.

The Commission is not, however, persuaded by the comments filed in this docket that tobacco requires special handling or equipment for loading and transporting. To the contrary, unmanufactured tobacco is transported much the same as other commodities transported by carriers of general commodities. Flatbed or van trailers are used in transporting unmanufactured tobacco and it is loaded or unloaded by hand or with forklifts with the loads being covered and secured.

FURTHER COMMENTS

Rule R2-37 of the Commission's Rules and Regulations sets forth 20 groups of named commodities with Group 21 designated for use of other commodities not included in any of the other named commodity groups. Group 19, unmanufactured tobacco and accessories, should be requested by an applicant solely desiring to transport only that commodity. This also applies to the other named commodity groups. However, an applicant desiring to transport a variety of general commodities under Group 1 should not be excluded from transporting commodities from other named groups at some future date as long as the commodities meet the definition of general commodities as set forth under Rule R2-37.

IT IS, THEREFORE, ORDERED as follows:

1. That unmanufactured tobacco is included in Group 1, general commodities, pursuant to Commission Rule R2-37.

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 19th day of October 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-100, SUB 54

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation and Rulemaking Proceeding to	)	ORDER PROPOSING
Consider Least Cost Integrated Resource Planning	)	RULES FOR COMMENT

BY THE COMMISSION: By Order issued March 25, 1987, the Commission instituted a general investigation and rulemaking proceeding to consider the adoption of a new approach to electric utility planning which is intended to identify those electric resource options which can be obtained for the total least cost to the ratepayers consistent with adequate, reliable service. Least cost integrated resource planning is a strategy which includes conservation programs, load management programs and other demand-side measures as important resource options which must be considered along with new generating plants, cogeneration and other supply-side measures in providing cost effective, high quality electric service.

The Commission recognized in its Order of March 25, 1987, that least cost integrated resource planning is already being practiced in North Carolina to a large degree. However, the Commission believed then and continues to believe now that there is a need to establish specific policies and procedures in order to ensure that the present ad hoc case-by-case approach to planning gives appropriate consideration to the many alternative resources available for meeting electricity needs. The primary thrust of the least cost integrated resource planning strategy under consideration is to integrate both demand side and supply side energy planning into a comprehensive program that will weigh the costs and benefits of the available resource options and provide the basis for a balanced evaluation of those options.

The March 25, 1987, Order published a series of rules defining a proposed least cost integrated resource planning program, and it requested comments on the rules from all interested parties. Carolina Power & Light Company, Duke Power Company, North Carolina Power, Nantahala Power & Light Company, the Public Staff, and the Attorney General were made parties to the proceeding and were requested to file initial comments on the proposed rules within approximately 60 days after the Order was issued and reply comments within approximately 30 days after the initial comments were filed.

By Order issued April 1, 1987, Carolina Power & Light, Duke Power, North Carolina Power, and Nantahala Power & Light were required to publish, at their own expense, a newspaper notice to the public announcing the least cost integrated resource planning investigation and rulemaking proceeding, and requesting comments on the proposed rules.

By Order issued May 12, 1987, the parties were allowed until August 21, 1987, to file initial comments on the rules and until September 21, 1987, to file reply comments.

By Order issued August 5, 1987, Carolina Utility Customers Association, Inc. (CUCA) was allowed to intervene in the proceeding. By Order issued August 25, 1987, the North Carolina Industrial Energy Consumers (NCIEC) were allowed to intervene in the proceeding.

Initial comments were filed by Carolina Power & Light, Duke Power Company, North Carolina Power, Nantahala Power & Light, the Public Staff, the Attorney General, the North Carolina Industrial Energy Consumers, and the Carolina Utility Customers Association. Initial comments were also filed by the following individuals: Jane Sharpe, James R. Martin, Edward A. Holland of Triangle J Council of Governments, Mrs. Barney L. Davidson, Paul Markowitz of the Energy Conservation Coalition, Kimberly Lillig, David Kirkpatrick of Sun Shares, Peter G. Somers, Betsy Levitas of North Carolina Fair Share, Wells Eddleman, Laura Drey, Jerry Markatos, and Joseph Kriesberg and David Efken of Public Citizen. Reply comments were filed by Carolina Power & Light, Duke Power, the Public Staff, and the Attorney General.

The comments filed by the various parties and individuals were extensive and addressed most of the provisions of the proposed rules. There was strong disagreement in the comments concerning a great many of the provisions in the rules, with few of the rules escaping criticism from at least one or more quarters.

For example, it is clear to the Commission from the various comments that least cost planning terminology is not sufficiently defined. Some comments argue that least cost planning means giving primary consideration to the short term revenue requirements in ranking each resource option. Other comments argue that least cost planning should consider risk, system reliability, fuel availability, and environmental constraints among other things in ranking each resource option.

Some comments expressed concern about the voluminous end-use data which might be required and questioned the cost effectiveness of gathering such data. Other comments expressed concern about hasty implementation of comprehensive rules dealing with such complex issues without adequate discussion of the impact that the rules would have on the planning process.

The proposed rules have generally proven to be so controversial that a thorough evaluation of all disputed issues in one overall proceeding seems at this point to be unwise if not unworkable. Resolution of some of the issues will be difficult, and further discussion of the proposed rules will undoubtedly lead to additional issues being raised which have not been addressed thus far.

The Commission recognizes that least cost integrated resource planning is an evolving, dynamic process, and that new information and new understanding of integrated resource planning principles will be developed in the future. In order to address each issue more effectively, the Commission is considering an alternative approach which would refocus its rulemaking proceeding on a relatively few issues at a time. Such an approach would initially require the adoption of rules establishing the basic framework for a least cost integrated resource planning program, followed by rules developing the details necessary to flesh out the overall program. In this manner, controversies arising over the details of the program can be resolved on a case-by-case basis without impeding the development of the remainder of the program or extending the resources of the Commission beyond their reasonable limitations.

As a first step in the approach to be followed, the Commission is proposing rules herein which define an overall framework within which the least

cost integrated resource planning process will take place. The rules proposed herein are based on those aspects of the rules proposed in the Commission's Order of March 25, 1987, which were generally uncontroversial plus certain planning procedures already in place. A copy of the rules proposed herein is attached to this Order as Appendix A.

The rules proposed herein do more than outline a planning procedure. They specify that neither demand-side resource planning nor supply-side resource planning is to be done separately, but that they are to be integrated into a single planning process. They also specify that alternative resource options must be studied and compared in such depth that a balanced evaluation of the options can be made. They provide a framework wherein least cost considerations, environmental concerns, operating needs, and flexible response to future unknowns can all be accommodated.

The rules proposed herein also integrate Article 8 of the Commission's existing electric service rules (NCUC Rules R8-42 and R8-43 for Electric Energy Supply Planning) into the least cost integrated resource planning rules. The current Rules R8-42 and R8-43 (which have been redesignated R8-60 and R8-61) will provide an element of continuity in the integrated resource planning rules until such time as the planning process evolves into its final form.

The rules proposed herein will be published for further comment by all interested parties within 60 days. It is hoped that the proposed rules can then be finalized soon after the comments are received. It is further hoped that the comments received will enable the Commission to define and prioritize the next steps which need to be taken or the next series of detailed rules or issues which need to be addressed in order to properly flesh out the planning process outlined herein. To that end, the Commission is also soliciting comments on two specific detailed issues which it perceives as requiring attention in the new future. It is imperative that a workable definition of least cost integrated resource planning be established early in the rulemaking process so that the rules developed during the process can be better focused on an overall goal. The Commission is of the opinion that least cost integrated resource planning can best be defined by identifying the primary considerations which must be addressed by each least cost integrated resource planning study and the relative weight which should be given to each of the considerations in ranking each resource option in the study.

G. S. § 62-2(3a) now declares that it is the public policy of the State of North Carolina:

> "(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills." (Emphasis Added).

In order to fully implement the public policy which has been declared by the General Assembly, the Commission concludes that it is appropriate to request all interested parties to file comments regarding consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills.

A Least Cost Conference is tentatively being scheduled for the fall of 1988 in North Carolina. The Conference will be co-sponsored by the North Carolina Utilities Commission, the South Carolina Public Service Commission, the North Carolina Alternative Energy Corporation, and North Carolina State University. The Conference will be open to all interested parties, including regulatory officials, public utilities, consumer representatives, industrial organizations and other public interest groups. The Conference will address many of the details and issues which the Commission must evaluate in developing its least cost integrated resource planning program. The Commission is enthusiastic about the prospects for the Conference, and anticipates valuable feedback from the Conference in identifying those issues which must be incorporated into our integrated resource planning rules and the priorities for dealing with those issues. The Commission anticipates soliciting further comments on the integrated resource planning rules after the fall 1988 Least Cost Conference is completed.

Section 62-110.1(c) of the General Statutes of North Carolina require that the Commission analyze the probable growth in the use of electricity and the long range need for future generating capacity for North Carolina. On August 18, 1986, the Commission issued its Order Adopting Updated Forecast and Plan for Meeting Long Range Needs for Electric Generating Facilities in North Carolina - 1985/86 in Docket No. E-100, Sub 50. The Order contained the findings and conclusions of the Commission regarding generating capacity expansion by electric utilities serving North Carolina pursuant to G.S. § 62-110.1. Docket No. E-100, Sub 50 was the most recent proceeding of the Commission concerning generating capacity expansion.

Further hearings and analysis of the long range needs for electric generation pursuant to G.S. § 62-110.1 would normally be held in 1988 consistent with the Commission's practice of holding such hearings and proceedings approximately every 2 years. However, the 2 year frequency of such proceedings was influenced by the active construction programs under way by all of the electric utilities. The construction programs of the utilities are far less active now, and current forecasts continue to indicate that future load growth will be less than it was during the past decade.

Carolina Power & Light and Duke Power prepare their electric load forecasts on a calendar year basis. The most timely review of such load forecasts can be made in the spring of each year shortly after the forecasts are updated. However, any hearings or proceedings to evaluate the electric generating capacity needs of the State during the spring of 1988 will conflict with the general rate case proceedings of Carolina Power & Light. If such hearings or proceedings are conducted during the fall of 1988, they will conflict with our Least Cost Conference and the proposed biennial proceedings to revise the avoided cost rates for purchases of electric power from cogenerators and small power producers. The Commission issued its most recent Order Establishing Standard Rates and Contract Terms for Qualifying Facilities

on April 7, 1987, following hearings held in November 1986 in Docket No. E-100, Sub 53.

The Commission is of the opinion that the next hearings and proceedings to evaluate the electric generating capacity needs for North Carolina pursuant to G.S. § 62-110.1 should be scheduled for the spring of 1989. The hearings should also address least cost integrated resource planning considerations, including additional comments on the present or proposed integrated resource planning rules of the Commission. It is anticipated that prior to the spring 1989 hearings, the Commission may propose additional least cost integrated resource planning rules or issues for comment and discussion in the 1989 hearings, or it may hold earlier hearings to discuss certain integrated resource planning rules and issues, or both.

IT IS, THEREFORE, ORDERED as follows:

1. That the proposed rules attached hereto as Appendix A and entitled "Least Cost Integrated Resource Planning" are hereby published for comment.

2. That the parties to this proceeding shall file written comments regarding the proposed rules attached hereto as Appendix A and the other matters raised in decretal paragraphs 3, 4, and 5 not later than sixty (60) days after the date of this Order. The parties may file reply comments in response to the matters raised in decretal paragraphs 3, 4, and 5 not later than ninety (90) days after the date of this Order.

3. That the comments should also identify the primary considerations which must be addressed by each least cost integrated resource planning study and the relative weight which should be given to each of the considerations in ranking each resource option in the study.

4. That the comments should also address the issue regarding consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills.

5. That the comments should also identify the next issue or issues which need to be developed in greater detail as part of a systematic evolution of the rules proposed herein toward their final form.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of March 1988.

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

APPENDIX A

ARTICLE 11

LEAST COST INTEGRATED RESOURCE PLANNING

Rule R8-56. General.

(a) Purpose. The purpose of least cost integrated resource planning is to ensure that each regulated electric utility operating in North Carolina is

developing reliable projections of the long range demands for electricity in its service area, and is developing a combination of reliable resource options for meeting the anticipated demands in a cost effective manner. These rules are intended to be consistent with the applicable provisions of the North Carolina General Statutes, but are not intended to restrict or prohibit demonstration projects, pilot programs or other experimental ventures.

(b) Applicability. These rules are applicable to Carolina Power & Light Company, Duke Power Company, Nantahala Power and Light Company, and Virginia Electric and Power Company, d/b/a North Carolina Power.

(c) Integrated Resource Plan. Each utility shall develop and keep current a least cost integrated resource plan consisting of at least the following components:

(1) A load forecast;
(2) A resource integration plan; and
(3) A short-term action plan.

(d) Data. Each utility shall provide such information and data as the Commission requests and deems necessary for proper evaluation of the integrated resource plans prepared by the utility.

(e) Filing. Each utility shall file its least cost integrated resource plan and supporting testimony with the Commission at the times designated by the Commission. The utilities should anticipate filing such plans approximately every two (2) or three (3) years. The Public Staff or any other intervenor can file a least cost integrated resource plan of its own, or it can prepare an evaluation of the integrated resource plans filed by the utilities, or both. Any integrated resource plans, evaluations, and supporting testimony prepared by the Public Staff or other intervenors shall be filed at the times designated by the Commission. A reasonable amount of time will be given for the Public Staff and other intervenors to evaluate the integrated resource plans filed by the utilities prior to filing their own integrated resource plans and evaluations. The intervenors should anticipate filing their own integrated resource plans and evaluations approximately four (4) months after receipt of the integrated resource plans filed by the utilities.

(f) Review. The Commission is required by G.S. 62-110.1(c) to consult with the utilities in North Carolina and with other state and federal agencies having relevant information in analyzing the long range needs for expansion of electric generating facilities in North Carolina. The Public Staff is required by G.S. 62-15(d) to assist the Commission in analyzing the long range needs for expansion of electric generating facilities pursuant to G.S. 62-110.1. Public hearings to consider the least cost integrated resource plans filed by the utilities and the least cost integrated resource plans and evaluations filed by the Public Staff and other intervenors shall be scheduled at the time and place designated by the Commission. The utilities and intervenors should anticipate public hearings being scheduled promptly following the filing of testimony and exhibits by the intervenors.

Rule R8-57. Load Forecasts.

The load forecast filed by each utility as part of its integrated resource plan shall include, at a minimum, the following:

(a) A description of the methods and assumptions used by the utility to prepare its forecast including a description of the models and variables used in the models;

(b) A tabulation of the utility's forecasts for at least a 15-year period, including peak loads for the summer and winter seasons of each year and the projected effects of non-price induced conservation and load management on the forecasted peak loads for each year; and

(c) Highest, lowest, and most probable forecast scenarios based on the methods and assumptions used by the utility in preparing its forecasts; or, any other technique which addresses forecast uncertainty to at least a comparable degree.

Rule R8-58. Integrated Resource Plan.

Each utility shall evaluate each resource option which is reasonably available to it in meaningful quantities, including both demand-side and supply-side options, in order to determine an integrated resource plan which offers a combination of reliable resource options for meeting the anticipated demands on its system in a cost effective manner. The assumptions in the evaluation shall be fully documented, and the cost benefits of all resource options in the evaluation shall be quantified to the extent possible.

(a) Evaluation of Resource Options. Evaluation of resource options shall include at least the following considerations:

(1) Determine the present value of future revenue requirements as at least one criterion used in evaluating the resource options;

(2) Evaluate both demand-side and supply-side resource options using the best and most reasonable procedures available, including, but not limited to, such resource options as conservation, load management, re-lighting, insulation, cogeneration and small power production;

(3) Analyze the sensitivity of major assumptions used in the evaluation of resource options, including:

A. Assessment of risk in accordance with an assumption's potential impact on the least cost plan;

B. Assessment of reliability; and

C. Assessment of other uncertainties, including forecast uncertainty; and

(4) Identify the costs and other effects associated with deferral or acceleration of both demand-side and supply-side resource options.

(b) Generating Facilities. Each utility shall provide data for the electric generating facilities (including planned additions and retirements, but excluding cogeneration and small power production) in its integrated resource plan. Data should be detailed enough to facilitate a comparative analysis of capacity alternatives and shall include all planning assumptions.

(1) Existing Generation. The utility shall provide a 15-year projection of the following:

A. Projected fuel use by type of unit. Data shall be annual data;

B. Projected unit characteristics by type of unit; such as availability factors, capacity factors, heat rates, outage rates or other relevant data. Data shall be annual data;

C. Projected retirements of existing units, including a discussion of the reasons for the retirements; and

D. Other projected revisions to existing facilities plus a discussion of any life extension programs currently being planned or implemented.

(2) Planned Generation Additions. The utility shall provide a 15-year projection of the following:

A. Projected fuel use by type of unit. Data shall be annual data;

B. Projected unit characteristics by type of unit, such as availability factors, capacity factors, heat rates, outage rates or other relevant data. Data shall be annual data; and

C. Summaries of all studies supporting the new generation additions included in the least cost plan.

(c) Alternative Energy Resources. Each utility shall assess on an ongoing basis the potential for lowering fuel costs or improving the overall efficiency of its generation facilities by means of reasonably available alternative energy resource options. Alternative energy resources shall include, but not be limited to, hydro, wind, geothermal, solar thermal, solar photovoltaic, municipal solid waste, biomass, cogeneration, small power production and other alternative energy resources. The utility shall discuss its overall assessment of alternative energy resources and it shall provide details of the methods and assumptions used in the assessment of those alternative energy resources having a significant impact on its integrated resource plan.

(d) Conservation and Load Management. Each utility shall assess on an ongoing basis the potential for lowering fuel costs or improving overall system

efficiency by means of conservation and load management techniques. The utility shall discuss its overall assessment of conservation and load management techniques, and it shall provide details of the methods and assumptions used in the assessment of those conservation and load management techniques having a significant impact on its integrated resource plan. The assessments shall include costs, benefits, risks, uncertainties, reliability, and customer acceptance where appropriate.

(e) Purchased Power. Each utility shall assess on an ongoing basis the potential for lowering fuel costs and improving overall system efficiency by means of purchased power resources and additional bulk power transmission facilities. The assessments shall include costs, benefits, risks, uncertainties, and reliability where appropriate. The utility shall:

(1) Discuss its overall assessment of its purchased power resources, including but not limited to purchases from cogenerators, small power producers, independent power producers and other utilities, and it shall provide details of the methods and assumptions used in the assessment of those purchased power resources having a significant impact on its integrated resource plan; and

(2) Discuss its overall assessment of those additions to its bulk power tranmission facilities which will have a significant impact on its integrated resource plan, including details of the methods and assumptions used in the assessment.

(f) Transmission/Distribution Facilities Improvements. Each utility shall assess on an ongoing basis the potential for improving the overall efficiency of its generation/tranmission/distribution facilities by means of improvements to the transmission/distribution facilities. The utility shall discuss its overall assessment of transmission/distribution facilities improvements, and it shall provide details of the methods and assumptions used in the assessment of those facility improvements having a significant impact on its integrated resource plan.

Rule R8-59. Short-Term Action Plan.

Each utility shall prepare a short-term action plan which discusses those specific actions currently being taken by the utility to implement its integrated resource plan.

(a) Summary. The utility's short-term action plan shall contain a detailed summary of the various resource options contained in its current integrated resource plan. For each resource option or program, the summary shall include:

(1) The objective of the resource option or program;
(2) Criteria for measuring progress toward the objective;
(3) The implementation schedule for the program over the next two to three years; and
(4) Actual progress toward the objective to date.

(b) Cost Justification. For each major project currently undertaken by the utility to implement its integrated resource plan, the summary of the various resource options shall include a summary of the cost justification of the project.

Rule R8-60. Preliminary Plans and Certificates of Public Convenience and Necessity for Siting and Construction of Electric Generation and Related Transmission Facilities in North Carolina.

(a) No commitments and contracts made for the purchase of a steam supply system, turbine, generator or other major component of the generation system shall be noncancelable until such time as the certificate of public convenience and necessity has been issued.

(b) Information to be filed 120 days or more before the filing of the application for a certificate of public convenience and necessity for generating facilities with capacity of 300 MW or more shall include the following:

(1) Available site information (including maps and description), preliminary estimates of initial and ultimate development, justification for the adoption of the site selected, and general information describing the other locations considered.

(2) As appropriate, preliminary information concerning geological, aesthetic, ecological, meteorological, seismic, water supply, population and general load center data to the extent known.

(3) A statement of the need for the facility including information on loads and generating capability.

(4) A description of investigations completed, in progress, or proposed involving the subject site.

(5) A statement of existing or proposed plans known to applicant of federal, State, local governmental and private entities for other developments at or adjacent to the proposed site.

(6) A statement of existing or proposed environmental evaluation program to meet the applicable air and water quality standards.

(7) A brief general description of practicable transmission line routes emanating from the site.

(8) A list of all agencies from which approvals will be sought covering various aspects of any generation facility constructed on the site and the title and nature of such approvals.

(9) A statement of estimated cost information, including plans and related transmission capital cost (initial core costs for nuclear units); all operating expenses by categories, including fuel costs and total generating cost per net kWh at plant; and information concerning capacity factor, heat rate, and plant

service life. Furnish comparative cost including related transmission cost of other final alternatives considered.

(10) A schedule showing the anticipated beginning dates for construction, testing, and commercial operation of the generating facility.

(c) Procedures for obtaining the certificate of public convenience and necessity shall be as stated in the General Statutes.

(d) In filing an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) in order to construct a generating facility, a utility shall include the following:

(1) The most recent resource integration plan of the utility plus any proposals by the utility to update said plan;

(2) Testimony specifically indicating the extent to which the proposed construction conforms to the utility's most recent resource integration plan; and

(3) Testimony supporting any utility proposals to update its most recent resource integration plan.

Rule R8-61. Annual Report of Updates to Least Cost Integrated Resource Plans.

(a) Every electrical public utility shall, annually, on or before April 1 furnish the Commission with a report containing a ten-year forecast of loads and generating capability. The report shall describe all generating facilities and known transmission facilities with operating voltage of 200 KV or more which, in the judgment of the utility, will be required to supply system demands during the forecast period. The report shall cover the ten-year period next succeeding the date of said reports and shall include the following:

(1) A tabulation of peak loads, generating capability, and reserve margins for each year.

(2) A list of the existing plants in service with capacity, location, and any technological innovations to be backfitted to improve environment quality to the extent known.

(3) A list of generating units under construction or planned at plant locations for which property has been acquired, for which certificates have been received, or for which applications have been filed with location, capacity, plant type, and proposed date of operation included.

(4) A list of proposed generating units at locations not known with general location, capacity, plant type, and date of operation included to the extent known.

(5) A list of units to be retired from service with location, capacity and expected date of retirement from the system.

(6) A list of transmission lines and other associated facilities (200 KV or over) which are under construction or proposed including the capacity and voltage levels, location, schedules for completion and operation.

(7) A list of any generation and associated transmission facilities under construction which have delays of over six months in the previously reported in-service dates and the major causes of such delays. Upon request from the Commission Staff, the reporting utility shall supply a statement of the economic impact of such delays.

(8) A list of future probable sites giving general location and description, major advantages, and whether the site is wholly owned, partially owned or not owned by the utility.

(b) Every electrical public utility shall, biennially, include in the report a twenty-year forecast of loads, generating capability, and reserve margins.

DOCKET NO. E-100, SUB 54

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation and Rulemaking Proceeding to	)	ORDER ADOPTING
Consider Least Cost Integrated Resource	)	RULES
Planning	)	

BY THE COMMISSION: By Order issued March 25, 1987, the Commission instituted a general investigation and rulemaking proceeding to consider the adoption of a new approach to electric utility planning which is intended to identify those electric resource options which can be obtained for the total least cost to the ratepayers consistent with adequate, reliable service. Carolina Power & Light Company, Duke Power Company, Virginia Electric and Power Company, d/b/a North Carolina Power, Nantahala Power and Light Company, the Public Staff, and the Attorney General were made parties to the proceeding and were requested to file comments. Carolina Utility Customers Association, Inc. (CUCA), and the North Carolina Industrial Energy Consumers (NCIEC) were allowed to intervene in the proceeding.

By Order issued March 16, 1988, the Commission proposed rules which define an overall framework within which the least cost integrated resource planning process will take place and requested comments on the proposed rules from all interested parties. The Commission recognized in the Order that it could address each issue in the proceeding more effectively by refocusing the rulemaking proceeding on a relatively few issues at a time, and that such an approach would initially require the adoption of rules establishing the basic framework for a least cost integrated resource planning program, followed by rules developing the details necessary to flesh out the overall program.

The March 16, 1988, Order also requested comments on three specific issues in addition to comments on the proposed rules themselves; the three issues being: (1) the primary considerations which must be addressed by each least cost integrated resource planning study and the relative weight which should be given to each of the considerations in ranking each resource option in the study; (2) the consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills; and (3) the next issue or issues which need to be developed in greater detail as part of a systematic evolution of the proposed rules.

Comments were filed by Carolina Power & Light Company, Duke Power Company, North Carolina Power, the Public Staff, the Attorney General, Paul Markowitz of the Energy Conservation Coalition, and Martha Drake. Additional reply comments were filed by CP&L and Duke Power Company.

Based on the comments filed in this proceeding, the Commission is of the opinion that the rules proposed in the Order of March 16, 1988, should be adopted with relatively minor revisions. The rules specify that demand-side resource planning and supply-side resource planning are to be integrated into a single planning process; and that alternative resource options must be studied and compared in such depth that a balanced, realistic evaluation of the options can be made. The rules adopted herein also integrate Article 8 of the Commission's existing electric service rules (NCUC Rules R8-42 and R8-43 for Electric Energy Supply Planning) into the least cost integrated resource planning rules.

The Commission is also of the opinion that other issues commented on by the parties to the proceeding should be addressed by separate Order as appropriate. Such issues as a working definition of least cost integrated resource planning, appropriate rewards to utilities for efficiency and conservation, and competitive bidding systems for new capacity need further work and discussion.

In a companion Order issued this same day in Docket No. E-100, Sub 58, the Commission has scheduled hearings to consider, analyze, and investigate the least cost integrated resource plans which will be developed and filed in that docket by CP&L, Duke, North Carolina Power, and Nantahala. These plans will be prepared in conformity with all applicable state laws and the rules adopted and implemented by this Order. All interested parties, including the Public Staff and Attorney General, will be encouraged to participate in those hearings. The Commission has also scheduled six night hearings across the State of North Carolina for the convenience of those members of the general public who may wish to appear and testify. In addition, the Commission has indicated an intent to initiate, as an important part of those proceedings, a comprehensive investigation into the scope and effectiveness of the demand-side programs and resource options which our electric utilities currently have in place in North Carolina and which they may plan to initiate in the near future. In particular, CP&L, Duke, North Carolina Power, and Nantahala have been directed as part of their plans and testimony to provide a detailed description and assessment of the effectiveness of their energy conservation and load management programs. Furthermore, the Commission has also requested the Public Staff to conduct a comprehensive investigation into the scope and effectiveness of the integrated resource plans to be filed by the electric utilities, with

particular emphasis being given to the subject of conservation and load management as a resource option.

In addition to the actions today taken in Docket No. E-100, Sub 58, the Commission concludes that it is also appropriate to request the Public Staff to coordinate efforts with CP&L, Duke, North Carolina Power, and Nantahala to jointly develop and propose an assortment of demand-side pilot demonstration projects for implementation and trial in North Carolina. The Commission believes that pilot projects can and will form an extremely important part of the process which is designed to implement a comprehensive program of least cost planning in this State.

IT IS, THEREFORE, ORDERED as follows:

1. That the rules attached hereto as Appendix A entitled "Least Cost Integrated Resource Planning" are hereby adopted effective on and after the date of this Order.

2. That Article 8 of the Commission's Rules for Electric Light and Power, consisting of NCUC Rules R8-42 and R8-43, is hereby rescinded effective on and after the date of this Order.

3. That the Public Staff is hereby requested to coordinate efforts with CP&L, Duke, North Carolina Power, and Nantahala to jointly develop and propose for the Commission's consideration an assortment of demand-side pilot demonstration projects for implementation and trial in North Carolina. The Public Staff is hereby requested to report back to the Commission regarding the status of this matter as soon as possible.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of December 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioners Tate and Redman dissent.

APPENDIX A

CHAPTER 8
ELECTRIC LIGHT AND POWER
ARTICLE 11
LEAST COST INTEGRATED RESOURCE PLANNING

Rule R8-56. General.

(a) Purpose. The purpose of least cost integrated resource planning is to ensure that each regulated electric utility operating in North Carolina is developing reliable projections of the long range demands for electricity in its service area and a combination of reliable resource options for meeting the anticipated demands in a cost effective manner. These rules are intended to be consistent with the applicable provisions of the North Carolina General Statutes, but are not intended to restrict or prohibit demonstration projects, pilot programs or other experimental ventures.

(b) Applicability. These rules are applicable to Carolina Power & Light Company, Duke Power Company, Nantahala Power and Light Company, and Virginia Electric and Power Company, d/b/a North Carolina Power.

(c) Integrated Resource Plan. Each utility shall develop and keep current a least cost integrated resource plan consisting of at least the following components:

(1) A load forecast;
(2) An integrated resource plan; and
(3) A short-term action plan.

(d) Data. Each utility shall provide such information and data as the Commission requests and deems necessary for proper evaluation of the integrated resource plans prepared by the utility.

(e) Filing. Each utility shall file its least cost integrated resource plan and supporting testimony with the Commission at the times designated by the Commission. The utilities should anticipate filing such plans approximately every two (2) or three (3) years. The Public Staff or any other intervenor may file a least cost integrated resource plan of its own, or it may prepare an evaluation of the least cost integrated resource plans filed by the utilities, or both. Any least cost integrated resource plans, evaluations, and supporting testimony prepared by the Public Staff or other intervenors shall be filed at the times designated by the Commission. A reasonable amount of time will be given for the Public Staff and other intervenors to evaluate the least cost integrated resource plans filed by the utilities prior to filing their own least cost integrated resource plans and evaluations. The intervenors should anticipate filing their own least cost integrated resource plans and evaluations approximately four (4) months after receipt of the integrated resource plans filed by the utilities.

(f) Review. The Commission is required by G.S. 62-110.1(c) to consult with the utilities in North Carolina and with other state and federal agencies having relevant information in analyzing the long range needs for expansion of electric generating facilities in North Carolina. The Public Staff is required by G.S. 62-15(d) to assist the Commission in analyzing the long range needs for expansion of electric generating facilities pursuant to G.S. 62-110.1. Public hearings to consider the least cost integrated resource plans filed by the utilities and the least cost integrated resource plans and evaluations filed by the Public Staff and other intervenors shall be scheduled at the time and place designated by the Commission. The utilities and intervenors should anticipate public hearings being scheduled a minimum of 45 days after the filing of testimony and exhibits by the intervenors.

Rule R8-57. Load Forecasts.

The load forecasts filed by each utility as part of its least cost integrated resource plan shall include, at a minimum, the following:

(a) A description of the methods and assumptions used by the utility to prepare its forecast including a description of the models and variables used in the models;

(b) A tabulation of the utility's forecasts for at least a 15-year period, including peak loads for the summer and winter seasons of each year, annual energy forecasts, and the projected effects of non-price induced conservation and load management on the forecasted annual energy and peak loads for each year; and

(c) Highest, lowest, and most probable forecast scenarios based on the methods and assumptions used by the utility in preparing its forecasts; or, any other technique which addresses forecast uncertainty to at least a comparable degree.

Rule R8-58. Integrated Resource Plan.

Each utility shall evaluate each resource option without regard to geographical location which is reasonably available to it in meaningful quantities, including both demand-side and supply-side options, in order to determine an integrated resource plan which offers a combination of reliable resource options for meeting the anticipated demands on its system in a cost effective manner. The assumptions in the evaluation shall be fully documented, and the cost benefits of all resource options in the evaluation shall be quantified to the extent possible.

(a) Evaluation of Resource Options. Evaluation of resource options shall include at least the following considerations:

(1) Determine the present value of future revenue requirements where appropriate for evaluating the resource options;

(2) Evaluate both demand-side and supply-side resource options using the best and most reasonable procedures available, including, but not limited to, such resource options as conservation, load management, relighting, insulation, cogeneration and small power production;

(3) Analyze the sensitivity of major assumptions used in the evaluation of resource options, including:

A. Assessment of risk in accordance with an assumption's potential impact on the least cost plan;

B. Assessment of reliability; and

C. Assessment of other uncertainties, including forecast uncertainty.

(b) Generating Facilities. Each utility shall provide data for the electric generating facilities (including planned additions and retirements, but excluding cogeneration and small power production) in its integrated resource plan. Data should be detailed enough to facilitate a comparative

analysis of capacity alternatives and shall include all planning assumptions.

(1) Existing Generation. The utility shall provide a 15-year projection of the following:

A. Projected fuel use by type of generation. Data shall be annual data;

B. Projected unit characteristics by type of generation, such as availability factors, capacity factors, heat rates, outage rates or other relevant data. Data shall be annual data;

C. Projected retirements of existing units, including a discussion of the reasons for the retirements; and

D. Other projected changes to existing generating units which are expected to increase or decrease capability by at least 10% or 10 megawatts, whichever is less, plus a discussion of any life extension programs currently being planned or implemented.

(2) Planned Generation Additions. The utility shall provide a 15-year projection of the following:

A. Projected fuel use by type of generation. Data shall be annual data;

B. Projected unit characteristics by type of generation, such as availability factors, capacity factors, heat rates, outage rates or other relevant data. Data shall be annual data; and

C. Summaries of all studies supporting the new generation additions included in the least cost plan.

(c) Alternative Energy Resources. Each utility shall assess on an ongoing basis the potential benefits of reasonably available alternative energy resource options, including the benefits of lower fuel costs and improved efficiency of its generating facilities. Alternative energy resources shall include, but not be limited to, hydro, wind, geothermal, solar thermal, solar photovoltaic, municipal solid waste, biomass and other alternative energy resources. The utility shall discuss its overall assessment of alternative energy resources and it shall provide details of the methods and assumptions used in the assessment of those alternative energy resources having a significant impact on its least cost integrated resource plan. The utility shall also provide general information on the methods and assumptions used in the assessment of the reasonably available alternative energy resources considered under this paragraph but not adopted for its least cost integrated resource plan.

(d) Conservation and Load Management. Each utility shall assess on an ongoing basis the potential benefits of conservation and load management

techniques, including the benefits of lower fuel costs and improved efficiency of the overall system. The utility shall discuss its overall assessment of conservation and load management techniques, and it shall provide details of the methods and assumptions used in the assessment of those conservation and load management techniques having a significant impact on its least cost integrated resource plan. The assessments shall include costs, benefits, risks, uncertainties, reliability, and customer acceptance where appropriate. The utility shall also provide general information on the methods and assumptions used in the assessment of those conservation and load management techniques considered under this plan but not adopted for its least cost integrated resource plan.

(e) Purchased Power. Each utility shall assess on an ongoing basis the potential benefits of reasonably available purchased power resources. The assessments shall include costs, benefits, risks, uncertainties, and reliability where appropriate. The utility shall discuss its overall assessment of its purchased power resources, including but not limited to purchases from cogenerators, small power producers, independent power producers and other utilities, and provide details of the methods and assumptions used in the assessment of of those purchased power resources having a significant impact on its least cost integrated resource plan.

(f) Transmission/Distribution Facilities. Each utility shall assess on an ongoing basis the potential benefits of improvements to the transmission/distribution facilities. The utility shall discuss its overall assessment of transmission/distribution facilities improvements, and it shall provide details of the methods and assumptions used in the assessment of those facility improvements having a significant impact on its least cost integrated resource plan.

Rule R8-59. Short-Term Action Plan.

Each utility shall prepare an annual short-term action plan which discusses those specific actions currently being taken by the utility to implement its least cost integrated resource plan. The utility's short-term action plan shall contain a summary of the resource options or programs contained in its current least cost integrated resource plan and for which specific actions must be taken by the utility within the next two to three years. For each resource option or program, the summary shall include:

(a) The objective of the resource option or program;
(b) Criteria for measuring progress toward the objective;
(c) The implementation schedule for the program over the next two to three years; and
(d) Actual progress toward the objective to date.

Rule R8-60. Annual Report of Updates to Least Cost Integrated Resource Plans.

Every electrical public utility shall furnish the Commission with an annual report containing a fifteen-year forecast of loads and generating capability. An updated report shall be filed within thirty (30) days after

any significant revision of the forecast, and there shall be at least one report filed annually. The report shall describe all generating facilities and known transmission facilities with operating voltage of 200 KV or more which, in the judgment of the utility, will be required to supply system demands during the forecast period. The report shall cover the 15-year period next succeeding the date of said reports and shall include the following:

(a) A tabulation of summer and winter peak loads, annual energy forecast, generating capability, and reserve margins for each year;

(b) A list of the existing plants in service with capacity, location, and any technological innovations to be backfitted to improve environment quality to the extent known;

(c) A list of generating units under construction or planned at plant locations for which property has been acquired, for which certificates have been received, or for which applications have been filed with location, capacity, plant type, and proposed date of operation included;

(d) A list of proposed generating units at locations not known with general location, capacity, plant type, and date of operation included to the extent known;

(e) A list of units to be retired from service with location, capacity and expected date of retirement from the system;

(f) A list of units which are being considered for life extension, refurbishment or upgrading. The reporting utility shall also provide the expected (or actual) date removed from service, general location, capacity rating upon return to service, expected return to service date, and a general description of work to be performed;

(g) A list of transmission lines and other associated facilities (200 KV or over) which are under construction or proposed including the capacity and voltage levels, location, and schedules for completion and operation;

(h) A list of any generation and associated transmission facilities under construction which have delays of over six months in the previously reported in-service dates and the major causes of such delays. Upon request from the Commission Staff, the reporting utility shall supply a statement of the economic impact of such delays;

(i) A list of future probable sites giving general location and description, major advantages, and whether the site is wholly owned, partially owned or not owned by the utility; and

(j) The current short-term action plan.

Rule R8-61. Preliminary Plans and Certificates of Public Convenience and Necessity for Construction of Electric Generation and Related Transmission Facilities in North Carolina.

(a) No commitments and contracts made for the purchase of a steam supply system, turbine, generator or other major component of the generation system shall be noncancelable until such time as the certificate of public convenience and necessity has been issued.

(b) Information to be filed 120 days or more before the filing of the application for a certificate of public convenience and necessity for generating facilities with capacity of 300 MW or more shall include the following:

(1) Available site information (including maps and description), preliminary estimates of initial and ultimate development, justification for the adoption of the site selected, and general information describing the other locations considered;

(2) As appropriate, preliminary information concerning geological, aesthetic, ecological, meteorological, seismic, water supply, population and general load center data to the extent known;

(3) A statement of the need for the facility including information on loads and generating capability;

(4) A description of investigations completed, in progress, or proposed involving the subject site;

(5) A statement of existing or proposed plans known to applicant of federal, state, local governmental and private entities for other developments at or adjacent to the proposed site;

(6) A statement of existing or proposed environmental evaluation program to meet the applicable air and water quality standards;

(7) A brief general description of practicable transmission line routes emanating from the site;

(8) A list of all agencies from which approvals will be sought covering various aspects of any generation facility constructed on the site and the title and nature of such approvals;

(9) A statement of estimated cost information, including plans and related transmission capital cost (initial core costs for nuclear units); all operating expenses by categories, including fuel costs and total generating cost per net kWh at plant; and information concerning capacity factor, heat rate, and plant service life. Furnish comparative cost including

related transmission cost of other final alternatives considered; and

(10) A schedule showing the anticipated beginning dates for construction, testing, and commercial operation of the generating facility.

(c) Procedures for obtaining the certificate of public convenience and necessity shall be as stated in the General Statutes.

(d) In filing an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) in order to construct a generating facility, a utility shall include the following:

(1) The most recent least cost integrated resource plan of the utility plus any proposals by the utility to update said plan;

(2) Testimony specifically indicating the extent to which the proposed construction conforms to the utility's most recent least cost integrated resource plan; and

(3) Testimony supporting any utility proposals to update its most recent resource integration plan.

DOCKET NO. E-100, SUB 55

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Consider Management Efficiency in Minimizing Fuel Costs Pursuant To G. S. 62-133.2(d1)	)))	ORDER ADOPTING AMENDED RULE R8-55

BY THE COMMISSION: On July 24, 1987, the General Assembly of North Carolina enacted legislation rewriting G.S. 62-133.2, which deals with fuel charge adjustments for electric utilities. This legislation, among other things, added subsection (d1) to the statute. G.S. 62-133.2(d1) reads as follows:

> Within one year after ratification of this act, for the purposes of setting fuel rates, the Commission shall adopt a rule that establishes prudent standards and procedures with which it can appropriately measure management efficiency in minimizing fuel costs.

The legislation further provided that until the Commission has formally adopted a rule pursuant to this subsection, all fuel charge adjustment proceedings shall be heard and decided pursuant to the remaining subsections of the statute and Commission Rule R8-55.

On October 29, 1987, the Commission instituted a rulemaking proceeding in this docket to adopt a rule that establishes prudent standards and procedures

with which the Commission can appropriately measure management efficiency in minimizing fuel costs. Pursuant to said Order, comments and/or proposed rules were solicited from all interested parties.

Comments in this docket and/or proposed rules were filed by Carolina Power & Light Company (CP&L), Duke Power Company (Duke), Virginia Electric and Power Company, d/b/a North Carolina Power (NCP), the Public Staff, the Attorney General, Carolina Utility Customers Association, Inc. (CUCA), and the Carolina Industrial Group for Fair Utility Rates (CIGFUR-II). No party requested an evidentiary hearing.

Based upon the comments submitted by the parties, the Commission developed a proposed rule which was noticed by Order dated February 26, 1988. The Order also solicited comments from all interested parties concerning all aspects of the proposed rule.

Further comments by the parties were timely filed with the Commission concerning the proposed rule. After having carefully considered these comments, the Commission has concluded that several changes to the proposed rule are in order. Such changes are discussed hereafter.

The Commission has now concluded that capacity factors for nuclear production facilities should be normalized based generally on the national average. In reaching this conclusion the Commission carefully considered the decision of the North Carolina Supreme Court in the case of State ex rel Utilities Commission v. Thornburg, 316 N.C. 238, 342 S.E. 2d 28 (1986). In such case, the Court found that the use of national averages as a starting point was not improper as long as proper adjustments were made to reflect the unique characteristics of the utility. The Commission, in the amended rule attached hereto, recognizes that adjustments may be made to take into consideration unique, inherent factors which may impact upon the capacity factors. Further, after studying all of the comments offered in this proceeding, the Commission is now of the opinion that the incorporation of past nuclear performance into the standard has the effect of at least partially nullifying the normalization sought to be achieved.

The Commission, in its proposed rule, allowed each utility the option of using two data sources to compute the national average capacity factor. Upon consideration of the further comments filed in this docket, the Commission is of the opinion that such option is not necessary and might prove to be counterproductive. Therefore, the Commission concludes that such option should be deleted from the final rule.

The final rule adopted herein requires that the national average capacity factors for nuclear facilities be drawn from data as reflected in the North American Electric Reliability Council's Equipment Availability Report (NERC) rather than the "Gray Books" published by the Nuclear Regulatory Commission (NRC). CP&L has supported the use of the NRC "Gray Book" data contending that it is more reliable and more up-to-date. The Commission has carefully considered the contentions of CP&L together with the comments of other parties which emphasize that the NERC data is readily available and less burdensome since the averages are already computed whereas the NRC data must be computed from raw data on approximately 100 units per year on a moving five-year period.

Accordingly, the Commission has adopted the use of the NERC data in obtaining the national average nuclear capacity factor.

G.S. 62-130(e) requires that overcollections by a utility from its customers shall be refunded with interest and, accordingly, the Commission has amended its Rule R8-55 to provide for each utility to refund any overcollections of reasonable and prudently incurred fuel costs through the operation of the EMF rider with interest.

With respect to the rebuttable presumption of imprudency in determining the EMF, the Commission's proposed rule provided that a utility would be presumed imprudent as to the increased fuel cost incurred if the system nuclear capacity factor actually experienced in the test year was not at least equal to the nuclear capacity factor used for setting the fuel cost component(s) of rates in effect for said test year. The Commission recognizes that the complexities of scheduling refuelings for numerous nuclear generating units, coupled with other scheduled and unscheduled outages, will likely result in varying system capacity factors from period to period. Therefore, the Commission concludes that this provision in the Commission's proposed rule should be modified to read as follows:

> For purposes of determining the EMF rider, failure to achieve either (a) an actual systemwide nuclear capacity factor in the test year that is at least equal to the systemwide nuclear capacity factor used for setting the rate in effect during the test year or (b) an average systemwide nuclear capacity factor, based upon a two-year simple average of the systemwide capacity factors actually experienced in the test year and the preceding year, that is at least equal to the systemwide nuclear capacity factor used for setting the rate in effect during the test year shall create a presumption that the utility incurred the increased fuel expense resulting therefrom imprudently and that disallowance thereof is appropriate.

Upon consideration of the provisions of G.S. 62-133.2(d1) and the entire record in this matter, the Commission concludes that Rule R8-55 should be amended as set forth in Appendix A attached hereto.

IT IS, THEREFORE, ORDERED that Commission Rule R8-55 is hereby amended as more particularly set forth in Appendix A attached hereto and made a part hereof. This rule, as amended, shall become effective as of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of April 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A

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

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

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

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

(1) Fuel costs will be preliminarily established utilizing the methods and procedures approved in the utility's last general rate case, except that capacity factors for nuclear production facilities will be normalized based generally on the national average for nuclear production facilities as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, adjusted to reflect unique, inherent characteristics of the utility including but not limited to plants 2 years or less in age and unusual events. The national average capacity factor for nuclear production facilities shall be based on the most recent 5-year period available and shall be weighted, if appropriate, for both pressurized water reactors and boiling water reactors. A fuel cost rider will then be determined based upon the difference between the fuel costs thus established and the base fuel cost component of the rates established in the utility's most recent general rate case. The foregoing normalization requirement assumes that the Commission finds that an abnormality having a probable impact on the utility's revenues and expenses existed during the test period.

(2) The fuel cost as described above will be further modified through use of an experience modification factor (EMF) rider. The EMF rider will reflect the difference between reasonable and prudently incurred fuel cost and the fuel related revenues that were actually realized during the test period under the fuel cost components of rates then in effect.

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

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

(5) Pursuant to G.S. 62-130(e), any overcollection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

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

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

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

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

(4) Cost of fuel corresponding to the adjusted test period kWh generation, including a detailed explanation showing how such cost of fuel was derived. The cost of fuel shall be based on end-of-period unit fuel prices incurred during the test period, although the Commission may consider other fuel prices if test period fuel prices are demonstrated to be nonrepresentative on an on-going basis. Unit fuel prices shall include delivered fuel prices and burned fuel expense rates as appropriate.

(5) The monthly fuel report and the monthly base load power plant performance report for the last month in the test period and any information required by NCUC Rules R8-52 and R8-53 for the test

period which has not already been filed with the Commission. Further, such information for the complete 12-month test period shall be provided by the company to any intervenor upon request.

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

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

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

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

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

(i) The burden of proof as to the correctness and reasonableness of any charge and as to whether the test year fuel expenses were reasonable and prudently incurred shall be on the utility. For purposes of determining the EMF rider, failure to achieve either (a) an actual systemwide nuclear capacity factor in the test year that is at least equal to the systemwide nuclear capacity factor used for setting the rate in effect during the test year or (b) an average systemwide nuclear capacity factor, based upon a two-year simple average of the systemwide capacity factors actually experienced in the test year and the preceding year, that is at least equal to the systemwide nuclear capacity factor used for setting the rate in effect during the test year shall create a presumption that the utility incurred the increased fuel expense resulting therefrom imprudently and that disallowance thereof is appropriate. The utility shall have the opportunity to rebut this presumption at the hearing and to prove that its test year fuel costs were reasonable and prudently incurred. To the extent that the utility rebuts the presumption by the preponderance of the evidence, no disallowance will result.

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

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

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

DOCKET NO. E-100, SUB 55

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Consider Management Efficiency in Minimizing Fuel Costs Pursuant to G.S. 62-133.2(d1)	)))	ORDER ON REQUEST FOR CLARIFICATION REGARDING PRESUMPTION OF IMPRUDENCE

BY THE COMMISSION: On April 27, 1988, the Commission entered an Order in the above-captioned proceeding amending Commission Rule R8-55. The amended Rule R8-55(i) was written as follows:

> (i) The burden of proof as to the correctness and reasonableness of any charge and as to whether the test year fuel expenses were reasonable and prudently incurred shall be on the utility. For purposes of determining the EMF rider, failure to achieve either (a) an actual systemwide nuclear capacity factor in the test year that is at least equal to the systemwide nuclear capacity factor used for setting the rate in effect during the test year or (b) an average systemwide nuclear capacity factor, based upon a two-year simple average of the systemwide capacity factors actually experienced in the test year and the preceding year, that is at least equal to the systemwide nuclear capacity factor used for setting the rate in effect during the test year shall create a presumption that the utility incurred the increased fuel expense resulting therefrom imprudently and that disallowance thereof is appropriate. The utility shall have the opportunity to rebut this presumption at the hearing and to prove that its test year fuel costs were reasonable and prudently incurred. To the extent that the utility rebuts the presumption by the preponderance of the evidence, no disallowance will result.

On May 16, 1988, Duke Power Company filed a Request for Clarification of Amended Rule R8-55 asserting that the language quoted above is unclear as to whether the presumption of imprudently incurred fuel expense would be created if only one of the benchmarks is accomplished or if both benchmarks must be accomplished to avoid a presumption of imprudently incurred fuel expense. Duke cites the language of the Commission's April 27, 1988 Order as reflecting the

Commission's intent that accomplishment of either benchmark would avoid the presumption of imprudently incurred fuel expense, and Duke suggests that amended Rule R8-55(i) be clarified as follows in order to reflect the Commission's intent:

(i) The burden of proof as to the correctness and reasonableness of any charge and as to whether the test year fuel expenses were reasonable and prudently incurred shall be on the utility. For purposes of determining the EMF rider, a utility must achieve either (a) an actual systemwide nuclear capacity factor in the test year that is at least equal to the systemwide nuclear capacity factor used for setting the rate in effect during the test year or (b) an average systemwide nuclear capacity factor, based upon a two-year simple average of the systemwide capacity factors actually experienced in the test year and the preceding year, that is at least equal to the systemwide nuclear capacity factor used for setting the rate in effect during the test year, or a presumption will be created that the utility incurred the increased fuel expense resulting therefrom imprudently and that disallowance thereof is appropriate. The utility shall have the opportunity to rebut this presumption at the hearing and to prove that its test year fuel costs were reasonable and prudently incurred. To the extent that the utility rebuts the presumption by the preponderance of the evidence, no disallowance will result.

On May 24 and June 20 respectively, CP&L and Vepco filed Concurrences asserting that the request will help to clarify the Commission's intent that the presumption of imprudence can be avoided by complying with either the one-year standard or the two-year standard set forth in amended Rule R8-55(i). No other responses have been received.

The Commission finds good cause to allow the Request for Clarification in order to more accurately reflect the intent of the Commission's April 27, 1988 Order Adopting Amending Rule R8-55.

IT IS, THEREFORE, ORDERED that the Request for Clarification of Amended Rule R8-55 filed in this proceeding by Duke on May 16, 1988, should be, and the same hereby is, allowed and that Commission Rule R8-55(i) should be, and the same hereby is, amended as hereinabove provided.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of June 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-100, SUB 55

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Consider Management	)	ORDER ON REQUEST FOR
Efficiency in Minimizing Fuel Costs Pursuant	)	CLARIFICATION REGARDING
to G.S. 62-133.2(d1)	)	COMPUTATION OF INTEREST

BY THE COMMISSION: On April 27, 1988, the Commission entered an Order in the above-captioned proceeding amending Commission Rule R8-55. The amended Rule R8-55(c)(5) was written as follows:

> Pursuant to G.S. 62-130(e), any overcollection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

On June 13, 1988, Duke Power Company filed a Request for Clarification Concerning the Computation of Interest Under Amended Rule R8-55. By the Request, Duke asks the Commission to clarify the computation of interest in two respects. First, Duke argues that the beginning date for the accrual of interest should be the effective date of amended Rule R8-55(c)(5), which was April 27, 1988. Second, Duke argues that the accrual of interest should begin as of the end of the test period when the net amount of an overcollection is known. Duke argues that the accrual of interest on a month-to-month basis within the test period could lead to results which are unreasonable. For example, accrual of interest on a month-to-month basis within the test period could result in a net overcollection but no interest due the ratepayers. Finally, Duke argues that, in the interest of fundamental fairness, accrual of interest should apply to undercollections as well as to overcollections.

On June 15, 1988, CP&L filed a Request by which it "supports and adopts" Duke's Request for Clarification.

On June 17, 1988, the Public Staff filed a Response. The Public Staff proposes that interest accrue on a month-to-month basis during the test period on both overcollections and undercollections. The Public Staff argues that this method correctly calculates interest from the beginning of the test period until the end of the EMF refund period while Duke's methodology would result in an inaccurate and, in many cases, understated accrual of interest. The Public Staff recognizes that its methodology may result in an undercollection of fuel costs at the end of the test period but a net accrual of interest due to the ratepayers. In such a case, the Public Staff argues that the interest should not be paid.

On June 17, 1988, the Attorney General filed its Objection. The Attorney General argues that Duke's Request should be denied and that interest should accrue only on overcollections from the beginning of the test period.

On June 17, 1988, the Carolina Utility Customers Association Inc. (CUCA) filed a Response. CUCA argues that interest should accrue from the first day

of the test period, not from the date Rule R8-55 was amended, since the accrual of interest is based upon G.S. 62-130(e), which was in effect before the Rule was amended. CUCA also argues that accrual of interest on a month-to-month basis during the test period is fair to the utilities and the ratepayers, legally sound, and is consistent with the Commission's statutory mandate.

On June 20, 1988, Vepco filed a Concurrence by which it agrees with and joins Duke's Request for Clarification.

As to the beginning date for the accrual of interest, the Commission does not find good cause to constrain the accrual of interest to the date Rule R8-55 was amended, which was April 27, 1988, since the accrual of interest is founded upon the statutory provisions of G.S. 62-130(e).

As to the methodology for the accrual of interest, the Commission does not find good cause to adopt either Duke's or the Public Staff's methodology. Instead, the Commission concludes that the methodology advanced by Carolina Power & Light Company in Docket No. E-2, Sub 544, is more appropriate. This methodology takes the net overcollection known as of the end of the test period and accrues interest on that amount from the mid-point of the test period to the mid-point of the EMF refund period. This methodology is superior to the Public Staff methodology in that interest due ratepayers will always be provided on overcollections. Additionally, this methodology is superior to the Duke methodology because it recognizes interest during the test period. Based on the foregoing, the Commission concludes that the interest methodology that calculates interest from the mid-point of the test period to the mid-point of the EMF refund period is fair and reasonable and should be adopted.

The Commission finds good cause to order that accrual of interest pursuant to Commission Rule R8-55(c)(5) shall henceforth be computed as hereinabove provided and that Commission Rule R8-55(c)(5) shall be interpreted and implemented according to the provisions of the present Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the Request for Clarification filed in this proceeding by Duke Power Company on June 13, 1988, should be, and the same hereby is, denied; and

2. That accrual of interest pursuant to Commission Rule R8-55(c)(5) shall henceforth be computed as hereinabove provided and that Commission Rule R8-55(c)(5) shall be interpreted and implemented according to the provisions of the present Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of June 1988.

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

DOCKET NO. G-100, SUB 25

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Prohibition of Installation of Outdoor Lights Using Natural Gas and Use of Natural Gas in Outdoor Lights	)))	ORDER GRANTING PETITION AND REPEALING RULE R6-19.3(b)

BY THE COMMISSION: On June 3, 1975, the Commission, following an investigation instituted on the Commission's own Motion, entered an Order Terminating the Use of Natural Gas in Torches and Prohibiting the Addition of New Gas Light Customers in this docket. By that Order, the Commission provided that "no additional gas lighting service beyond that presently being offered shall be allowed from and after the date of this Order and each natural gas company shall revise its rules and regulations or tariffs as requires to implement this Order." This portion of the Commission's Order was incorporated into the Commission's Rules as Rule R6-19.3(b).

Subsequently, on November 9, 1978, the President signed into law the Powerplant and Industrial Fuel Use Act of 1978 which directed the Department of Energy to prohibit by rule the connection of new natural gas outdoor lights and the continuation of natural gas service to customers suing gas for outdoor lights. The Department of Energy was authorized to delegate implementation and enforcement to appropriate state regulatory agencies, and implementation in North Carolina was subsequently delegated to this Commission. The Economic Regulatory Administration issued rules implementing the Act which included criteria for exempting certain gas lights. On July 12, 1979, this Commission entered its Order Determining Exemptions for Prohibitions on Installation and Use of Natural Gas Outdoor Lights. By this Order, the Commission noted that its earlier June 3, 1975 Order had effectively addressed prohibition of new natural gas outdoor lights. As to existing natural gas outdoor lights, the Commission's Order temporarily exempted them from prohibition and required the natural gas utilities in North Carolina to file reports regarding the permanent exemption of existing natural gas outdoor lights. Following the filing of these reports and the filing of a study by the Public Staff, the Commission issued its Order Granting Exemption on March 12, 1981, which found that all natural gas outdoor lights in existence from prohibition pursuant to the exemption criteria of the Economic Regulatory Administration.

On December 7, 1987, Piedmont Natural Gas Company, Inc., filed its Petition asking the Commission to terminate all prohibitions against the use of natural gas in outdoor lighting. Piedmont assets that natural gas is no longer in short supply and that on May 21, 1987, the President signed a law repealing the prohibition on the addition of new natural gas outdoor lights.

On January 12, 1988, the Commission issued its Order serving Piedmont's Petition on interested parties and requesting comments in support of or in opposition to the Petition.

On January 15, 1988, the City of Bessemer City, a municipal corporation operating a natural gas distribution system, filed a letter expressing its support of the Petition. On January 20, 1988, the Public Staff filed Comments to the effect that it does not oppose the Petition. On January 25, 1988, North

Carolina Natural Gas Corporation and Public Service Company of North Carolina, Inc., filed comments joining in Piedmont's Petition. Finally, on February 10, 1988, the Attorney General filed comments to the effect that he does not oppose the granting of the Petition.

On the basis of the comments filed herein, the Commission finds good cause to grant the Petition filed by Piedmont on December 7, 1987, and to repeal Commission Rule R6-19.3(b).

IT IS, THEREFORE, ORDERED that the Petition filed by Piedmont on December 7, 1987, should be, and the same hereby is, granted and that Commission Rule R6-19.3(b) should be, and the same hereby is, repealed.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of March 1988.

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

DOCKET NO. G-100, SUB 48

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of Public Service Company of North Carolina for Amendment of NCUC Rule R6-19.2(f) and (g)) ORDER AMENDING RULE

BY THE COMMISSION: On June 24, 1987, Public Service Company of North Carolina, Inc., (Public Service) filed a Petition in this proceeding requesting the Commission to amend its Rule R6-19.2(f) and (g) to permit the annual review of customers' consumption and the placing of all customers in proper priorities and on proper rate schedules.

Commission Rule R6-19.2 deals with curtailment priorities. Subsection (f) provides for an annual review of the consumption of customers in Priorities 1 through 5 and an automatic reclassification to a lower priority if it is found that a customer has increased his consumption to a point that it would place him in a lower priority. Subsection (g) provides that any customer in Priorities 1 through 5 who permanently reduces his consumption to the point that it would place him in a higher priority can make a written request and, upon proof, the customer will be reclassified to the higher priority.

By its Petition, Public Service asserts that in making its annual reviews it has found numerous situations in which customers should be placed in different priorities and on different rate schedules, but that it could only reclassify customers to lower priorities and lower rate schedules. Public Service believes that it would be in the public interest to amend the Rule to provide that all customers should be placed in the proper priorities and on the proper rate schedules following an annual review of customers' consumption. Public Service proposed that Subsection (f) be rewritten and that Subsection (g) be repealed.

On July 20, 1987, the Commission issued its Order Instituting Rulemaking Proceeding serving Public Service's proposed amendment on interested persons and setting a deadline for the receipt of comments.

On August 17, 1987, North Carolina Natural Gas Corporation (NCNG) filed comments. NCNG generally supported the Petition; however, it suggested that two consecutive years' consumption be considered before a customer's priority is automatically changed since consumption in a single year might be significantly affected by weather or oil prices.

On August 17, 1987, Piedmont Natural Gas Company, Inc. (Piedmont) filed comments supporting Public Service's Petition but asserting that the entire priority system should be reviewed in another proceeding after long-term gas transportation criteria are established.

On August 17, 1987, the Carolina Utility Customers Association, Inc. (CUCA) petitioned to intervene (which was subsequently allowed by Commission Order of August 21, 1987) and recommended that the Commission defer ruling pending action in Docket No. G-100, Sub 47. CUCA also raised questions as to the manner in which consumption would be calculated under the proposed amendment; it questioned the effect of involuntary curtailment and the effect of alternate fuel usage.

Finally, on August 19, 1987, the Public Staff filed comments expressing general agreement with the proposed amendment with the proviso that customers should be given adequate notice of the annual review and the effect of being placed on different priorities and different rate schedules. The Public Staff also asked that customers be notified of the amendment to the Rule.

On February 24, 1988, Public Service filed Supplemental Comments addressing the comments filed by the other parties and generally agreeing with them. Public Service revised its proposed amendment in order to incorporate NCNG's suggestion that two years' consumption be reviewed and the Public Staff's concerns with respect to notice. With respect to the questions raised by CUCA, Public Service responded as follows:

> The Company will review the actual consumption of the customer for each of the last two 12 month periods. If this review determines that the customer should be changed to another priority, then the Company will review its curtailment records to determine if the customer was curtailed and if this is the cause of the potential change in priority. If curtailment imposed by the Company was the factor causing the potential priority change, the Company will not make the change. If this was not the cause of the change in priority, the customer would be notified of the pending change in priority. If the customer notifies the Company within fifteen (15) days that he still has the capacity to burn sufficient gas to remain in his original priority and that the only reason for a decline in usage over the two year period was because of his choosing to burn an alternate fuel, the Company will reverse the pending priority change and allow the customer to remain in his original priority.

Public Service agreed that both the proposed amendment and the entire priority system should be subject to review in other proceedings.

On the basis of the comments filed herein, the Commission finds good cause to amend Commission Rule R6-19.2(f) and (g) by rewriting Subsection (f) and by repealing in its entirety Subsection (g). Rule R6-19.2(f) should be rewritten consistent with the Supplemental Comments of Public Service as set forth on Appendix A attached hereto. The time period for notice of a pending priority change has been lengthened to allow more time to review documentation of alternate fuel usage.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R6-19.2(f) should be, and the same hereby is, amended as provided by Appendix A attached hereto and that Commission Rule R6-19.2(g) should be, and the same hereby is, repealed effective as of the date of this Order.

2. That within 30 days following the date of this Order, each of the natural gas public utility companies in North Carolina shall give notice of the present rule change by mailing to its customers a copy of the Notice attached hereto as Appendix B.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of April 1988.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

APPENDIX A

(f) Updated Base Period - During July and August of each year, consumption for each customer in Priorities 1 through 9 for the 12 months ending June 30 of such year will be reviewed. If it is found that the customer has either increased or decreased his annual consumption based on the two prior years' consumption to the point it would place him in a different priority, the customer will be automatically reclassified to the proper priority and placed on the proper rate schedule effective on the following September 1. In determining consumption, periods of involuntary curtailment will be excluded.

Each customer reclassified under this rule will receive a notice of the priorities for curtailment of service along with a statement of current rates for each priority within the customer's class (residential, commercial, or industrial), together with a notice of the change in priority and rate schedule at least twenty one (21) days prior to the effective date of the change.

If the customer, within fourteen (14) days of being notified that a priority change is pending, files appropriate documentation showing that any decline in usage during the updated base period was due to alternate fuel usage, the company will allow the customer to remain in his original priority.

(g) Repealed.

APPENDIX B

NOTICE

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has amended Commission Rule R6-19.2(f) to permit the annual review of customers' natural gas consumption and the placing of all customers in proper priorities and on proper rate schedules.

Commission Rule R6-19.2 establishes priorities for curtailment of natural gas service in the event of a shortage of natural gas. Curtailment priorities are based in part on the level of natural gas consumption. Some natural gas rate schedules are based on curtailment priorities, and thus reclassification to the proper curtailment priority might result in some customers being assigned to a different rate schedule.

The Commission, following a rulemaking proceeding and receipt of comments from interested persons, has amended Rule R6-19.2(f) to provide as follows:

Updated Base Period - During July and August of each year, consumption for each customer in Priorities 1 through 9 for the 12 months ending June 30 of such year will be reviewed. If it is found that the customer has either increased or decreased his annual consumption based on the two prior years' consumption to the point it would place him in a different priority, the customer will be automatically reclassified to the proper priority and placed on the proper rate schedule effective on the following September 1. In determining consumption, periods of involuntary curtailment will be excluded.

Each customer reclassified under this rule will receive a notice of the priorities for curtailment of service along with a statement of current rates for each priority within the customer's class (residential, commercial, or industrial), together with a notice of the change in priority and rate schedule at least twenty one (21) days prior to the effective date of the change.

If the customer, within fourteen (14) days of being notified that a priority change is pending, files appropriate documentation showing that any decline in usage during the updated base period was due to alternate fuel usage, the company will allow the customer to remain in his original priority.

Questions regarding the effect of this rule change should be addressed to your natural gas public utility company.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of April 1988.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

DOCKET NO. G-100, SUB 48

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of Public Service Company of	)	
North Carolina for Amendment of NCUC	)	ORDER AMENDING
Rule R6-19.2(f) and (g)	)	RULE R6-19.2

BY THE COMMISSION: On April 4, 1988, the Commission issued its Order Amending Rule in this docket. Ordering Paragraph 2 required each natural gas utility company to give notice to its customers of the rule change.

On oral motion of Public Service, consented to by the Public Staff, the Commission finds good cause to amend Ordering Paragraph 2 in order to provide that the Notice required thereon shall be given only to customers in Priorities 2-9.

IT IS, THEREFORE, ORDERED that the notice requirement of the Order Amending Rule issued herein on April 4, 1988, should be, and the same hereby is, amended as hereinabove provided.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of April 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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 and 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	ORDER ESTABLISHING A PLAN TO BILL AND KEEP INTRASTATE INTERLATA ACCESS CHARGES EFFECTIVE JULY 1, 1988

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 6 - 9, 1987, and October 19, 1987

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

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BY THE COMMISSION: On December 23, 1986, the Commission entered an Order in these dockets entitled "Order Reducing Intrastate Access Charges and Authorizing IntraLATA Resale Competition By All Long Distance Carriers." The Commission therein stated that further Orders would thereafter be entered in these dockets scheduling hearings in 1987 to consider further reductions in access charges, nonpooling of interLATA access charge revenues, company-specific traffic sensitive access charges and high cost company plans.

On April 29, 1987, the Commission entered an Order in these dockets scheduling a hearing to consider the following issues:

1. Should the current level of access charges be further reduced in consideration of the emerging competitive telecommunications industry in North Carolina? If further access charge reductions are warranted, how should access revenue shortfalls to the local exchange companies (LECs) be handled?

2. Should flat rate alternatives to a usage sensitive method of recovering non-traffic sensitive (NTS) access costs be considered? The alternatives formulated by Southern Bell and other interested LECs pursuant to the Commission's request should be presented.

3. Should company-specific traffic sensitive switched access charges be implemented?

4. Are high cost fund plans necessary? If so, what plans are most appropriate? The alternatives formulated by the LECs pursuant to the Commission's request should be presented.

5. The most appropriate method for replacing the pooling of interLATA access charges was determined to be the "Bill and Keep" methodology using the end-office approach. What is the financial impact of this nonpooling plan on each LEC operating in North Carolina and how should regulatory gains or shortfalls be treated for regulatory purposes?

6. Is a universal WATS access line (combined interstate and intrastate WATS lines) in the public interest? What allocation procedures are necessary to properly allocate revenues and costs jurisdictionally?

7. Any other relevant transition issues presented by a party of record.

The Order of April 29, 1987, also established the dates for the prefiling of testimony by the LECs, other common carriers (OCCs), resellers, the Public Staff, and other intervenors.

On June 15, 1987, SouthernNet Services, Inc. ("SouthernNet") filed a motion in these dockets entitled "Motion Requesting Severed Hearing On Universal WATS Access Line" seeking to have the issue of whether a universal WATS access line is in the public interest severed from the October 6, 1987, hearing and a separate hearing scheduled on that issue at the earliest date available. Carolina Telephone and Telegraph Company filed its "Response To Motion For Severed Hearings" on June 30, 1987, supporting SouthernNet's request that the WATS access line issue be considered in a separate hearing. On July 16, 1987, the "Response by US Sprint Communications Company In Support of Motion Requesting Severed Hearing on Universal WATS Access Line" was filed. US Sprint Communications Company (US Sprint) supported SouthernNet's motion to sever the universal WATS access line issue and schedule the hearing on that issue at a time prior to October 6, 1987. On July 17, 1987, the Commission entered an Order in Docket No. P-100, Sub 96, scheduling a separate hearing wherein the Commission ordered that for purposes of hearing and decision the universal WATS access line issue would be considered as a separate case with the hearing on that issue beginning at 10:00 a.m. on October 6, 1987, and hearing in the generic competition case beginning upon completion of the hearing on the single line WATS issue.

Various parties filed comments, testimony and/or exhibits. The Public Staff filed a motion to strike on September 17, 1987, in which the Public Staff sought to have stricken on grounds of redundancy and irrelevancy the testimony of William Beard and Nina W. Cornell on behalf of MCI Telecommunications Corporation and a portion of the testimony of David H. Jones on behalf of SouthernNet Services, Inc. On September 22, 1987, Southern Bell filed a motion to strike wherein Southern Bell sought to have stricken the testimony of William Beard and Nina W. Cornell and a portion of the testimony of David Jones on the grounds of redundancy and irrelevancy and a portion of the testimony of Mr. Newkirk on behalf of the North Carolina Long Distance Association on the grounds of it being irrelevant and beyond the scope of the hearing scheduled in this proceeding. On September 24, 1987, Carolina Telephone Company filed a motion wherein Carolina joined the Public Staff's motion to strike the testimony of William Beard and Nina W. Cornell and portions of David H. Jones' testimony and further moved to strike a portion of the testimony of Robert

Michael Newkirk on the grounds of its being irrelevant to the issues to be addressed in these hearings. On September 25, 1987, the North Carolina Long Distance Association (NCLDA) filed its response to Southern Bell's motion to strike. MCI's response in opposition to the Public Staff's motion to strike testimony was filed on September 26, 1987, wherein MCI requested the Commission to deny the Public Staff's motion to strike as well as other such motions. SouthernNet's response to the various motions to strike was filed on September 29, 1987. SouthernNet therein requested the Commission to deny all motions seeking to strike any portion of the testimony of Mr. Jones. On September 30, 1987, the Commission entered an Order denying motions to strike in which all motions to strike testimony were denied and parties wishing to address the additional issues raised by MCI, SouthernNet and NCLDA were allowed to do so in oral testimony or amendments to prefiled testimony presented at the hearing. The Commission also stated that it wished to avoid a situation where the additional issues "...might overshadow the extremely important and crucial issues delineated in the Order of April 29, 1987." The Commission further stated, "If it should come to pass at any point during the hearing process that the additional issues raised by MCI, SouthernNet and NCLDA will overshadow the six specific issues set forth in the Order of April 29, 1987, the Commission reserves the right to rule that such issues and in particular the issue of intraLATA facilities-based competition will be segregated for separate consideration in a subsequent hearing to be conducted in these dockets." Subsequently, during the hearing, it was agreed that testimony relating to intraLATA facilities-based competition would be deferred to a subsequent hearing.

The hearing was conducted as scheduled. Pursuant to stipulation, the testimony of Michael A. Pandow on behalf of Service Telephone Company and Barnardsville Telephone Company was copied into the record without his being present. The following witnesses personally appeared and offered testimony: B. A. Rudisill and David B. Denton for Southern Bell Telephone and Telegraph Company; Joseph W. Wareham for Carolina Telephone and Telegraph Company; R. Chris Harris for Central Telephone Company; O. D. Fulp, II for Continental Telephone Company of North Carolina, Inc.; Harold W. Shaffer for ALLTEL Carolina, Inc., Heins Telephone Company and Sandhill Telephone Company; Carol C. Guthrie for General Telephone Company of the South; Charles L. Ward and Bruce H. Branyan for AT&T Communications; David H. Jones for SouthernNet, Inc; Hugh L. Gerringer for the Public Staff; Jocelyn M. Perkerson for the Attorney General; and Robert Michael Newkirk for North Carolina Long Distance Association.

Based upon a careful consideration of the foregoing, the testimony and exhibits received during the hearing, and the entire record in these dockets, the Commission now makes the following

FINDINGS OF FACT

Jurisdiction

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

Proposals Made by the Local Exchange Companies

2. Under the proposals filed in this docket by the local exchange companies, the current intrastate interLATA access charge pooling arrangement would be replaced with a bill and keep plan augmented by a high cost fund (HCF) mechanism to assist high cost LECs.

3. The LECs propose to bill and keep access revenues generated by company-specific interLATA traffic sensitive access charges and a terminating carrier common line charge (TCCLC) set at a uniform level of 4.33 cents per each terminating access minute and to phase-in over a three-year period company-specific residually determined originating interLATA carrier common line charges (OCCLCs).

Pooling of Intrastate InterLATA Access Revenues

4. The existing pooling of intrastate interLATA access revenues is inconsistent with deaveraged, company-specific access charges and is unsuitable to the fully competitive environment which is emerging on an interLATA basis in the State of North Carolina. Continued pooling of interLATA access revenues is no longer in the public interest and will be terminated effective July 1, 1988.

5. The most appropriate method for replacing the pooling of interLATA access charges is the bill and keep methodology.

6. In some instances, the facilities of more than one LEC are required in order to connect an interexchange carrier (IXC) to the public switched network. In these circumstances, meet point billing, where each LEC individually bills the IXC for that company's portion of the access facilities, is appropriate. Under meet point billing, each LEC will bill and keep the revenues associated with that portion of the access service it provides.

7. Effective January 1, 1988, the Federal Communications Commission ordered a meet point billing arrangement for bill and keep of interstate Feature Groups C and D, Special Access and Directory Assistance access charges.

8. It is in the public interest, in order to avoid the administrative burden and cost of maintaining two diverse billing systems, to implement meet point billing for intrastate access beginning July 1, 1988.

The Appropriate Level and Structure of Access Charges

9. Company-specific interLATA switched and special access charges are compatible with a fully competitive long-distance market.

10. Having the LECs mirror their individual interstate access rates in the manner and to the extent proposed by the LECs will facilitate the move to company-specific access charges with no disruption to the revenue stability of the LECs and without threatening reasonably affordable local service.

11. Bypass of LEC facilities is a competitive phenomenon occurring in the competitive telecommunications market which exists today. There is a greater threat of bypass on originating traffic. This is true for the reason that a

proportionately greater number of customers have the financial and technological capability to bypass the local exchange network on the originating side. Relatively few customers possess the capability to bypass termination on the local network. Fewer still are capable of bypassing the local network in its entirety for all purposes. The potential for bypass, while still present, has been significantly mitigated by the regulatory actions taken by this Commission at the intrastate level and by the Federal Communications Commission at the interstate level.

12. Implementation of company-specific interLATA switched and special access charges in the manner proposed by the LECs will result in additional billed revenues to a number of the LECs because of increased rates for traffic sensitive components of those access charges. This additional revenue will be used to lower each company's originating CCLC. This reduction in the originating CCLC should help to further combat and reduce the threat of uneconomic bypass.

The High Cost Fund

13. Although a move to company-specific access charges coupled with the elimination of pooling of intrastate interLATA access revenues is in the public interest, such a move without a reasonable plan to provide revenue support for certain high cost LECs could pose an unnecessary threat to reasonably affordable local service.

14. A high cost fund is necessary to minimize the disparity among company-specific OCCLCs utilized across the state. The high OCCLCs which certain LECs would require without a high cost fund in order to maintain their revenues might result in increased bypass and reduced competitive entry into areas served by these high cost LECs.

15. The high cost fund will provide revenue support to those LECs which have company-specific OCCLCs in excess of Southern Bell's OCCLC. The monies necessary to provide this revenue support will be collected through the application of a uniform high cost surcharge or additive applied to all terminating access minutes in the State of North Carolina. High cost companies will receive revenues from this fund equal to the amount represented by the difference between Southern Bell's OCCLC and the company-specific alternate OCCLC which would be required if no revenue support were provided through the HCF.

16. The high cost fund should be administered by Southern Bell. The high cost fund will provide revenue support to high cost companies for the next three years. The need for a continuation of the high cost fund will be evaluated after three years. The identity and number of companies requiring high cost fund assistance may change over time and should be reexamined periodically.

The Plan Approved by the Commission

17. It is in the public interest to replace the intrastate interLATA access charge pooling arrangement which is currently in effect in North Carolina with a bill and keep plan utilizing (a) meet point billing, (b) company-specific interLATA switched and special access charges, (c) a uniform

statewide TCCLC of 4.33¢ per each terminating access minute, (d) residually priced company-specific OCCLCs, and (e) a high cost fund. These changes shall be made effective July 1, 1988, pursuant to a plan designed as follows:

a. Each LEC shall compute its access revenue requirement using 1987 minutes. The computation will be made in the same manner and at the same rates as are currently used for the interLATA pool. Barnardsville will be allowed to increase its revenue requirement to account for the new countywide EAS to be implemented on April 1, 1988.

b. The traffic sensitive revenue shall be computed using meet point billing and the changes in access rates proposed by the LECs.

c. The nontraffic sensitive revenue requirement shall be computed as a residual by subtracting the revenue computed in step b from the revenue requirement computed in step a.

d. The revenue from the terminating CCLC shall be computed by multiplying 1987 terminating minutes by 4.33 cents.

e. Company-specific originating CCLCs shall be computed by subtracting the revenue obtained in step d from the revenue requirement obtained in step c.

f. Southern Bell and each LEC with an originating CCLC lower than Southern Bell's OCCLC shall bill their company-specific OCCLCs; however, no LEC shall bill an OCCLC which is less than zero. LECs with originating CCLCs higher than the OCCLC for Southern Bell shall bill the same OCCLC rate as Southern Bell.

g. A high cost fund, funded through imposition of a uniform additive on each LEC's terminating CCLC applied to all terminating intrastate interLATA access minutes, shall pay the difference between the revenue generated to a high cost LEC which bills an OCCLC equal to the OCCLC for Southern Bell and the revenue requirement that would have been generated had the high cost LEC billed its own company-specific OCCLC.

h. The nontraffic sensitive revenue requirement for each LEC obtained in step c shall be capped, but shall be allowed to increase annually by a percentage equal to the annual percentage growth in total access lines, until the LEC's originating CCLC either reaches zero or the issue is revisited by the Commission.

i. After a LEC's originating CCLC reaches zero, the LEC shall continue to bill the TCCLC of 4.33 cents plus the high cost additive on all terminating minutes unless and until the issue is revisited by the Commission.

j. On the first day of July in each succeeding year, new OCCLCs and a uniform high cost fund additive will be computed using minutes of use from the prior calendar year. The computations for the OCCLCs and high cost fund additive will be made by inflating the

NTS revenue requirement from step c by the percentage growth in total access lines and then following steps d through step i.

18. It is in the public interest to continue pooling intraLATA toll revenues until an acceptable nonpooling plan can be developed and implemented. The bill and keep plan adopted by this Order applies only to interLATA access charge revenues. It does not apply to intraLATA revenues.

Miscellaneous Matters

19. Time-of-day discounts are commonly utilized by IXCs and LECs alike in conjunction with various services. The use of time-of-day discounts for many services offered to end-users encourages efficient use of the network and may stimulate usage and increased contribution. However, prior to the implementation of time-of-day discounts on access charges, full consideration must be given to the existing LEC rate structure and the possible need for adjustments. Sufficient evidence has not been presented and fully explored in this proceeding to convince the Commission that time-of-day discounts on access charges are in the public interest at this time.

20. The authorization of the resale of intraLATA Feature Group B and Feature Group D access services is tantamount to the authorization of facilities-based intraLATA toll competition. The Commission has deferred consideration of facilities-based competition for later hearings and will reserve this issue until that time. Without a full consideration and understanding of the revenue impact on the LECs of the authorization of the resale of Feature Group B and Feature Group D services, such resale cannot be found to be in the public interest at this time.

21. The reservation of 1+ and 0+ intraLATA traffic to the LECs continues to be in the public interest. Opening this traffic to other carriers at this time could have an adverse impact on local rates and could affect in a detrimental manner the availability of reasonably affordable local service.

22. Resellers and facilities-based carriers use access services in exactly the same manner. Discounts available to resellers alone are not appropriate and would be unreasonably discriminatory. A 45% discount on originating and terminating Feature Group A access for resellers would reduce revenues to the LECs and is not in the public interest.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The subject of intrastate long-distance competition initially arose as a result of enactment by the North Carolina General Assembly of legislation effective June 29, 1984, which amended Chapter 62 of the North Carolina Public Utilities Act. (Ratified House Bill 1365, 1983 Sess. L. Ch. 1043 (Reg. Session, 1984), amending G.S. 62-2 and 62-110).

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

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

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

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

The evidence for these findings of fact is found in the testimony and exhibits presented by the witnesses for the local exchange companies (LECs), the interexchange carriers (IXCs), the Public Staff, the Attorney General, and other intervenors.

At the present time, all access charge revenues collected by the LECs for intrastate calls are pooled along with intraLATA toll revenues collected by the LECs. Each LEC turns over these revenues to Southern Bell which serves as the pool administrator. These revenues are divided as follows: There are fifteen companies that are compensated from the pool using the nationwide average cost schedules and there are thirteen companies, including Southern Bell, that receive revenues from the pool based on their actual costs. Companies using the nationwide average schedules are compensated first out of the pool. The remaining revenues are divided among the cost companies by first reimbursing each company for its expenses associated with providing these services. The residual revenue is then divided based on each company's pro rata share of the total industry investment used to produce such revenues. The present pooling arrangement, with some modifications, has been in existence since 1960. The cost companies' share of the pool is approximately 95% whereas the share of the nationwide average schedule companies is only 5%.

Under the present pooling arrangement, uniform intrastate access charges apply statewide. It costs an IXC, therefore, the same to access a customer in one area of the state (e.g., an area in the mountains served by Continental) as in another area (e.g., a city in the Piedmont served by Southern Bell). Consequently, the present structure of access charges does not pose a disincentive for IXCs to serve any area of the state.

In this case, the LECs advocate company-specific intrastate access charges and the replacement of the interLATA access charge portion of the settlement pool by a bill and keep arrangement augmented with a high cost fund (HCF) mechanism to mitigate the resulting adverse impacts on the high cost LECs. The LECs propose to bill and keep revenues generated by company-specific non-carrier common line charges and a terminating carrier common line charge (TCCLC) set at a uniform level of 4.33¢ per terminating access minute and to phase-in over a three-year period company-specific residually determined

originating common carrier line charges (OCCLC). During the first year of the transition, the OCCLC would be set at a uniform 3.39¢ per originating access minute. A modified settlement pooling arrangement would be in effect during the transition period after which time each LEC would bill and keep revenues generated by its company-specific OCCLC. The specific details of the LECs' plan are as follows:

Under the industry plan, each LEC would identify its intrastate interLATA access revenue requirement. This would not include billing and collection, facilities or services provided to IXCs under contract, and any nonregulated or intraLATA activities. The cost procedures used would be in accordance with applicable FCC and NCUC Rules as stated in FCC Parts 67 and 69. Intrastate costs would be separated between interLATA and intraLATA using procedures agreed upon among the exchange carriers. Average schedule LECs would use their 1985 settlements as their revenue requirement.

Step 1 - Development of CCLC Revenue Requirement

Each LEC would bill the IXC accessing its service area according to its adopted access tariff for traffic sensitive switched and special access services. Companies who have their interstate access tariffs on file at the FCC for these services would generally adopt those same rates and that rate design. Companies who concur in the interstate NECA tariff for these services would generally adopt that tariff.

Step 2 - Development of CCLCs by Company

Following the application of Step 1, the residual revenue requirement would be determined. This would be designated as the Carrier Common Line Charge (CCLC) Revenue Requirement and would be recovered in a two-step process: First, the terminating usage would be billed at the current TCCLC of 4.33¢ per terminating access minute. Second, company-specific CCLCs per originating access minute would be developed by dividing the remaining unrecovered revenue requirement by the originating access minutes of use.

Step 3 - Development of Statewide OCCLC

The uniform statewide OCCLC to be used for the initial phase of the access plan transition period would be developed by summing all LECs' residual OCCLC revenue requirements and dividing by the sum of all LECs' originating access minutes of use.

Step 4 - Revenue Sharing Plan

The revenue sharing plan during the transition phases of the plan would be administered by Southern Bell. Monthly, each LEC would be required to do as follows: (1) bill the statewide OCCLC, (2) report the billed OCCLC revenues to the administrator, and (3) report its originating access minutes of use. The administrator would then identify each LEC's CCLC revenue receivable or payable based on its reported usage and its specific OCCLC as developed. Settlement statements and cash flow would then be effectuated as required.

Step 5 - The Transition Plan

The LECs' plan provides for a phase-in over three years from the present system of a statewide uniform OCCLC to company-specific rates. This would be accomplished each year of the plan by reducing the differential between the average OCCLC and the company-specific OCCLC by one-third. For LECs with costs below the average, the OCCLCs would be reduced, and, likewise, LECs above the average would have to increase their OCCLCs. The specific timetable for the transition would be as follows:

1. The transition plan would commence on July 1, 1988, with a uniform OCCLC and an intercompany transitional cash flow plan which would require LECs with lower than average residually developed company-specific OCCLCs to bill a charge higher than their costs in order to fund LECs with higher than average OCCLCs.

2. In the second year of the plan, starting January 1, 1989, the uniform OCCLC would be replaced with non-uniform OCCLCs as each company would move its OCCLC one-third toward company-specific requirements. A LEC would not be required to increase its OCCLC if other sources of revenue were available. It was conceded, however, that some LECs, such as Continental Telephone Company, do not have other sources of revenue available and would, therefore, be forced to raise their OCCLC.

3. The third year, beginning January 1, 1990, would cause further shifts in the OCCLCs as each LEC would move two-thirds toward its company-specific OCCLC.

4. The fourth year, starting January 1, 1991, would provide that each OCCLC would be at the company-specific rate or at 150% of the statewide average OCCLC. In either case, a .09¢ additive would be added to the OCCLC to fund the high cost fund.

Step 6 - The High Cost Fund

The LECs' proposed plan provides for a mechanism to lessen the adverse impact of the LECs' plan on high cost companies. The plan provides that a high cost fund would be established to distribute funds to high cost companies having company OCCLCs above 150% of the statewide average. A .09¢ additive would be imposed on all LECs to fund the plan. If a LEC has an OCCLC revenue requirement greater than the 150% cap, then that LEC would draw from the HCF.

Three LECs would be compensated through the industry HCF mechanism: Continental, Barnardsville, and Citizens. These three companies would have residually developed company-specific OCCLCs greater than 150% (5.17¢) of the statewide average. Continental, for example, would have a residually developed company-specific OCCLC under the LECs' plan of 9.57¢ before application of the HCF. The HCF would provide Continental with cost support from the fund equal to the difference between 9.57¢ and 5.17¢ (150% of the statewide average). Similar support would be provided for Barnardsville and Citizens. The LECs propose that the support provided by the HCF should be fully funded for three

years and should not be phased down. The LECs recommended that at the end of three years the HCF should be studied to see if the fund should be continued.

Mr. Rudisill, Segment Manager-Bell Independent Relations, presented an exhibit indicating the dollar impact by LEC of going from the present pooling arrangement for interLATA access charges to a bill and keep system based on 1985 pool revenues. This exhibit showed that while the industry revenues are the same under either pooling or bill and keep, the effect on some LECs of going to a bill and keep system would be substantial: For example, Mr. Rudisill testified that if Southern Bell continued to bill the current average OCCLC, without the corresponding present pooling of costs, Southern Bell would have an immediate revenue shortfall of approximately $5.4 million. Continental would have an immediate revenue shortfall of approximately $1.4 million. On the other hand, Central and Carolina would recover revenues of approximately $2.4 million and $2.8 million, respectively, over and above their costs. Of the twenty-eight companies in the present pool, seventeen of these companies would have shortfalls if they continued to bill and keep the current average OCCLC.

Mr. Rudisill testified at the hearing that the LECs used 1985 cost figures in formulating their recommended plan because 1985 was the most recent year for which final or actual costs were then known. Mr. Rudisill also stated that in computing the current level of access revenue, the industry group adjusted 1985 access revenues to reflect 1987 access rates. AT&T and several of the IXCs took issue with using 1985 costs and restated revenues arguing the access minutes of use have significantly increased since 1985. Mr. Rudisill admitted that access volumes have increased, but he also stated that costs have increased as well. He cited the uniform system of accounts rewrite, the procedural changes by the Federal-State Joint Board, increased depreciation rates, and a number of other factors that have increased the cost of providing access. His conclusion was that 1985 costs and adjusted revenues were the most reliable data to use.

Witness Shaffer, testifying on behalf of ALLTEL Carolina, Inc., Heins Telephone Company and Sandhill Telephone Company, supported the LECs' plan, but sought the Commission's authorization to combine the revenue impact data for the ALLTEL subsidiaries so ALLTEL would be enabled to file uniform intrastate interLATA access rates statewide. The Public Staff opposes the combining of the ALLTEL subsidiaries for access charges, since each company is treated separately in rate cases. Therefore, the Commission will not approve witness Shaffer's proposal at this time as the proposal appears premised on plans for a merger of the ALLTEL subsidiaries. At this point, no application for merger has even been filed with the Commission.

AT&T proposed a "flash-cut" type plan whereby pooling would be eliminated immediately and a bill and keep plan instituted with no phase-in period. Southern Bell and many of the other LECs were very much opposed to a "flash-cut" plan. In this regard. Mr. Rudisill of Southern Bell testified as follows:

> "We are very much opposed to that [flash-cut]. The industry has been pooling for, like I say, I remember my thirty years, and even longer, so we have been going along billing uniform rates, having a pooling environment and, you know, operating under this for all of these years. Now suddenly, suddenly just to say overnight that you are

going to stop and have these impacts where what you bill is what you get, or either overnight you go ahead and jump your rates up or bring them back down, we just don't feel like that is the way to go. There is just not that big a hurry to do it overnight. Why not, as I say, we have been doing it for years, thirty, forty, fifty years, so why not take three years to eliminate the rate shock that would accrue if we tried to all recover the next morning our residual losses or gains so, yes, we are very much opposed to that."

In its proposed Order and reply comments, AT&T proposed the following alternate plan for use by the LECs in North Carolina:

1. The LECs shall use 1987 access volumes adjusted to 1987 rate levels to determine the total access revenues for each company as illustrated in Wareham Exhibit No. 4.

2. Revenues generated from company-specific traffic sensitive switched and special access charges are to be subtracted from the total access revenue to determine the residual amount attributable to NTS cost recovery. The switched traffic sensitive access rates are to be developed using the methodology proposed by the LEC plan. Special access revenues will be calculated at current intrastate rate levels.

3. The NTS support level for each LEC will then be divided by 12 to establish a monthly NTS revenue level. That amount will be allocated and billed in a lump sum to all interLATA toll service providers (facilities-based carriers and nonfacilities-based carriers) according to each provider's relative proportion of switched access minutes adjusted quarterly.

4. The total NTS support level for each LEC will be adjusted upward or downward each year based on the percentage change from the previous year in the number of residence access lines in each LEC's serving area.

AT&T states that this plan retains the most beneficial aspects of the LEC proposal while adding features that will benefit all parties. It is designed to allow LECs to mirror interstate traffic sensitive rates that are based on North Carolina costs and to institute a mechanism to control the growth of the NTS cost subsidy that also recognizes growth in residence access lines. In contrast to the LECs' proposal, AT&T states that its plan should be more easily administered by the LECs because it will not require continuation of pooling during a three-year transition period during which individual company CCL rates would increase or decrease. Nor will there be a need, according to AT&T, to establish and administer an intrastate high cost fund at this time because all LECs will continue to receive NTS cost subsidies at fixed levels with periodic adjustments for growth in residence access lines. AT&T further states that its proposed plan also provides revenue stability to the LECs by eliminating the possibility of under-recovery or over-recovery of nontraffic sensitive access charges. According to AT&T, its plan also provides an additional incentive to interexchange carriers to introduce new and innovative service offerings to the public which are designed to expand the market and also sends the proper signal to the marketplace that this Commission is determined to create a fair and

equitable environment for competitive telecommunications services in North Carolina.

Public Staff witness Gerringer testified that the purpose of his testimony was to present the Public Staff's comments and recommendations concerning the major issues set out in the Commission's April 29, 1987, Order: (1) the level and structure of the LECs' intrastate access charges including the deaveraging of such charges by the LECs and (2) replacement of the intrastate interLATA access charge settlement pool by a bill and keep arrangement in conjunction with a high cost fund (HCF) mechanism. He testified that the main criterion upon which the formulation of the Public Staff's comments and recommendations is based is that changes in the level, structure and pooling of intrastate access charges should not produce results which would jeopardize the Commission's long-standing policy of keeping basic local service rates as low as possible; thus ensuring the ability of marginal customers to afford basic service. He stated as a secondary criterion that any changes to the intrastate access charge system should not discourage the benefits of competition being extended to the greatest number of citizens throughout the state of North Carolina. He testified that after reviewing the LECs' and IXCs' proposals, the Public Staff concluded that those proposals will produce results that will put upward pressure on basic local rates or discourage the benefits of the spread of authorized intrastate toll competition throughout the state.

Witness Gerringer testified that since uniform intrastate access charges were established over three years ago, the Commission has approved several reductions, mainly in the CCLC, in an attempt to strike a balance between the needs of the LECs and those of the IXCs. He stated that the last reduction, effective May 1, 1987, resulted in the interLATA access charge settlement pool ratio being lowered by approximately three (3) percentage points from approximately 15.5% to 12.5%, and that a further reduction in access charge revenues could put upward pressure on other rates. He noted that while some parties have proposed offsetting the impact of reducing the common carrier line charge by the imposition of end-user charges, that is the same as increasing local rates and the Public Staff continues to oppose the imposition of end-user charges.

Witness Gerringer stated that concern about bypass is one of the reasons commonly cited by parties seeking to lower access charges, but that the Public Staff believes this concern has been greatly mitigated by the FCC's lowering of the interstate OCCLC (currently at 0.69 cents per minute) compared to the TCCLC (currently at 4.33 cents per minute). He said that the FCC's lowering of the originating as opposed to the terminating CCLC has been influenced by the belief that bypass is more sensitive to the level of the originating CCLC. He noted that this Commission has taken similar action by setting the OCCLC at 4.00¢ per minute compared to 4.33¢ per minute for the TCCLC effective May 1, 1987. Witness Gerringer stated that since most potential bypassers are large users of both interstate and intrastate service, the Public Staff believes the action taken by the FCC and followed by this Commission regarding the levels of the OCCLC and TCCLC should greatly reduce the bypass threat. He testified that the Public Staff has concluded that the concerns regarding the potential impact on LECs and their customers' basic local rates from further reducing access charge revenues through reducing access charges or implementing access charge time-of-day discounts outweigh the concerns put forth by supporters of further access charge reductions.

Public Staff witness Gerringer stated that under the LECs' plan after the transition period and application of the high cost fund, company-specific OCCLCs range from a negative 3.88¢ per minute to a positive 5.17¢ per minute. He indicated that the obvious problems are that the negative charges are unrealistic; some LECs will have OCCLCs higher than their TCCLCs which is contrary to the FCC's lead based on bypass concerns; and most severe, that the OCCLCs of some LECs will be greater than the current level of that charge so that they must charge a higher OCCLC than the current uniform one or seek adjustments in local rates. Witness Gerringer stated that either approach violates the Public Staff's criteria of keeping basic local rates as low as possible so as to ensure the marginal customer's ability to afford basic local service and not discourage the extension of the benefits of authorized intrastate toll competition to the greatest number of citizens throughout the state. He also indicated that IXC proposals to further reduce access charges or implement time-of-day discounts would produce an overall access charge revenue reduction and put pressure on local rates.

Witness Gerringer stated that consistent with the position taken by the Public Staff in the last hearing concerning these issues in July 1986, the Public Staff recommends that no further changes in the level and structure of access charges should be made at this time and that access charges should continue to be pooled. Witness Gerringer indicated that the LECs and IXCs had not presented sufficient justification to warrant further changes in the access charge system, especially changes that adversely impact the continuation of the lowest possible basic local rates or the extension of the benefits of competition throughout the state. Witness Gerringer stated that the Public Staff's belief that the current intrastate access charge system is not in dire distress and need of fixing, as one could be led to believe by the LECs' and IXCs' proposals, is provided by the observation that the LECs and IXCs are doing well in the current access charge environment.

Witness Gerringer strongly opposed the elimination of pooling and its replacement by a bill and keep arrangement of company-specific intrastate access charges. Mr. Gerringer testified that the LECs' plan would produce impacts that would put upward pressure on basic local rates and would discourage the spread of the benefits of authorized intrastate toll competition in North Carolina. Specifically, Mr. Gerringer stated that the LECs' plan to eliminate pooling and go to company-specific OCCLCs would result in shortfalls for some LECs. This would require that these LECs make up any such revenue deficit through either a higher OCCLC or seek relief by way of local rate increases. Either alternative would be detrimental to the local ratepayers. Mr. Gerringer stated that a further disadvantage of the LECs' plan was that it would require the approval and administration of a greater number of tariffs. Finally, Mr. Gerringer testified that some LECs, even after application of the high cost fund, would have their OCCLC higher than their TCCLC thereby encouraging bypass and discouraging IXCs from expanding service to customers in the service areas of those LECs.

Mr. Gerringer testified that in the event the Commission decides to allow a bill and keep arrangement of company-specific intrastate access charges, the Public Staff recommends that only the non-CCLC intrastate access charges should be company-specific subject to a bill and keep arrangement and that the CCLC should be uniform and subject to a modified pooling arrangement such as the LECs' plan to use during the first year of their proposed three-year transition

period. This would eliminate the need for a HCF mechanism and would solve the problem related to the company-specific negative OCCLCs resulting for some of the LECs under the LECs' plan. Witness Gerringer testified that this alternate proposed uniform CCLC pooling arrangement could also provide the Commission with the flexibility to address any bypass concerns by lowing the current OCCLC and raising the TCCLC. Mr. Gerringer testified that an optimum solution for the concerns of all parties can best be achieved by the appropriate selection and pooling of OCCLCs and TCCLCs.

Ms. Jocelyn Perkerson, Accountant with the North Carolina Department of Justice, testified that the Attorney General opposes the local exchange companies' bill and keep proposal. She testified that going to a bill and keep plan as proposed by the LECs would do very little to encourage a competitive market in some of the state's least populated areas as it would add an economic disincentive for IXCs to serve the service territories of higher cost LECs' (e.g., Contel) than the service areas of lower cost LECs' (e.g., Carolina). The LECs' plan, therefore, could impede the spread of competition and hamper the efforts of less developed areas of the state to encourage economic growth and attract business.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The LECs, by virtue of their unanimous support for the industry plan, assert that nonpooling of interLATA access charge revenues is necessary due to the emerging competitive environment in North Carolina. On the other hand, the witnesses for the Attorney General and the Public Staff argue that pooling of access revenues should continue. They point out that the practice has been in use for a long period of time and argue that the move to company-specific switched access charges could result in a great disparity among access rates on a statewide basis. This in turn, they allege, could lead to a lack of competition for services, potentially higher local rates in those areas with high access charges, and, ultimately, deaveraged toll rates throughout the state.

While the Commission is certainly mindful of these concerns, the nonpooling of interLATA access revenues must be viewed in light of the record in this case as a whole. The evidence presented by the witnesses for the LECs undermines the persuasiveness of these arguments. The Commission concludes that the plan adopted by this Order, which includes a high cost fund designed to minimize the impact of access charge deaveraging and nonpooling of interLATA access charges on high cost companies, adequately responds to the concerns which have been voiced by the Public Staff and the Attorney General.

The evidence likewise supports the use of July 1, 1988, as the effective date for the move to bill and keep of interLATA access revenues, as well as most other provisions of this Order. Southern Bell witness Rudisill testified to the numerous changes which would be necessary to implement bill and keep of company-specific access charges, such as the filing of new tariffs and the execution of new inter-LEC contracts and revenue sharing agreements. He also explained that a mid-year implementation date is preferable from an accounting standpoint when the first of the year is not practical. The other LECs shared this opinion. The Commission concludes that it is in the public interest to implement bill and keep of interLATA access revenues on July 1, 1988. The

Commission further concludes that it is in the public interest that the present pooling arrangement should be continued for the first half of 1988.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

In the Order entered in these dockets on December 23, 1986, the Commission concluded that bill and keep was the most appropriate method to replace pooling of interLATA access revenues. The LECs have incorporated this methodology into the industry proposal and no party has attacked its use except to object to the abolition of pooling as a whole,. Therefore, the Commission reaffirms its earlier conclusion that bill and keep of access revenues is the appropriate methodology to implement in lieu of continuing to pool interLATA access revenues.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

In the Order entered in these dockets on December 23, 1986, the Commission stated a preference for end-office bill and keep of access revenues. However, as the witnesses for the LECs explained in their testimony in this case, this method still requires revenue sharing among LECs where the facilities of more than one company are required to connect an IXC to the public switched network. These witnesses further explained that no such sharing is required with meet point billing where each LEC bills for that portion of access which it has provided. No party has objected to the introduction of meet point as opposed to end-office billing. The Commission endorses and adopts meet point billing as the more appropriate method of bill and keep whereunder each LEC will bill the IXCs for the facilities it provides.

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

Southern Bell witness Rudisill testified with respect to the Order of the Federal Communications Commission regarding the implementation of meet point billing effective January 1, 1988. Mr. Rudisill also explained that while it may be technically possible to utilize meet point billing for one jurisdiction and end-office billing for another jurisdiction, the administrative burden and cost of maintaining the two billing systems would be significant. In that the Commission has adopted the meet point billing method for bill and keep of interLATA access revenues, the Commission concludes that it is in the public interest to implement meet point billing for all intrastate access beginning July 1, 1988. The LECs shall continue to pool and share interLATA access revenues until the abolition of pooling on July 1, 1988, at which time the LECs shall implement bill and keep on a meet point basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The Commission concluded in the Order entered in these dockets on December 23, 1986, that "the witnesses for the LECs and the interexchange carriers ...generally agree that company-specific access charges are compatible with, and are a necessary element of, a competitive long-distance market." These witnesses testified that company-specific switched access charges would provide the necessary incentive for the LECs to reduce access charges through cost controls in order to remain competitive; that uniform rates deprive the LECs of a degree of flexibility in pricing, which in turn impairs their ability to respond to competitive pressures; and that access charges should consider

and reflect the market value, cost and/or revenue needs of each individual LEC, which they cannot do if uniform, statewide rates are imposed.

In the present proceeding, only the Public Staff and the Attorney General oppose the movement to company-specific interLATA access charges. Witness Gerringer stated that the LECs' proposal to deaverage access charges by LEC and to dissolve the interLATA access charge settlement pool would potentially give AT&T an incentive to seek geographical deaveraging of its toll rates. According to witness Gerringer, if AT&T remains the sole provider of interLATA service in high cost areas, it would be desirable to raise its toll rates in these noncompetitive areas where access charges would be higher and to lower toll rates in its competitive areas where access charges would be lower. Attorney General witness Perkerson also expressed concern that if a bill and keep plan were adopted, tremendous pressure to deaverage toll rates would follow. These parties argue that depooling, and with it company-specific access charges, will result in diminished competition in those areas served by LECs forced to implement drastic increases in access charges. Moreover, they argue that depooling and company-specific charges could ultimately result in deaveraged toll rates to the detriment of the body of ratepayers in those areas where toll rates will increase.

Conversely, GTE South witness Guthrie testified concerning her experience in Georgia which had previously implemented nonuniform switched access charges. Georgia has not experienced a deaveraging of toll rates on a statewide basis, even though nonuniform access rates have been in place for nearly four years. Specifically, Southern Bell witness Denton testified that market segmentation, i.e., specialized offerings to large customers, has been the response, as opposed to deaveraged toll rates. On cross-examination, AT&T witness Branyan stated that AT&T has no intention of deaveraging its toll rates and that a shift to deaveraged toll rates would require significant expense in order to implement and administer new tariffs, as well as significant expense to change AT&T's present billing system. Witness Branyan, like the LEC witnesses, denied that deaveraged toll rates would ultimately result from the implementation of company-specific switched access charges.

For all of the foregoing reasons, the Commission concludes that company-specific traffic sensitive switched access charges are compatible with a fully competitive interLATA long-distance market.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

During the July 1986 hearing, several LECs suggested that mirroring of interstate access tariffs should be permitted in order to facilitate the move to company-specific tariffs. Mirroring these rates simplifies billing programs and is logical since the same facilities and same costs are incurred for access whether the call is interstate or intrastate. The LECs have included in their proposal, as explained by Carolina witness Wareham and Central witness Harris, a recommendation that (a) LECs with company-specific interstate traffic sensitive access tariffs mirror their rates for intrastate traffic, (b) LECs without a company-specific interstate access tariff experiencing a negative revenue impact (loss) with the move from depooling should implement mirrored NECA interstate tariff rates, and (c) LECs currently billing access rates sufficient to cover their cost (contributing to the pool in excess of their recovery) should continue to bill their present access rates.

Several parties, primarily the IXCs, have objected to mirroring on the theory or ground that mirroring will deprive this Commission of authority over intrastate rates. This argument presupposes that subsequent adjustments to interstate rates would automatically be reflected in intrastate rates. The LEC witnesses deny that this is intended. If subsequent adjustments to intrastate access charges are proposed, they will continue to be reviewed and approved by this Commission. Therefore, the Commission concludes that the LECs' proposal to mirror their individual interstate switched and special access rates is reasonable and will allow for a smooth transition with no short-run impact on the revenue stability of any LEC. The Commission further notes that the present intrastate traffic sensitive access charges were adopted in 1984 based upon a NECA tariff which was never adopted at the federal level. Obviously, traffic sensitive costs have changed since the present intrastate traffic sensitive tariff was approved in 1984. The industry plan seeks only to place intrastate interLATA traffic sensitive access rates more in line with the current costs of providing the service.

AT&T and certain other parties have also objected to the implementation of mirrored rates on the basis that the interstate rates are based on embedded costs and not incremental costs. Even so, while the reduction in OCCLCs is offset by increases in traffic sensitive access charges, the net effect does not result in increased billing to the IXCs. Therefore, regardless of the cost and methodology underlying the interstate rates, it is reasonable to mirror these rates, to the extent explained above, in order to implement company-specific interLATA switched and special access charges which the Commission finds are in the public interest.

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

Several of the witnesses for the LECs testified to the facts contained herein. These witnesses explained that on the originating side, a customer generally must only bypass (or provide for itself) a single facility between its locations and the IXC's point-of-presence. On the terminating side, generally, a customer would have to duplicate many more facilities to terminate at multiple locations. Southern Bell witness Denton explained that a customer would have to essentially duplicate the entire public switched network in order to bypass the LECs entirely. Consequently, at the present time, originating bypass is more likely than terminating bypass.

In the Order previously entered in these dockets on December 23, 1986, the Commission concluded that the primary rate element contributing a high level of access charges was the CCLC. Consequently, it follows logically that the high CCLC is likely to be the primary motivator of uneconomic bypass. For this reason, it is reasonable to conclude that any reduction in the OCCLC, even if only accomplished by a shift to traffic sensitive switched access charges, may combat the threat of uneconomic bypass.

Extensive testimony was presented in the course of the hearings that led to the Order of December 23, 1986, concerning the existence of uneconomic bypass and the corresponding threat to the revenue stability of the LECs. The LECs who have presented testimony in this proceeding have stated that uneconomic bypass continues to be a substantial threat. The Public Staff and Attorney General have argued through direct testimony and cross-examination that the threat of bypass is overstated and may not in fact exist. As an

example, the Public Staff presented a portion of the recent opinion of the Federal District Court for the District of Columbia to the effect that only one in a million customers is capable of bypass. In addition, AT&T, among others, has argued its objection to the use of the term "bypass" in conjunction with a subscriber's decision to utilize services other than basic switched access service for its communications needs.

Southern Bell witness Denton, as well as numerous other LEC witnesses, explained that while a relatively small number of subscribers may be capable of engaging in total facilities bypass, a disproportionately small number of LEC business subscribers control a large portion of LEC revenues. Witness Denton further explained that in his opinion the Federal District Court was addressing complete and total bypass of the local exchange network which he agrees is not feasible for most LEC subscribers.

It must also be remembered that competitive threats and incentives to bypass, either through alternative services of the LECs or total facility bypass, are not uniform throughout the state. Southern Bell, for example, serves a number of large cities with concentrations of large customers. These areas are much more likely to be targets for bypass threats and more toll competition than other areas.

Although the Commission believes that the continued potential for bypass of LEC facilities poses some threat to the revenue stability of the LECs, bypass concerns have been significantly mitigated by the actions we have taken at the intrastate level and by the actions taken by the FCC at the interstate level. Our concerns regarding partial bypass are alleviated by the actions we have taken, which are similar to those taken by the FCC at the federal level, to structure intrastate access charges so that the OCCLCs for all LECS are today lower than their TCCLCs. Under the bill and keep plan adopted by this Order, the interLATA OCCLCs for most if not all LECs will generally continue to be either lower than or not significantly higher than their TCCLCs. Such structuring is responsive to the belief that bypass is more sensitive to the level of the OCCLC. Furthermore, the evidence indicates that the incentive to substitute special access services for switched access services has been greatly lessened due to the relative level of these charges on both the interstate side and intrastate side.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13 - 16

In the Order entered in these dockets on December 23, 1986, the Commission stated that "[t]he ultimate approval of company-specific switched access charges and the elimination of pooling of interLATA access charges is dependent upon the acceptance and implementation of an acceptable high cost fund by the Commission." This conclusion was based on the realization that nonpooling, and the subsequent revenue loss to certain of the LECs, could result in excessively high switched access rates or higher charges for other services necessary to recover the revenue losses.

The testimony presented by the LECs in this proceeding has clearly demonstrated that dissolution of pooling and the implementation of company-specific traffic sensitive access charges will result in significant shifts in revenue among the LECs. Certain of the LECs will be deprived of

significant revenues which in turn could require either implementation of excessively high CCLCs or adjustments in rates for other services.

The LEC witnesses argue that the two mechanisms proposed in their plan--the transition plan and the high cost fund--are necessary to effectuate a smooth and orderly transition to depooling and company-specific access charges. The LECs state that these mechanisms will provide revenue support for companies which would otherwise be faced with recovering those revenues from other sources, including local exchange rates.

The IXCs object to the implementation of the transition plan and high cost fund on the grounds that these mechanisms are not necessary. The IXCs argue that nonpooling and company-specific traffic switched access charges can be implemented on a flash-cut basis along with a further reduction in the CCLC. SouthernNet through cross-examination argues that a simple "additor" (increase in the CCLC) can generate the revenues sufficient to protect the LECs on a flash-cut basis. The additor suggested by SouthernNet is significantly higher than the surcharge which the LECs have incorporated as a means of generating the revenues necessary to fund the high cost fund.

The Commission concludes that implementation of a high cost fund is necessary in order to provide for a smooth and orderly transition to nonpooling and deaveraging of intrastate interLATA access rates. The use of a high cost fund will ensure that no LEC's originating CCLC will be extraordinarily high and that the disparity between the access rates of the various LECs will be minimized. The Commission concludes that the HCF will encourage the continuance of reasonably priced, geographically averaged intrastate interLATA toll rates, which is a matter of particular importance to consumers in high cost, low-density serving areas in North Carolina. The Commission also believes that the HCF will serve to further alleviate the threat of bypass which very high access rates might encourage, since the HCF will spread high interLATA access costs over as wide a base as possible. This should certainly lessen the threat of bypass to high cost LECs.

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

The evidence supporting these findings of fact is found throughout the testimony as a whole in this proceeding.

The Commission has decided to adopt a plan in this proceeding which is, in many ways, a hybrid of the plans proposed by the LECs and AT&T. The evidence offered by the LECs and IXCs clearly supports a finding that the existing pooling of intrastate interLATA access revenues is inconsistent with deaveraged, company-specific interLATA access charges and is unsuitable to the fully competitive environment which is emerging on an interLATA basis in North Carolina. Continued pooling of interLATA access revenues is no longer in the public interest and will be terminated effective July 1, 1988, as advocated by the LECs. The intrastate interLATA access charge pooling arrangement will be replaced with a bill and keep plan utilizing (a) meet point billing, (b) company-specific interLATA switched and special access charges, (c) a statewide uniform terminating CCLC of 4.33 cents per each terminating access minute, (d) residually priced company-specific originating CCLCs which will decline to or toward zero over time, and (e) a high cost fund. These changes will be made effective July 1, 1988, pursuant to a plan designed as follows:

a. Each LEC shall compute its access revenue requirement using 1987 minutes. The computation will be made in the same manner and at the same rates as are currently used for the interLATA pool. Barnardsville will be allowed to increase its revenue requirement to account for the countywide EAS to be implemented on April 1, 1988.

b. The traffic sensitive revenue shall be computed using meet point billing and the changes in access rates proposed by the LECs.

c. The nontraffic sensitive revenue requirement shall be computed as a residual by subtracting the revenue computed in step b from the revenue computed in step a.

d. The revenue from the terminating CCLC shall be computed by multiplying 1987 terminating minutes by 4.33 cents.

e. Company-specific originating CCLCs shall be computed by subtracting the revenue obtained in step d from the revenue requirement obtained in step c.

f. Southern Bell and each LEC with an originating CCLC lower than Southern Bell's OCCLC shall bill their company-specific OCCLCs; however, no LEC shall bill an OCCLC which is less than zero. LECs with originating CCLCs higher than the OCCLC for Southern Bell shall bill the same OCCLC rate as Southern Bell.

g. A high cost fund, funded through imposition of a uniform additive on each LEC's terminating CCLC applied to all terminating intrastate interLATA access minutes, shall pay the difference between the revenue generated to a high cost LEC which bills an OCCLC equal to the OCCLC for Southern Bell and the revenue requirement that would have been generated had the high cost LEC billed its own company-specific OCCLC.

h. The nontraffic sensitive revenue requirement for each LEC obtained in step c shall be capped, but shall be allowed to increase annually by a percentage equal to the annual percentage growth in total access lines, until the LEC's originating CCLC either reaches zero or the issue is revisited by the Commission.

i. After a LEC's originating CCLC reaches zero, the LEC shall continue to bill the TCCLC of 4.33 cents plus the high cost additive on all terminating minutes unless and until the issue is revisited by the Commission.

j. On the first day of July in each succeeding year, new OCCLCs and a uniform high cost fund additive will be computed using minutes of use from the prior calendar year. The computations for the OCCLCs and high cost fund additive will be made by inflating the NTS revenue requirement from step c by the percentage growth in total access lines and then following steps d through step i.

As previously stated, the bill and keep plan adopted by the Commission with respect to interLATA access charges is basically a hybrid of the plans proposed by the LECs and AT&T. In structuring this plan, the Commission has incorporated and adopted what we consider to be the best features of each plan in order to fairly balance the interests of the three parties most affected by the provisions of this Order; i.e., consumers, the LECs, and the IXCs. The plan adopted by the Commission has been designed to mitigate, as much as possible, unwarranted upward pressure on local telephone rates and higher than necessary interLATA OCCLCs, while also preserving a fair and reasonable stream of interLATA NTS access revenues for the LECs and allowing the LECs to implement company-specific traffic sensitive interLATA access charges.

This plan will benefit the IXCs through the capping mechanism on interLATA NTS revenues which is designed to transition the interLATA OCCLC for each LEC to or toward zero over a reasonable period of time. In the opinion of the Commission, the phase-down of total interLATA NTS access charge revenues that would result from AT&T's plan, if implemented, would lead to the IXCs paying less than their fair share of a joint NTS operating cost to the detriment of the LECs and their ratepaying customers.

The Commission has also adopted a high cost fund as part of our interLATA bill and keep plan which is designed to benefit high cost companies and their ratepayers. The HCF which we have adopted differs only slightly from the fund proposed by the LECs. The HCF proposed by the LECs would provide revenue support and assistance to those companies that have a residually priced OCCLC greater than 150% of the uniform statewide average OCCLC while the HCF adopted by the Commission will provide revenue support to those LECs whose company-specific OCCLCs exceed the OCCLC for Southern Bell. The HCF adopted by the Commission will serve to mitigate, even more than the HCF proposed by the LECs, unwarranted upward pressure on local telephone rates, as well as helping to combat any bypass that might result as a consequence of high cost LECs having to bill higher than necessary interLATA OCCLCs. These benefits will be accomplished at an additional cost of only approximately .01 cent per each interLATA terminating minute of use more than the .09 cent per minute of use charge proposed by the LECs in their HCF. The Commission further notes that the total cost per minute to the IXCs for the high cost fund will decline as minutes of use continue to grow. The HCF adopted by the Commission is also structured so as to prevent, insofar as reasonably possible, significant over- or undercollections of HCF revenues.

Assuming that long-distance traffic will continue to grow each year to the degree it has increased in the past, the Commission's decision to cap the interLATA NTS access charge revenue requirement at 1987 levels will result in an orderly phased-in reduction of the originating CCLC levied on IXCs over time to or toward zero for each LEC. Given the fully competitive nature of the interLATA long distance market in North Carolina and AT&T's history since divestiture of implementing substantial reductions in intrastate toll rates, the Commission anticipates that further significant reductions in intrastate long-distance rates will result from this action.

The Commission will carefully monitor the effectiveness of the interLATA access revenue bill and keep plan as augmented by a high cost fund mechanism that will be implemented in North Carolina effective July 1, 1988. The plan will be reviewed and evaluated in its entirety after it has been in effect for

a period of three years. This plan does not apply, in any way, to intraLATA long-distance revenues which shall continue to be pooled until an acceptable nonpooling plan can be developed and implemented.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The evidence related to this finding of fact is found in the testimony of SouthernNet witness Jones, Carolina witness Wareham, Southern Bell witness Denton, Public Staff witness Gerringer and the record as a whole.

SouthernNet witness Jones recommended that equal access Feature Group D (FGD) switched access charges should be restructured to reflect time-of-day sensitive (also referred to as peak/off-peak periods) pricing in order to encourage full utilization of the telecommunications network during evening, night and weekend periods. He recommended that the FGD access charges be discounted similarly to the discounts applying to AT&T's interLATA toll rates and the LECs' intraLATA toll rates - 25% in the evening period and 50% in the night and weekend period. Mr. Jones stated that since AT&T offers time-of-day sensitive toll rates and that, typically, residential customers make the majority of off-peak calls, time-of-day sensitive access charges would encourage and allow the other IXCs and resellers to compete with AT&T for residential customers. He further stated that, in order to be a competitor in the equal access residential market, SouthernNet's rates must be lower than AT&T's and peak/off-peak access charges would be of great benefit in accomplishing this objective. Although Mr. Jones stated his belief that time-of-day sensitive access charges would result in stimulation of evening, night and weekend calling providing additional access revenues to the LECs, he was unsure whether a significant revenue loss to the LECs would occur after including the offsetting effects of any stimulation.

On cross-examination, Mr. Jones agreed that any time-of-day discounts for access charges offered by the LECs would have to be extended equally to AT&T as well as the other IXCs and resellers, including SouthernNet. If all IXCs and resellers including AT&T chose to further discount toll rates for the same time periods that access charge time-of-day discounts applied, there would be no relative change in the competitive status among AT&T and the other IXCs and resellers for the off-peak residential market. Thus, there is no guarantee that time-of-day sensitive access charges would benefit the IXCs and resellers in their efforts to compete with AT&T for the off-peak residential market.

Generally, the LEC witnesses agreed that time-of-day discounts are used and useful for typical telecommunications services. However, several witnesses disagreed philosophically with discounts on charges designed to recover nontraffic sensitive costs. More importantly, several witnesses, including Southern Bell witness Denton, explained that before time-of-day discounts are implemented, full consideration must be given to the LEC rate structure as a whole. Discounts on off-peak rates could require upward adjustments in peak rates in order to maintain the revenue stability of the LECs. In addition, witness Denton testified that time-of-day discounts which could require an upward adjustment in peak rates would increase the incentive for large business customers to engage in uneconomic bypass.

Under cross-examination, Southern Bell witness Denton stated that Southern Bell probably would not object to offering time-of-day sensitive access charges

provided that the Company could recover the lost access revenues, preferably from local exchange rate increases. He believed that the access revenue loss to Southern Bell would be in the range of about $4 million per year. Such a loss would equate to about 25 cents per access line per month in North Carolina. Mr. Denton was opposed to the option of raising access charges in the peak periods to offset reductions in the off-peak periods.

Under cross-examination, Carolina witness Wareham indicated that Carolina would not have a problem with time-of-day sensitive access charges if they applied only to traffic sensitive access charges and if they were also allowed on the interstate side since Carolina prefers to mirror its interstate access charges. Time-of-day sensitive interstate access charges are under consideration, but have not been allowed by the FCC at this time. Mr. Wareham indicated that if off-peak access charges were lowered it would be appropriate to increase peak access charges in order to satisfy a given access revenue requirement.

Public Staff witness Gerringer expressed concern in his direct testimony that the implementation of time-of-day sensitive access charges would result only in a further reduction in access revenues flowing to the LECs, thereby putting upward pressure on basic local rates.

Based on the record and testimony presented in this proceeding, the Commission concludes that time-of-day sensitive access charges should not be allowed at this time. This conclusion is based on the consideration that it has not been conclusively shown that any apparent competitive benefit will accrue to the IXCs and resellers in their effort to capture more of the off-peak residential market from AT&T and on the concern that a further reduction in access charges might result in an additional reduction in access revenues to the LECs. Such a result would conflict with the Commission's overriding concern to not create upward pressure on basic local rates. Without pass-through, there will be no shifting of traffic from peak periods to nonpeak periods, which is one of the chief reasons underlying time-of-day discounts. Therefore, the Commission concludes that the record regarding this issue is insufficient to support the implementation of time-of-day discounts on access charges at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence related to this finding of fact is found in the testimony of NCLDA witness Newkirk, Southern Bell witness Denton and Public Staff witness Gerringer.

Witness Newkirk testified in support of the authorization of the resale of intraLATA Feature Groups B and D (FGB and FGD) access. Mr. Newkirk stated, "The NCLDA has always believed that it is in the public interest to allow resale of all telecommunications services and facilities for which compensatory rates have been established, and that any rate which has been approved by this Commission is by definition compensatory." Mr. Newkirk attempted to explain why he believes that the rates approved for these services are compensatory and why there should not be any compensation payments related to resale of these facilities.

Public Staff witness Gerringer testified that the Public Staff is opposed to the resale of intraLATA FGB and FGD access and the elimination of the compensation plan for the resale of these services. He stated that approval of this proposed change would result in reduced revenues to the LECs and put upward pressure on local exchange rates. Witness Gerringer indicated that if resale of these services was authorized, the LECs would receive less in terms of access charges on average than the toll revenues they would receive if they carried the calls. He stated that the Public Staff believes that the resale of FGD access would invite facilities-based interexchange carriers that are authorized to provide intraLATA competition through resale to come into the intraLATA market. He indicated that the resale of FGD access combined with the proposal to allow intraLATA resellers the "1+" dialing capability would give customers a strong incentive to use these carriers since their intraLATA rates are lower than the rates the LECs are currently charging for mileage bands from thirty miles up, based on the resellers' intraLATA rates being the same as their interLATA rates.

Southern Bell witness Denton stated, "... intraLATA resale of Feature Group B and D services, would simply amount to authorization of intraLATA competition via use of LEC intraLATA facilities rather than via IXC intraLATA facilities. As such, this proposal should also be considered in the next phase of this docket."

The Commission's primary interest in overseeing the steady but controlled implementation of competition in the intrastate long-distance market in North Carolina is to ensure that reasonably affordable rates for local service are not jeopardized. On cross-examination, witness Newkirk admitted that if Feature Groups B and D access services were available for resale, there would be no incentive to resell other services like WATS. It was demonstrated that there could be significant losses of revenue based on the difference between revenue generated by the use of Feature Group D access service as opposed to WATS service, for example.

Having carefully considered all the evidence, the Commission believes that authorizing the resale of intraLATA FGD access in particular would be tantamount to allowing intraLATA facilities-based competition. Based upon witness Gerringer's testimony, the Commission believes that authorization of the resale of FGB and FGD services would result in the LECs receiving less revenue from access charges than from toll charges if the LECs carried these calls themselves. The Commission believes this loss of revenue could result in unwarranted upward pressure on basic local rates and that it is unwise to invite such pressure at this time. Therefore, the Commission concludes that the resale of intraLATA FGB and FGD access should not be authorized at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence supporting this finding of fact is found in the testimony of NCLDA witness Newkirk and the rebuttal testimony of Southern Bell witness Denton and Public Staff witness Gerringer.

Witness Newkirk testified:

"The NCLDA believes that under no circumstance should the LECs be allowed to strip the intraLATA traffic from calls which originate on

> Feature Group D connections and which are routed by virtue of the 1+ selection to the facilities of a carrier which is authorized to resell intraLATA traffic over LEC facilities. It is quite inconsistent in logic, on one hand, to make a finding that it is in the public interest to allow resale of intraLATA facilities, and, on the other hand, to allow the LEC to take all of the intraLATA long distance calls before they ever get to the reseller's switch, thereby effectively preventing the resale."

Southern Bell witness Denton recommended denial of witness Newkirk's proposed change regarding the stripping of intraLATA traffic. Witness Denton quoted from the December 23, 1986, Order in Docket Nos. P-100, Subs 65 and 72, of which the Commission takes judicial notice. The Commission therein stated:

> "In consideration of these matters, the Commission believes that it is in the public interest at this time to take all reasonable actions which will serve to protect the revenue streams which the LECs derive from intraLATA toll. One way in which this can be done, while still recognizing the need to authorize resale competition in the intraLATA arena, is to require that all "1+" and "0" calls be automatically routed to the LEC. The Commission believes that this requirement is reasonable and is necessary to protect reasonably affordable local exchange service..."

Both AT&T and NCLDA objected to the broad language used by the Commission in that Order which permitted the LECs to retain 0+ and 1+ calling. In the Order entered in these dockets on April 1, 1987, entitled "Order Ruling on Petitions For Reconsideration and/or Clarification and Comments on Tariff Filings," this Commission stated that it would ". . .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."

Witness Denton stated that the circumstances which led to the Commission's decision had not changed and Mr. Newkirk's proposal therefore should be rejected.

Witness Gerringer indicated that the Public Staff opposed the change because it would result in reduced revenue for the LECs and would put upward pressure on local rates. He also cited the Commission's Order of December 23, 1986, and stated that the Public Staff believes that Order adequately addresses the issue of extension of the 1+ dialing capability to resellers for intraLATA services, especially regarding the Commission's concern for the potential reduction in the LECs' revenue stream. He stated that the Public Staff did not believe anything had changed since the Commission's previous decision which would warrant extension of the 1+ dialing capability to intraLATA resellers.

The Commission does not believe that any changes have taken place to eliminate our previously stated need to protect the revenue stream that the LECs derive from intraLATA toll. The Commission shares witness Gerringer's concern that extension of the 1+ dialing capability to resellers for intraLATA services would result in reduced revenues for the LECs and would put unwarranted upward pressure on local rates. Therefore, the Commission reaffirms the previous decision to reserve 1+ and 0+ intraLATA traffic to the LECs except as modified in our Order of April 1, 1987.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence relating to this finding of fact is found in the testimony of NCLDA witness Newkirk, Southern Bell witness Denton, and Public Staff witness Gerringer.

Witness Newkirk stated that NCLDA believes resellers are effectively denied the use of Feature Group D originating and terminating services due to (1) the requirement that a reseller pay compensation if it terminates a call on FGB or FGD and (2) the ability of the LECs to take all the resellers' FGD intraLATA traffic. Mr. Newkirk stated that resellers are thus made to terminate over inferior FGA connections or lose to the monopoly provider all their intraLATA traffic. Witness Newkirk testified that it is well-established by previous testimony before the Commission that FGA connections are inferior to FGD connections and that these reasons by themselves are sufficient to justify a discount on FGA service. He stated that the discrepancies between these services are made more pronounced by stripping and compensation and that until FGD may be resold without compensation and without stripping the NCLDA requests a 45% discount for FGA originating and terminating access for resellers because of stripping on the originating end and because of the compensation requirement on the terminating end.

Southern Bell witness Denton noted that the Commission addressed the question of access charge discounts to resellers in its November 25, 1985, Order in Docket No. P-100, Sub 72. He noted that the Commission therein stated:

> "The Commission now concludes, after consideration, that a 45% discount limited to pure resellers is not justified by the evidence in this docket since resellers use the local switched network in the same manner as the OCCs and that such discount, being unreasonably discriminatory, is unlawful."

Witness Denton stated in regard to the proposals to eliminate 1+ intraLATA exclusivity and to allow to resellers a 45% discount for originating and terminating FGA, "... I point out that the Commission has previously ordered against these proposals and that the conditions which led the Commission to its orders have not changed, that is risks to LECs revenue streams and thus to reasonably affordable exchange service; and the inherent discrimination of giving resellers preferential treatment."

Public Staff witness Gerringer stated with regard to the discount that the Commission has ruled on it at least twice, possibly more, and that the Public Staff does not believe any further discount is warranted in FGA and FGB access charges. Witness Gerringer stated that the basis for the Public Staff's opposition to changing the discount as well as the other changes proposed by NCLDA witness Newkirk is that in all cases the Public Staff believes the changes would result in the LECs receiving reduced revenues and would put upward pressure on the rates of the LECs' ratepayers.

Both witness Denton and witness Gerringer expressed concern that the proposed change could put at risk the revenue streams of the LECs and could result in upward pressure on local rates. Based upon all the evidence, the Commission finds that increasing the discount on FGA and FGB access from 25% to

45% on originating access and implementing a 45% discount on terminating access which today has no discount would reduce the LECs' revenues. The Commission believes that such action would in all likelihood result in unnecessary upward pressure on local rates. Furthermore, the Commission does not believe that any changes have occurred since our decision as stated in the November 25, 1985, Order in Docket No. P-100, Sub 72, to warrant a change in that decision. The Commission still believes that to allow such a discount to resellers who utilize the local switched network in the same manner as the OCCs would be unreasonably discriminatory and therefore unlawful. In view of all the foregoing, the Commission concludes that the discount to resellers should not be extended to 45% for FGA and/or FGB originating and terminating access.

IT IS, THEREFORE, ORDERED as follows:

1. That the intrastate interLATA access revenue pool shall be abolished and terminated effective July 1, 1988. Effective on that date, the local exchange companies will bill and keep access revenues on a meet point billing basis as described herein.

2. That the local exchange companies shall implement a meet point billing arrangement for intrastate access revenues beginning July 1, 1988. These companies shall continue to collect and pay access revenues to the pool administrator, Southern Bell, who will continue to allocate these monies pursuant to current methodology until July 1, 1988, when interLATA pooling shall end. Tariffs, as needed, shall be filed to permit such billing.

3. That effective July 1, 1988, the requirement of uniform statewide interLATA traffic sensitive switched and special access charges shall be abolished. The local exchange companies shall prepare and file tariffs incorporating company-specific interLATA traffic sensitive access charges for switched access and company-specific access charges for special access to be effective July 1, 1988. The rates filed shall mirror the rates proposed by the LECs. As set forth in the LECs' industry plan, those local exchange companies which presently have company-specific, traffic-sensitive switched and special access tariffs at the federal level shall mirror the rates in those tariffs. Other LECs without company-specific rates but who receive contributions from the pool shall mirror NECA rates, but those companies presently contributing more revenue to the intrastate access revenue pool than they receive shall incorporate their present rates into the new company-specific tariffs. These access charges and any future changes which the LECs may propose shall continue to be, as they now are, subject to review and approval by this Commission.

4. That the local exchange companies shall prepare and file tariffs continuing a uniform statewide carrier common line charge element for terminating access in the amount of 4.33 cents per each access minute effective July 1, 1988.

5. That the local exchange companies shall prepare and file tariffs effective July 1, 1988, establishing carrier common line charge elements for originating interLATA access calculated in the manner set forth in this Order. Copies of an exhibit or exhibits showing these recalculated amounts and underlying workpapers shall be filed with the Commission and served upon all parties. Any party having an objection to the tariffs as filed concerning the non-conformance of such filing with the intent of this Order shall file a

written objection within 15 days of the tariff filing. The filings to be made by the LECs in response to this Order shall be made not later than Monday, May 9, 1988.

6. The local exchange companies shall establish a high cost fund with Southern Bell as administrator. The fund shall be made up of monies collected through the levying of a surcharge or additive on all terminating intrastate interLATA access minutes billed in the State of North Carolina. Revenues collected by levying of this surcharge shall be paid to Southern Bell as administrator of the fund and shall be redistributed by Southern Bell to those companies qualifying for high cost fund revenue support. Local exchange companies whose company-specific, residually priced CCLCs for originating interLATA access exceed Southern Bell's originating interLATA CCLC shall qualify for revenue support from the high cost fund.

7. Southern Bell shall calculate the additive necessary to generate the revenue required for the high cost fund and shall file a tariff establishing the additive. All other LECs shall concur with the Southern Bell high cost fund tariff. Southern Bell shall review the level of the high cost fund quarterly and shall file, if necessary, an amended tariff to become effective on one day's notice, increasing or decreasing the additive to keep a match between revenue and expense. Southern Bell shall be entitled to recover its reasonable and necessary expenses for administering the high cost fund. A report detailing the status of the high cost fund shall be filed with the Commission and the Public Staff not later than 10 days after the close of each calendar quarter. Southern Bell shall also mail a copy of said quarterly report to each IXC and LEC providing service in North Carolina.

8. That all 1+ and 0+ intraLATA toll traffic shall continue to be automatically routed to and retained by the local exchange companies which shall complete such traffic using the facilities of such other local exchange companies as are necessary.

9. That the requests by the North Carolina Long Distance Association for (a) authorization to resell Feature Group B and Feature Group D access services and for (b) a 45% discount for originating and terminating Feature Group A access be, and the same are hereby, denied.

10. That time-of-day discounts on switched and NTS intrastate access charges are hereby denied at this time.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of April 1988.

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

Commissioner Edward B. Hipp, concurring in part and dissenting in part.

HIPP, COMMISSIONER, DISSENTING. I concur with the majority decision as far as it goes, but I dissent from the failure of the majority to address the No. 1 issue in the case, to achieve long distance rate reductions in North Carolina, i.e.,

"1. Should the current level of access charges be further reduced in consideration of the emerging competitive telecommunications industry in North Carolina? If further access charge reductions are warranted, how should access revenue shortfalls to the local exchange companies (LECs) be handled?" (Majority Order, p. 3)

I would answer this issue "Yes" and reduce the current level of access charges, to flow through to reduce intrastate long distance rates, with the reductions to be charged to the earnings of the local exchange companies in excess of the allowed or authorized rate of return on equity.

The extensive time and effort expended in this docket has produced major changes in the way long distance carriers pay for access to the local exchange and has rearranged the way the access charges are distributed between the local exchange companies, but the decision to date has not done anything for the customers of either the long distance companies or the local exchange companies.

The majority has changed the formulas for the payment and distribution of the access charges, but has studiously kept the changes revenue neutral, i.e.,is no reductions were made in the access charges to achieve reductions in long distance rates because of a concern not to put any pressure on local rates. This concern overlooks the financial reports of the local exchange companies on public file with the Commission showing that the local exchange companies are making returns on equity from the present local and toll and access revenues sufficiently in excess of the allowed or authorized rates of return to absorb a reduction in access charges. The access charges can be reduced (and flow through to reduce long distance rates in North Carolina) without placing any pressure upon local rates.

Local rates have been constant for three years and were, in fact, reduced materially on January 1, 1988, to pass through to the local customers all of the income tax savings from the 1986 Tax Reform Act. A large part of those tax savings were attributable to access charge revenues, but the full flow through was applied to reduce local exchange rates. The Commission noted in the tax reduction case that the funds belonged to the ratepayers and must be refunded in total immediately upon the reduction of the income taxes. The same should be said of the present earnings of the local exchange companies in excess of the allowed or authorized rate of return. The excess earnings belong to the local customers, but local customers will not have the benefit of this ownership until the Commission acts to reduce rates to a level that will produce no more than allowed or authorized earnings. The present excess earnings are derived to a large extent from high toll and access charge revenues and a fair return of these earnings to the customers would require that some of the excess earnings be applied to reduce access charges, with a flow through to reduce long distance rates in North Carolina.

Low cost long distance communications are the lifeblood of commerce and jobs in North Carolina and are particularly needed for the underdeveloped areas of North Carolina. Long distance telephone service is the primary lifeline and economic hope of the low income customers below the poverty line who reside in areas of underemployment in North Carolina. To have a reasonable chance of communicating to an area of better employment the employee must have low cost telephone service from the place of employment to his or her residence.

Extensive studies have shown that the low income poor are equally dependent on long distance service as other segments of the population. The present high access charges and high long distance rates in North Carolina impact the poor many times over, as compared to the medium and high income customers because of the regressive effect of the overcharges on the low income customers. (JOINT TELECOMMUNICATIONS PROJECT, Consumer Federation of America, American Association of Retired Persons, AT&T, As presented at the Annual Assembly of the Consumer Federation of America February 12, 1987.) Preliminary reports in North Carolina show that SSI and AFDC recipients enrolled in the subscriber line waiver program are dependent upon long distance service to the same extent as other customers.

Toll service and access charges are now providing revenue for local exchanges in excess of the proportionate use of the exchange facilities. The local exchange companies receive less than 50% of their revenue from local rates, with the other 50% from toll and access charge revenues, whereas the local service utilizes 80% of the minutes of use on the exchange while toll access service utilizes only 20% of the minutes of use of the local exchange. The Commission has gone to considerable length to allocate usage and revenue between classes of service in electric and gas cases, and it would be consistent with this purpose to move toward equalization between revenues and use of local and toll services.

It is time now in this case to allow a modest 2 1/2% reduction in access charges to be flowed through to reduce intrastate interLATA MTS rates. Notice has been given from an early stage in of this docket that the No. 1 issue is the reduction of the current level of access charges, in consideration of the emerging competitive telecommunications industry. The Commission has found, and based its decision as far as it goes, on the emerging competition in the telecommunications industry. It should not stop with the depooling provisions and the bill and keep formulas. The measures adopted by the majority are invisible to telephone customers. They will still be paying the same excessive total telephone bills which produce earnings for the local exchange companies in excess of allowed or authorized rates of return. This is a case where action will speak louder than words, and action is needed now in this Order. If the majority's reluctance to act or its delay of any action is due to any hope that the excess earnings can be addressed in later proceedings, they have not said so. Even if that is the case, to wait for later proceedings delays the return of these earnings to the customers for a period that could well turn out to be another two years or more.

It is true that the Order freezes or places a cap on access charge revenue and, if the recent high rate of growth in toll continues, it should allow reductions in the access charges in years to come. If the majority relies upon this hope for the benefit of the customers, they have failed to take the essential step of stimulating the toll use to allow such future reductions in access charges. The present growth in toll is based upon the stimulation of competition and new services and rate offerings which have largely expended their value for stimulation. A new stimulation from reduced toll rates within North Carolina is essential at this time to gain the reductions the majority hopes for.

For many years, long distance rates in North Carolina were approximately equal to or below interstate long distance rates between North Carolina and

other states. This is no longer true under the approximately 35% reductions in interstate rates accomplished by the Federal Communications Commission. North Carolinians must now pay more to call a given distance within North Carolina than they have to pay for the same distances between North Carolina and other states. The Commission, in this case, could reduce the North Carolina long distance rates to be more nearly equal to the interstate rates.

The efficiency of North Carolina's economy is hurt by excessive long distance rates. The low income poor are being irreparably damaged by repressive long distance rates which deny them needed use of this essential service - essential to their health, safety, better jobs, and to the common decencies of life beyond the arbitrary local exchange boundaries.

It is imperative that the Commission protect the right of North Carolina ratepayers to utility rates that produce no more than the utilities' allowed or authorized rates of return. Every month that the Commission delays a decision on the reduction in telephone rates is a denial of these rights. The opportunity is present in this case to make that decision, and I dissent from the failure to act on the No. 1 issue in the case, to reduce the originating carrier common line charge immediately.

Edward B. Hipp

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

BEFORE 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

) ORDER REGARDING CONSIDERATION OF INTRALATA FACILITIES-BASED COMPETITION

BY THE COMMISSION: On April 8, 1988, the Commission issued an "Order Establishing a Plan to Bill and Keep Intrastate Access Charges Effective July 1, 1988." This Order is a follow-up to that Order and deals with the issue of intraLATA facilities-based competition.

The Commission has long recognized that the issue of intraLATA facilities-based competition is fraught with complexity and requires the settlement of numerous ancillary issues. In authorizing long-distance

competition in G.S. 62-110(b), the General Assembly charged the Commission to consider whether such services were required to serve the public interest "effectively and adequately," to assess their impact on local exchange companies, and to permit such services only if the Commission found that they would not "jeopardize reasonably affordable local exchange service." The execution of this mandate has required and continues to require extensive and orderly investigation. Thus, the Commission has recognized the need for a transition period to facilities-based intraLATA competition and has been particularly concerned that all competitors, including the local exchange companies (LECs), be able to compete, while a reasonably affordable local exchange service is maintained. Accordingly, an examination and revision of the current access charge and toll pooling mechanism has been in order.

The Commission has perhaps tended to be overly optimistic concerning the length of the transition period necessary to implement facilities-based intraLATA competition. The Commission is very conscious of the General Assembly's charge that reasonably affordable local exchange service not be jeopardized. Given the scale and complexity of the issues involved here, it is more prudent that the Commission move slowly, step-by-step, than to act precipitately and face unintended consequences which cannot be undone.

During the October 1987 hearing, the Commission deferred the issues relating to facilities-based intraLATA competition which had been raised by certain parties and intimated as to a possible schedule for submission of plans and testimony. This schedule, however, was contingent upon subsequent Order, and the Commission has not issued such an Order.

The Commission has just issued an Order depooling interLATA access charges. The Commission is of the opinion that moving to intraLATA facilities-based competition would in all probability require the depooling of intraLATA toll revenue. It is, therefore, altogether prudent and reasonable that the Commission should receive and assess data concerning the depooling of interLATA access charges before beginning hearings on depooling intraLATA toll revenue. The experience in the one type of depooling can shed valuable light on the other.

For the reasons set forth above, the Commission again reiterates and incorporates by reference the statements and concerns regarding intraLATA facilities-based competition set forth in the Orders previously entered in these dockets on December 23, 1986, and April 1, 1987. The Commission also wishes to emphasize the fact that all facilities-based carriers who desire to provide intrastate intraLATA service to their customers have been authorized since January 1, 1987, to request certification to compete and offer such service through the resale of authorized services provided by the LECs. To date, no facilities-based carrier has requested such certification.

IT IS, THEREFORE, ORDERED that consideration of the issue of facilities-based intraLATA competition in these dockets and any comment or testimony, or hearing related thereto, be held in abeyance pending the Commission's review of data from the depooling of interLATA access charges and further Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of April 1988.

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

Commissioner Edward B. Hipp concurring in part and dissenting in part.

HIPP, COMMISSIONER, CONCURRING IN PART AND DISSENTING IN PART. I concur in the need to review results of intrastate interLATA depooling before going to facilities-based intraLATA competition, but I dissent from the failure of the majority to set any schedule or priority for hearings on such service.

Considerable expense has been undertaken in reliance on the Commission's Order of February 11, 1985, authorizing such competition to begin on or before January 1, 1987. The postponements of that date are becoming so extensive as to strain the credibility of the Commission program for this service.

The results of the depooling of interLATA access charges can be assessed shortly after the tariffs for that service are in place and it goes into effect on July 1, 1988. The schedule for filing testimony on intraLATA competition could begin in the Fall of 1988, with the hearing in the first quarter of 1989. I hope that such a schedule will be adopted by the Commission. A delay until after interLATA depooling is reviewed at length before setting the schedule for the hearing will likely push the next decision date into the Summer or Fall of 1989, and further exacerbate an already unreasonable postponement of a service originally ordered to begin on or before January 1, 1987.

Edward B. Hipp, Commissioner

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

BEFORE 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	ORDER ALLOWING TARIFFS TO BECOME EFFECTIVE AND SETTING TIME FOR FILING RESPONSES

BY THE COMMISSION: On April 8, 1988, the Commission entered an Order in these dockets whereby the local exchange companies (LECs) were directed to prepare and file tariffs to be effective July 1, 1988, establishing interLATA intrastate access charges calculated in the manner set forth in the Order. The Commission directed the LECs to file tariffs and underlying workpapers by Monday, May 9, 1988. The Order further provided that any party having an objection to the tariffs to be filed by the LECs should file a written objection not later than June 15, 1988.

On April 28, 1988, Southern Bell Telephone and Telegraph Company (Southern Bell) filed a motion in these dockets with the consent of and on behalf of all LECs requesting an extension of time until May 31, 1988, to file the tariffs and workpapers required by the Order of April 8, 1988. This motion was granted by Order dated May 3, 1988. The tariff filings in question were made by the LECs on May 31, 1988, and various revisions to those tariffs have been subsequently filed.

On May 19, 1988, the Public Staff filed a motion in these dockets whereby the Commission was requested to issue an Order (1) allowing a minimum of 30 days from the date of the LEC filings for review of the filings by all parties, and (2) postponing the effective date of the company-specific access tariffs to allow sufficient time for Commission review of any comments filed by the parties. On June 7, 1988, the Commission entered an Order in these dockets ruling on the Public Staff's motion as follows:

"The Commission has reviewed the motion filed by the Public Staff and concludes that good cause exists to grant the Public Staff an extension of time until June 30, 1988, to review the tariff filings to determine their conformance with the provisions of the Order of April 8, 1988. The Commission will, however, defer ruling at this time on the Public Staff's motion to postpone the effective

date of the LECs' tariff filing. The Commission is of the opinion that the tariffs in question should become effective on July 1, 1988, unless the Public Staff's review of those tariffs determines that they are in fact not in substantial compliance with the Order of April 8, 1988. To this end, the LECs are hereby directed to cooperate fully with the Public Staff by responding on an expedited basis to any questions or matters raised by the Public Staff in order that the tariffs in question may be allowed to become effective on July 1, 1988. Should the Public Staff discover any significant nonconformance in the tariffs that cannot be informally resolved with the LECs and which would require the tariffs to be suspended, the matter should be brought promptly to the attention of the Commission for resolution not later than Monday, June 27, 1988."

Comments were subsequently filed in response to the proposed access tariffs by the following parties: AT&T Communications of the Southern States, Inc.; the Public Staff; US Sprint Communications Company; Carolina Telephone and Telegraph Company; GTE South Incorporated; MCI Telecommunications Corporation; SouthernNet; and Southern Bell. By these comments, the parties have raised and responded to various issues which, if not informally resolved by the parties, would have to be resolved by the Commission. Many of the issues initially raised by the parties have in fact been resolved informally by the parties. Nevertheless, the following issues are still unresolved and will require further consideration by the Commission before they can be formally resolved:

1. AT&T and MCI assert that GTE South has requested Commission approval of an interLATA originating carrier common line charge (OCCLC) that differs from the OCCLC calculated by the LECs' industry committee. According to AT&T, this change, if allowed, would result in an increase in access revenues to GTE South of $428,000 on an annual basis.

2. AT&T asserts that those LECs that would have interLATA OCCLCs less then zero should be required to reduce their terminating CCLCs in a manner such that they will only recover their overall InterLATA access revenue requirement as calculated by the LECs' industry committee. MCI also raises questions regarding this matter.

3. The Public Staff asserts that GTE South's assumed minutes of use in the proposed tariff differ from the assumed minutes reflected in the existing tariff and that in situations where minutes cannot be measured, assumed minutes will be used for billing the interexchange carriers. The Public Staff takes the position that GTE South should be required to use the same assumed minutes in the proposed tariff as were used in the existing tariff.

4. The Public Staff asserts that a NECA provision relating to adjustment of feature group A (FGA) premium minutes is included in GTE's tariff and is unclear. According to the Public Staff, this provision is not in the existing tariff and should be stricken from the proposed tariff.

5. US Sprint and MCI request that the Commission suspend, review, and investigate Southern Bell's proposed interLATA OCCLC of $0.0583 per minute. MCI further requests that the Commission should investigate the costs of the LECs to provide access services and also reexamine the method by which the Commission has directed that access "revenue requirements" should be established.

6. SouthernNet requests that the Commission require those LECs which have proposed OCCLCs greater than $0.0433 per minute to maintain their OCCLCs at the current level of $0.04 per minute. SouthernNet further asserts that any LEC feeling aggrieved by such action may petition the Commission for an increase in its OCCLC upon a proper showing than the LEC would earn less than its authorized rate of return without the ability to charge a higher OCCLC.

The Commission concludes that, with only a few exceptions which involve GTE South, the intrastate access tariffs filed by the LECs in response to our Order of April 8, 1988, conform with the provisions of that Order and should be allowed to become effective on July 1, 1988. The Commission commends all of the parties to these dockets for diligently working to resolve most of the issues that might have required suspension of these tariffs.

In the interim, the Commission concludes that good cause exists to suspend certain of the tariff provisions filed by GTE South pending further review and Order. In its response filed on June 29, 1988, GTE South stated that the Company concurs with the methodology used by the LECs' industry committee in calculating GTE's interLATA OCCLC and agrees that the committee's calculation appropriately reflects the intent of the Commission expressed in the Order entered in these dockets on April 8, 1988. Nevertheless, GTE South has filed tariffs reflecting an OCCLC adjusted to establish an appropriate "going level" revenue requirement. Pending a final ruling regarding this issue, the Commission concludes that GTE South should be required to refile tariff pages for its interLATA OCCLC consistent with the priceout filed by the LECs' industry committee and our Order of April 8, 1988. In addition, it further appears that the proposed tariffs filed by GTE South are not consistent with the tariffs filed by the rest of the LECs regarding assumed minutes of use and the adjustment for premium FGA minutes. Pending further review and a final ruling by the Commission, the Commission concludes that good cause exists to suspend the proposed tariff pages filed by GTE South which address assumed minutes of use and the adjustment for premium FGA minutes. GTE South will be required to refile access tariff pages changing the assumed minutes of use to be consistent with the current North Carolina Access Service Tariff and deleting the adjustment of FGA premium minutes.

The Commission will rule by further Order on the merits of the six issues set forth above. Any party wishing to file comments with respect to those issues shall file those comments not later than Friday, July 15, 1988.

IT IS, THEREFORE, ORDERED as follows:

1. That, except as required below for GTE South, the intrastate access charge tariffs filed in these dockets by the LECs be, and the same are hereby, allowed to become effective on July 1, 1988.

2. That the proposed access tariffs filed by GTE South regarding its "going level" adjusted OCCLC, its assumed minutes of use, and its adjustment of FGA premium minutes be, and the same are hereby, suspended pending further consideration by the Commission.

3. That, not later than five (5) working days from the date of this Order, GTE South shall refile tariff pages to be effective July 1, 1988, regarding the Company's interLATA OCCLC consistent with the priceout filed by the LECs' industry committee.

4. That, not later than five (5) working days from the date of this Order, GTE South shall refile tariff pages to be effective July 1, 1988, changing assumed minutes of use to be consistent with the assumed minutes of use currently stated in the North Carolina Access Service Tariff.

5. That, not later than five (5) working days from the date of this Order, GTE South shall refile tariff pages to be effective July 1, 1988, deleting the adjustment of FGA premium minutes as discussed hereinabove.

6. That any party wishing to file comments on any or all of the six issues set forth hereinabove shall file those comments in these dockets not later than Friday, July 15, 1988.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of June 1988.

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

DOCKET NO. P-100, SUB 81

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Deregulation of Embedded Customer Premises Equipment) ORDER ESTABLISHING PRELIMINARY JOURNAL ENTRIES AND SCHEDULING HEARING

BY THE COMMISSION: On August 26, 1985, the Commission issued its Federal Communications Commission (FCC) certified deregulation plan to detariff all embedded customer premises equipment (CPE) owned by the independent telephone companies under its jurisdiction. The Commission's deregulation plan required that all embedded CPE investment (except CPE needed by the disabled) and the associated depreciation reserves, deferred income taxes, and unamortized investment tax credits be transferred to nonregulated operations or to a

nonregulated affiliate at December 31, 1987. The transfer 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.

On July 24, 1987, the Commission issued an Order requiring all the independent telephone companies with the exception of General Telephone Company of the South and Southern Bell Telephone and Telegraph Company to file certain information pertaining to the deregulation of their embedded CPE on or before August 31, 1987. The information filed consisted 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, present value analysis of projected cash flows related to CPE on an annual and quarterly basis, and various supporting data.

On December 30, 1987, the Public Staff filed a report with the Commission summarizing its findings and recommendations resulting from its review of the Companies' filings in this regard (except for North State Telephone Company, Pineville Telephone Company, and CONTEL of Virginia due to their peculiarities). Said report contains the Public Staff's recommended journal entries for recording the transfer of CPE effective January 1, 1988, for those companies addressed in the report. For North State Telephone Company, Pineville Telephone Company, and CONTEL of Virginia, the Public Staff recommended that the journal entries to record the transfer be postponed until February 1, 1988.

On January 4, 1988, at the regular Monday morning Commission Conference, the Public Staff presented an agenda item in this regard requesting the Commission to require each local exchange telephone company addressed in its report of December 30, 1987, to record the respective CPE deregulation journal entries found in Exhibit 4 of the report at this time, with a later true-up if necessary, after review by the Commission.

At the January 4, 1988, Conference, Kent Burns appeared on behalf of Continental Telephone Company of North Carolina, Dwight Allen appeared on behalf of Carolina Telephone and Telegraph Company, Ed Finley appeared on behalf of Concord Telephone Company, and Clayton Rawn appeared on behalf of Central Telephone Company; all appeared in opposition to the recommendation of the Public Staff. In general, these parties were against the Public Staff's recommendations for the following reasons: (1) no time or too little time to review and accurately comment on the Public Staff's report, (2) disagreed with some of the assumptions used by the Public Staff in determining the individual companies' economic value to be used for transferring the CPE investment, (3) disagreed with the Public Staff's treatment of excess deferred income taxes arising from the Tax Reform Act of 1986 (TRA-86) change in the corporate income tax rate from 46% to 34%, and (4) opposed the Public Staff view on transfer value that they use the Public Staff's economic value to record the journal entries rather than the Company's calculation of economic value subject to a later true-up, if necessary, because once something is booked as an unregulated asset, the companies believe it cannot be brought back to the regulated side without getting an FCC waiver of some sort.

In response to the concerns expressed by the parties, the Public Staff offered a compromise proposal for recording the transfer pending a later review by the Commission. The compromise proposal would result in journal entries

reflecting the transfer of the individual companies' CPE investment and the related depreciation reserve from regulated to nonregulated accounts at net book value. Further, under this proposal the CPE related excess deferred tax reserves resulting from TRA-86 would be reclassified to an other deferred credits account with the remaining deferred tax reserves and the unamortized investment tax credits associated with the CPE investment being transferred from regulated to nonregulated accounts. The Public Staff believes that recording the excess deferred tax reserves in the other deferred credits account is the best accounting approach since this account can be either a regulated or nonregulated account, depending on the nature of the items contained in the account. In the opinion of the Public Staff such treatment will avoid potential complications which could occur if CPE-related excess deferred tax reserves are recorded in nonregulated accounts.

On January 15, 1988, the Commission received separate letters from the parties appearing at the January 4, 1988, Commission Conference stating that in the interim they concur in the Public Staff's compromise proposal until the time their positions relating to the economic valuation of the companies' CPE investment and treatment of the excess deferred tax reserves can be properly presented in hearings before the Commission for a final determination.

The Commission has carefully reviewed the filings in this docket and concludes that the Public Staff's compromise proposal for the interim booking at net book value of the CPE being transferred from regulated to nonregulated operations and the placement of excess deferred income tax reserves into an other deferred credit account is appropriate for the individual companies to use until the Commission has an opportunity to hear evidence on the issues of economic valuation and excess deferred tax reserves. The Commission is of the opinion that a date should be set for a hearing and for the submission of prefiled testimony.

IT IS, THEREFORE, ORDERED as follows:

1. That the companies shall transfer their embedded CPE investment, and associated depreciation reserves, from regulated to nonregulated accounts at net book value. The CPE related excess deferred tax reserves resulting from TRA-86 shall be recorded in an other deferred credits account with the remaining deferred tax reserves and the unamortized investment tax credits associated with the CPE investment being transferred from regulated to nonregulated accounts.

2. That the CPE transfer transaction approved herein shall apply to the companies addressed in the Public Staff's December 30, 1987, report and the entries shall reflect the companies' net book value as of December 31, 1987. The affected companies are hereby, required to file with the Commission within 10 days of the date of this order, a statement of their resulting journal entries and an explanation of any differences with the journal entry amounts set forth in Exhibit 4 Revised of the Public Staff's January 5, 1988, filing in this docket.

3. That all local exchange companies required to make the entries approved in Ordering Paragraphs Nos. 1 and 2, be, and are hereby, allowed to file testimony and exhibits in support of the company's proposed treatment of

excess deferred income taxes and the transfer value (net book value or economic value) of the CPE investment at issue on or before February 19, 1988.

4. That the Public Staff and other interested parties shall submit prefiled testimony and exhibits in response to the companies filings in this regard on or before March 14, 1988.

5. That a hearing be held to determine the amount of gain, above net book value, if any, and the proper treatment of excess deferred income taxes to be reflected on the CPE transfer transaction. Such hearing shall be held beginning on Thursday, March 24, 1988, at 9:30 a.m. in Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina and continuing on March 25, 1988, if necessary.

6. That the Chief Clerk shall mail a copy of this Order to all regulated local exchange companies in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of January 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 81

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Deregulation of Embedded Customer Premises Equipment) ORDER ESTABLISHING TRANSFER VALUE OF CUSTOMER PREMISES EQUIPMENT

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 23-25, 1988

BEFORE: Commissioner Edward B. Hipp, Presiding, Chairman Robert O. Wells and Commissioner Sarah Lindsay Tate

APPEARANCES:

For Carolina Telephone & Telegraph Company:

Dwight W. Allen and Jack H. Derrick, Carolina Telephone & Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For Central Telephone Company:

James M. Kimzey, McMillan, Kimzey, Smith & Roten, Post Office Box 150, Raleigh, North Carolina 27602

For the Concord Telephone Company:

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

For ALLTEL Carolina, Inc., Sandhill Telephone Company, Heins Telephone Company, CONTEL of North Carolina, Inc., and Lexington Telephone Company:

F. Kent Burns, Burns, Day & Presnell, P.A., Post Office Box 2479, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Gisele L. Rankin, Staff Attorney, Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

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

BY THE COMMISSION: On August 26, 1985, the Commission issued its Federal Communications Commission (FCC) certified deregulation plan to detariff all embedded customer premises equipment (CPE) owned by the independent telephone companies under its jurisdiction. (Final Order establishing Deregulation Plan Certified to the Federal Communications Commission). The Commission's deregulation plan required that all embedded CPE investment (except CPE needed by the disabled) and the associated depreciation reserves, deferred income taxes, and unamortized investment tax credits be transferred to nonregulated operations or to a nonregulated affiliate at December 31, 1987. The transfer 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.

On July 24, 1987, the Commission issued an Order requiring all the independent telephone companies with the exception of General Telephone Company of the South and Southern Bell Telephone and Telegraph Company to file certain information pertaining to the deregulation of their embedded CPE on or before August 31, 1987. The information filed consisted 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, present value analysis of projected cash flows related to CPE on an annual and quarterly basis, and various supporting data.

On December 30, 1987, the Public Staff filed a report with the Commission summarizing its findings and recommendations resulting from its review of the Companies' filings in this regard (except for North State Telephone Company, Pineville Telephone Company, and CONTEL of Virginia). That report contains the Public Staff's recommended journal entries for recording the transfer of CPE effective January 1, 1988, for those companies addressed in the report. For North State Telephone Company, Pineville Telephone Company, and CONTEL of Virginia, the Public Staff recommended that the journal entries to record the transfer be postponed until February 1, 1988.

On January 4, 1988, at the regular Monday morning Commission Conference, the Public Staff presented an agenda item in this regard requesting the Commission to require each local exchange telephone company addressed in its report of December 30, 1987, to record the respective CPE deregulation journal entries found in Exhibit 4 of the report at that time, with a later true-up if necessary, after review by the Commission.

On January 27, 1988, the Commission issued an Order establishing preliminary journal entries and scheduling hearing.

The hearing was conducted as scheduled. The following witnesses testified:

Francis E. Westmeyer, Curtis Toms, Jr., Tony A. Bunch, U. Glenn Daughtridge, Marcus H. Potter, III, and Charles E. Jerominski for Carolina Telephone and Telegraph Company;

Americo Cornacchione for ALLTEL Carolina, Inc., Heins Telephone Company, and Sandhill Telephone Company;

Bruce A. Samuelson for Central Telephone Company;

Roy W. Long for Concord Telephone Company;

O. Douglas Fulp, II, Dean E. Thrush, and Carl E. Erhart for CONTEL of North Carolina;

Dr. James H. Vander Weide for ALLTEL Carolina, Central Telephone Company, Concord Telephone Company, Heins Telephone Company, Lexington Telephone Company, Sandhill Telephone Company, and Carolina Telephone and Telegraph Company;

Earl Hester for Lexington Telephone Company;

James G. Hoard for the Public Staff; and

Jocelyn M. Perkerson for the Attorney General.

Based upon careful consideration of the foregoing, the testimony and exhibits received during the hearing, and the entire record in this docket, the Commission now makes the following:

FINDINGS OF FACT

1. The Commission established the Deregulation Plan for embedded CPE by its Order of August 26, 1985, in this docket entitled "Final Order Establishing Deregulation Plan Certified to the Federal Communications Commission."

2. The FCC approved the Commission's Deregulation Plan for CPE by letter dated November 15, 1985.

3. Effective January 1, 1988, the Commission no longer has jurisdiction over the rates and charges for the leasing of CPE by the local exchange carriers (LECs).

4. The net book value of CPE for each LEC is as follows:

Local Exchange Carrier	Net Book Value
ALLTEL Carolina, Inc. (ALLTEL Carolina)	$2,758,133
Barnardsville Telephone Company (Barnardsville)	10,781
Carolina Telephone and Telegraph Company (Carolina)	1,539,497
Central Telephone Company (Central)	2,547,470
Citizens Telephone Company (Citizens)	17,043
Concord Telephone Company (Concord)	-
Continental Telephone Company of North Carolina (CONTEL of NC)	449,156
Ellerbe Telephone Company (Ellerbe)	27,047
Heins Telephone Company (Heins)	59,521
Lexington Telephone Company (Lexington)	-
Mebane Home Telephone Company (Mebane Home)	20,741
Randolph Telephone Company (Randolph)	69,946
Saluda Mountain Telephone Company (Saluda Mountain)	-
Sandhill Telephone Company (Sandhill)	149,963
Service Telephone Company (Service)	5,501

5. The capital budgeting value of CPE for each LEC is as follows:

Local Exchange Carrier	Capital Budgeting Value
ALLTEL Carolina	$ 953,507
Barnardsville	3,828
Carolina	7,170,961
Central	2,558,307
Citizens	187,137
Concord	1,797,161
CONTEL of NC	898,230
Ellerbe	61,335
Heins	407,388
Lexington	156,040
Mebane Home	102,680
Randolph	92,146
Saluda Mountain	20,993
Sandhill	79,995
Service	12,107

6. The embedded CPE should be transferred from the LECs' regulated accounts to their nonregulated accounts at the economic value of the CPE. The appropriate economic value of CPE for each LEC is as follows:

Local Exchange Carrier	Economic Value
ALLTEL Carolina	$1,855,820
Barnardsville	7,305
Carolina	7,170,961
Central	2,558,307
Citizens	187,137
Concord	1,797,161
CONTEL of NC	898,230
Ellerbe	61,335
Heins	407,388
Lexington	156,040
Mebane Home	102,680
Randolph	92,146
Saluda Mountain	20,993
Sandhill	114,979
Service	12,107

7. The gain or loss which represents the difference between the economic value and the net book value should be recorded in the regulated accounts of the LECs. The gain or loss to be recorded by each LEC is as follows:

Local Exchange Carrier	Regulatory Gain or Loss
ALLTEL Carolina	$ (902,313)
Barnardsville	(3,476)
Carolina	5,631,464
Central	10,837
Citizens	170,094
Concord	1,797,161
CONTEL of NC	449,074
Ellerbe	34,288
Heins	347,867
Lexington	156,040
Mebane Home	81,939
Randolph	22,200
Saluda Mountain	20,993
Sandhill	(34,984)
Service	6,606

8. The gain or loss determined in Finding of Fact No. 7 for the LECs should be amortized to their regulated operations over periods determined by the Commission in future proceedings. The LECs should not commence amortization of these amounts until specifically ordered to do so by the Commission.

9. The deferred tax reserves associated with CPE should be transferred by the LECs from their regulated accounts to their nonregulated accounts. These deferred tax reserves do not include "excess deferred tax reserves" as the term is defined by the Tax Reform Act of 1986 (TRA86). The appropriate deferred tax reserves for transfer by the LECs from regulated to nonregulated accounts are as follows:

Local Exchange Carrier	Deferred Tax Reserves
ALLTEL Carolina	$1,034,909
Barnardsville	1,144
Carolina	210,820
Central	985,121
Citizens	2,073
Concord	(9,528)
CONTEL of NC	181,854
Ellerbe	3,304
Heins	(2,285)
Lexington	(55,997)
Mebane Home	-
Randolph	3,989
Saluda Mountain	-
Sandhill	56,622
Service	611

10. The excess deferred tax reserves for each LEC which should remain in the regulated accounts are as follows:

Local Exchange Carrier	Excess Deferred Tax Reserves
ALLTEL Carolina	$ 284,587
Barnardsville	315
Carolina	16,894
Central	270,896
Citizens	571
Concord	(2,620)
CONTEL of NC	50,007
Ellerbe	810
Heins	(628)
Lexington	(15,398)
Mebane Home	-
Randolph	1,097
Saluda Mountain	-
Sandhill	15,570
Service	168

11. The unamortized investment tax credits (ITCs) associated with CPE should be transferred by the LECs from their regulated accounts to their nonregulated accounts. The appropriate unamortized ITCs for transfer are the per books unamortized ITCs as corrected for past underamortization of ITCs and past misclassifications of ITCs. The amount of unamortized ITCs for each LEC which should be transferred from their regulated accounts to their nonregulated accounts is as follows:

Local Exchange Carrier	Unamortized ITCs
ALLTEL Carolina	$ 167,775
Barnardsville	2,565
Carolina	318,981
Central	12,014
Citizens	13,921
Concord	-
CONTEL of NC	49,263
Ellerbe	3,165
Heins	5,952
Lexington	33,576
Mebane Home	-
Randolph	1,870
Saluda Mountain	-
Sandhill	21,279
Service	503

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

The evidence for these findings of fact is found in the Commission's Final Deregulation Plan (Order of August 26, 1985) and the FCC's letter of November 15, 1985, stating that the FCC would not deny the North Carolina plan.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding of fact is found in the Commission's Final Deregulation Plan (Order of August 26, 1985) which reads, in pertinent part:

"The Commission recognizes that it will have no authority to require a rental program after deregulation and no guarantee that any deregulated rental program will be long-lived. In addition, it will have no authority to control price increases which would be expected by the deregulated company in the face of strong demand."

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is found in the testimony of Public Staff witness Hoard, Carolina witness Toms, ALLTEL Carolina, Heins, and Sandhill witness Cornacchione, (ALLTEL witness Cornacchione), CONTEL of NC witness Erhart, Concord witness Long, and Central witness Samuelson.

The term net book value used in the context of CPE deregulation is defined as the gross investment in customer premises equipment less the associated depreciation reserve. This term differs significantly from adjusted net investment, which is defined for purposes of this docket, as net book value less the associated deferred income tax reserves and unamortized investment tax credits. Adjusted net investment represents the appropriate book amounts to be transferred from regulated to nonregulated accounts, whereas net book value is an economic value proxy used to determine the extent of any regulatory gain or loss to be recorded related to the transfer.

The net book value of CPE for each local exchange carrier is not in dispute between the parties. Therefore, the Commission finds that the net book value of CPE for each LEC at December 31, 1987, is as follows:

Local Exchange Carrier	Gross Investment	Depreciation Reserve	Net Book Value
ALLTEL Carolina	$ 3,307,597	$ (549,464)	$2,758,133
Barnardsville	76,657	(65,876)	10,781
Carolina	28,214,639	(26,675,142)	1,539,497
Central	6,962,086	(4,414,616)	2,547,470
Citizens	1,553,816	(1,536,773)	17,043
Concord	4,204,410	(4,204,410)	0
CONTEL of NC	1,710,388	(1,261,232)	449,156
Ellerbe	51,607	(24,560)	27,047
Heins	1,124,937	(1,065,416)	59,521
Lexington	1,146,391	(1,146,391)	0
Mebane Home	927,888	(907,147)	20,741
Randolph	124,131	(54,185)	69,946
Saluda Mountain	0	0	0
Sandhill	685,552	(535,589)	149,963
Service	108,644	(103,143)	5,501

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT OF NO.5

Public Staff witness Hoard and all of the LEC witnesses provided testimony regarding the capital budgeting value for the CPE. Additional evidence for this finding of fact is found in the LECs' filings in response to the Commission's July 24, 1987, "Order Requiring Filing of Accounting Information;" and the Public Staff's Report of December 30, 1987, regarding the deregulation of CPE. The CPE capital budgeting values for each LEC determined by the Public Staff and the respective LEC are as follows:

Local Exchange Carrier	Capital Budgeting Value	
	LEC	Public Staff
ALLTEL Carolina	$1,041,027	$ N/A
Barnardsville	5,697	N/A
Carolina	4,626,193	8,294,103
Central	1,472,305	2,899,974
Citizens	99,924	205,169
Concord	627,874	1,964,909
CONTEL of NC	395,285	989,313
Ellerbe	29,101	83,797
Heins	318,973	475,151
Lexington	84,789	180,908
Mebane Home	47,255	145,629
Randolph	49,913	134,827
Saluda Mountain	N/A	21,433
Sandhill	74,633	N/A
Service	5,699	15,801

N/A - Calculation not presented

The capital budgeting value as determined through the capital budgeting process refers to a management accounting tool for evaluating investment proposals whereby cash inflows and cash outflows are estimated for each period of an investment project and expressed on a present value basis. Expressing the periodic net cash flows (cash inflows such as cash receipts and salvage value less cash outflows such as cash operating expenses, cost of removal, and income taxes paid for a period) on a present value basis reflects the time

value of money and weights the pattern of periodic cash flows according to the period received. Cash flows received in earlier periods are weighted more heavily than those received in later periods. A discount rate, which represents the cost of capital for the project, is used to express the net cash flows on a present value basis.

CASH INFLOWS

A number of variables are evaluated for each period in determining projected cash inflows, including:

(a) number of units of each type of equipment available for lease;
(b) types of equipment available for lease;
(c) equipment lease rates in a price stable economy;
(d) equipment lease rates in an inflationary economy; and
(e) salvage value of retired equipment.

The major difference between the Public Staff and the LECs in determining cash inflows concerns the projected number of single line telephone and miscellaneous equipment units available for lease.

Public Staff witness Hoard projected single line telephone and miscellaneous equipment units for each LEC using regression analysis. Witness Hoard's analysis involved the selection of the best fitting curve using the linear, power, exponential, and logarithmic functional forms. His best fitting curve was determined for each LEC by the highest R-square using 25 months of historical leased telephone unit data from Station Development Reports ending September 30, 1987, except for (1) Carolina data originally included some company official use phones which was later discovered and deemed improper; the Public Staff reran the analysis using more recent data through December 31, 1987; (2) Continental data was supplied by the Company for April 1985 through April 1987; and (3) Service data was for the 25 month period ending December 31, 1987. Based upon their projected single line telephone and miscellaneous equipment units, the Public Staff calculated the company specific cash inflows using the companies' actual lease rates in effect at December 31, 1987.

In general, the LECs opposed the Public Staff's recommendation; they believed a longer period would have been more representative and would have resulted in a lower level of investment. The LECs used various methods for projecting single line telephone and miscellaneous equipment units.

Carolina witness Potter projected single line telephone and miscellaneous equipment units based on a mortality analysis of the single line telephone unit retirement ratios for the years 1985, 1986, and 1987. From this mortality analysis, witness Potter determined a future life characteristic of twelve

years. The projected units developed from this process were then adjusted by witness Potter as follows:

(1) Remaining units were reduced by an additional 56,279 units beginning in 1989 and beyond to reflect a rental rate increase of $.25, effective January 1, 1989.
(2) The attrition of remaining units was accelerated for years after 1990 by replacing the twelve-year future life characteristic with a ten-year future life characteristic.
(3) Remaining units were further reduced by an additional 20,386 beginning in 1992 and beyond to reflect an additional rental rate increase of $.25, effective January 1, 1992.

Witness Potter relied on the customer surveys presented by Carolina witness Daughtridge for deriving his adjustments to projected units.

CONTEL of NC witness Thrush used an exponential regression function based on 52 months of data through April, 1987 to project single line telephone units in developing his capital budgeting value of CPE for CONTEL of NC. In support of witness Thrush, CONTEL of NC witness Fulp stressed in his testimony the importance of the historical data to developing a regression equation. Witness Fulp testified that 52 months of data should be used since these data points represent all the months beginning when CPE sales commenced in 1983 to the most recent month (April, 1987) at the time of the August 31, 1987, filing date of the Company's capital budgeting valuation data.

The methodologies for projecting single line telephone units used by the other LECs is summarized as follows:

ALLTEL Carolina, Heins, and Sandhill- Calculated an average annual set loss amount based on three years of data ended April, 1987.

Barnardsville - Calculated an annual set loss amount based on the Company's average annual set loss using three years of data.

Central - Estimated a 50% erosion rate based on the impact of certain considerations such as: customers will have to bring instruments in for repair, old equipment, new phones available, competition, and deregulation in the customer's mind. Central assumed that the units in service beginning year end 1987 would decrease approximately 50% each year through 1992.

Citizens - Used historical leased equipment data, for the period December 31, 1984, through June 30, 1987, to establish a rate of decline.

Concord - Used historical leased equipment data from 1984 through 1987 to establish a rate of decline. A percentage estimate for obsolescence and removal from service was then added to the rate of decline.

Ellerbe - Attrition rate for units based on ALLTEL Carolina's rate of 23.18% per year plus acceleration of unit decline each year.

Lexington - Carolina witness Jerominski testified on a market approach analysis to verify Carolina's capital budgeting valuation. In the

analysis witness Jerominski found that the value of a rotary set is $5.00 and a touch call set is $13.50, both excluding his $9.00 cost of refurbishing. Lexington applied witness Jerominski's values excluding refurbishing to its number of sets at the time of filing to determine its capital budgeting valuation.

Mebane Home - Based on the average station loss over the past 57 months.

Randolph - Based on historical changes in CPE investment from December 31, 1981, through April 30, 1987.

Service - Based on average percent reduction in units for the years 1984 through 1987 plus a factor for acceleration in unit reductions.

The Commission has evaluated the various methods of projecting single line telephones proposed by the parties and finds that regression analysis using relevant historical unit leasing data regarding the single line telephone leasing business is a reasonable approach to projecting single line telephones for the purposes of this docket. Based upon a review of the various methodologies proposed by the companies, the Commission concludes that the method of projection of single line telephone units, as developed by Public Staff witness Hoard, provides a consistent methodology for all the companies and is acceptable for determining the capital budgeting value of each LEC's CPE business in this docket. The Commission is, however, concerned that the short historical period used may tend to extend the useful life beyond what may actually occur in the future environment. This concern is one of the factors causing the Commission to increase the discount rate beyond what would have otherwise been found to be reasonable.

CASH OUTFLOWS

The determination of projected cash outflows for each period involves the evaluation of many variables. Among these variables are:

(a) wage and salary rates for repair persons;
(b) material costs;
(c) vehicle operating costs;
(d) overhead loading costs;
(e) time required for repairing equipment;
(f) types of equipment available for lease;
(g) number of units of each type of equipment available for lease;
(h) cost of removing equipment from service;
(i) cost increases due to inflation;
(j) tax depreciation; and
(k) state and federal income tax rates.

The major point of disagreement between the Public Staff and the LECs in determining cash outflows concerns how cost increases due to inflation are reflected.

Most of the LECs reflected a periodic increment in projecting expenses for cost increases due to inflation. The inflation increment reflected in the LECs projected expenses ranged from a 2% inflation rate used by Concord to an 8% inflation rate used by Citizens. The Company witnesses stated that they

predicted these increases not only because of increases in inflation, wages, pensions, and the like, but also because telephones are mechanical and the maintenance expense increases on anything mechanical as it gets older. The companies believe that there will be inflationary increases which cannot be offset by price increases.

Companies' witness Vander Weide testified that there will be average inflation of 4.5% to 5% over the next few years and CPE businesses will not be able to cover increased costs by increasing lease rates due to competition.

Public Staff witness Hoard excluded an inflation increment from his expense projections. Witness Hoard reasoned that projected revenues and expenses should be treated consistently in the cash flow analysis. In the opinion of the Public Staff, the companies are assuming that the prices of all goods and services will rise, except for the rental rates they charge for CPE since they have reflected inflation in their expenses without any corresponding change in revenues. Stable rental rates in an inflationary economy equate to real price decreases over time. In other words, the Public Staff believes that the companies' approach is the same as reflecting rental rate reductions on a regular basis in an economy with stable prices. The Public Staff has taken the view that the relationship of CPE revenues and expenses at December 31, 1987, will continue.

The Commission recognizes that the LECs will likely experience inflationary cost increases. However, the extent of the inflation, and the ability of the LECs to pass on cost increases to their customers is a far more nebulous question to answer. We note that effective January 1, 1988, this Commission is no longer empowered to regulate the CPE leasing and/or sales operations of the LECs. In that regard, the LECs can now charge whatever CPE lease rates the market will bear. Evidence presented in this docket indicates that fair latitude exists for LECs to raise their CPE lease rates. This fact is exemplified by the deregulated single line telephone lease rates of AT&T, ALLTEL Carolina, Sandhill, and Heins, which are all greater than their previously regulated lease rates. However, such increases in rental rates may erode the Company's embedded customer base, as is indicated in the testimony of ALLTEL witness Cornacchione. The Commission is unsure as to what effect inflation would absolutely have on all operating costs and to what extent lease rates could be raised. The Commission is convinced that maintenance costs which are effected by equipment age will increase as the equipment ages. Therefore, based upon the foregoing, the Commission concludes that rather than to precisely make adjustments to various revenue and expense items, it is both fair and reasonable to adjust the discount rate, as discussed subsequently, to reflect the risk of inflationary pressures.

Another area of disagreement between the parties concerns the appropriate federal income tax rate (FIT) to use in the cash flow model. ALLTEL witness Cornacchione and CONTEL of NC witness Erhart contend that the pre-TRA86 tax rate of 46% should be used in the cash flow analysis rather than the present 34% FIT rate. This contention stems from their belief that using the 34% FIT rate would result in double counting the federal tax rate reduction when viewed in conjunction with the Commission ordered tariff reductions in Docket No. M-100, Sub 113 (Tax Docket). Public Staff witness Hoard disagreed with witnesses Cornacchione and Erhart on this matter and addressed it succinctly in his testimony as follows:

> "The rate reductions ordered in Docket No. M-100, Sub 113, (Tax Docket) reflect recalculations of revenue requirements determined in the companies' last general rate case orders as if the current tax rates had been in effect when the last general rate case orders were rendered. In other words, rates were adjusted as if they were originally set based on a 34% federal tax rate. Obviously, if the tax rate had always been 34%, revenue requirements would have reflected the 34% tax rate, and I would not be double counting by using a 34% tax rate in the capital budgeting model. Therefore, the contention that I have double counted the tax rate reduction is without merit." (Tr. Vol. 3, p. 231)

Barnardsville, Carolina, Central, Concord, Ellerbe, Mebane Home, Randolph, and Service all used the current 34% FIT rate in their calculations of capital budgeting value as used by the Public Staff.

The Commission concludes that the appropriate federal tax rate to use in the cash flow model is 34% since this is the tax rate which was in effect at the date of deregulation, it is our best estimate of what can reasonably be expected to be effective during the projection period, and its use does not represent a double counting. The Commission's action in Docket No. M-100, Sub 113 required tariff reductions to reflect rates at levels which would have been in effect since each LEC's last rate case order, had the current 34% federal income tax rate been in effect at that time. Obviously, if the federal income tax rate had always been 34%, the companies would have no disagreement with the Public Staff. Therefore, the Commission finds ALLTEL witness Cornacchione's and CONTEL of NC witness Erhart's contentions of the Public Staff's double counting the TRA86 tax rate reductions to be inappropriate.

DISCOUNT RATE

To reflect the time value of money, a present value discount factor is applied to each period's net cash flow. Ordinarily, the discount rate used would reflect the debt and equity cost associated with financing the investment proposal. To determine the discount rate, the following variables are evaluated related to the investment proposal:

(1) capital structure;
(2) return on equity; and
(3) interest rate on debt.

Testimony regarding this issue was presented by Public Staff witness Hoard and witness Vander Weide, representing ALLTEL Carolina, Carolina, Central, Concord, Heins, Lexington, and Sandhill.

Companies' witness Vander Weide recommended a net of tax discount rate of 14.5% to 15.5% for each LEC's CPE business based on a capital structure of 75% equity and 25% debt. He viewed a 25% debt component as the highest a CPE business could sustain. Witness Vander Weide concluded that the cost of debt and equity should be 11% and 17.5% respectively. In his opinion, the nonregulated CPE market involved greater business risks than those faced by telephone companies generally or by nonregulated businesses with more diverse operations. Witness Vander Weide compared the relative risk of CPE providers with the anticipated returns on equity for the firms comprising the Standard

and Poors 500. Witness Vander Weide placed the average return on equity for the Standard and Poors 500 at 16%. Witness Vander Weide then added a risk premium of 150 basis points to his required return of 16% to recognize what he perceived as the additional risks of a CPE business and concluded that the cost of equity was 17.5%.

Under cross examination, witness Vander Weide accepted the capital budgeting approach to valuation, given the proper assumptions. Witness Vander Weide agreed that K-Mart, Brendles, and even drug stores were examples of the high degree of competition in the CPE market. He also stated that obsolete equipment also placed the LECs at a disadvantage.

ALLTEL Carolina, Heins, Sandhill, Barnardsville, Central, Concord, Ellerbe, Randolph, and Service all used a 20% discount rate in their capital budgeting valuations to reflect the risk they believe this activity will face in the future. CONTEL of NC used a 10.95% discount rate based upon its April 1987 capital structure and cost rates, and Citizens used a discount rate of 8.91% based on its last approved (March 31, 1983) overall rate of return.

Public Staff witness Hoard used the net of tax overall cost of capital from each company's last rate case order as the discount rate for the determination of each LEC's capital budgeting value. For Saluda Mountain, which has not had a recent rate case order, witness Hoard used the Company's December 31, 1986, capital structure and cost rates, along with the return on equity allowed by the Commission in its most recent telephone company rate case order (Heins Telephone Company, Docket No. P-26, Sub 93, allowed return on equity of 13.25%). The Public Staff's discount rates ranged from a low of 4.71% for Mebane Home to a high of 11.06% for Concord and reflected equity returns ranging from 11.32% for Ellerbe to 16.60% for Service. The basis for witness Hoard's discount rates are discussed in his testimony as follows:

> "When all the facts related to the transfer are considered, the net of tax overall rate of return, as determined from each company's last rate order, is the best discount rate to use in this situation. Facts which must be considered in determining the discount rate are:
>
> (1) goodwill associated with the telephone company name and logo,
> (2) goodwill associated with experienced maintenance and repair persons,
> (3) detailed knowledge of the telephone company system and potential system changes,
> (4) revenue streams from an embedded customer base,
> (5) marketing data in the form of detailed customer information, and
> (6) in place hardware financing at low embedded cost rates rather than current market value rates."
> (Tr. Vol. 3, p. 235)

Witness Hoard further explained that the financing cost of the CPE business is reflected in the LECs' embedded cost of capital, not current market rates since financing of the CPE business has already been completed.

The LECs who intervened in this proceeding disagreed with the Public Staff's use of the net of tax overall cost of capital from each Company's last general rate case. The LECs contend that such a procedure assumes that there is no greater risk from renting CPE as an unregulated business than there is being in the regulated telephone business. The LECs do not agree with the Public Staff's assumption; they believe that the nonregulated CPE market is high risk because of the advanced age and outmoded technology of the embedded CPE.

The Commission has evaluated the testimony regarding the appropriate discount rate to use in determining the capital budgeting value of CPE. Based upon this evaluation and the previously discussed decisions, herein, relating to inflation and the appropriate method for projecting single line telephone units, the Commission concludes that witness Vander Weide's capital structure and cost of debt are reasonable to use in evaluating the value of CPE in this proceeding. Further, the Commission finds that an equity return of 17% is a fair return in the business of leasing embedded CPE equipment considering the present environment of CPE related technological change and price competition. The Commission decision in this regard results in a net of tax overall rate of return of 14.44% to be used as the discount rate for all the companies involved in this proceeding.

The Commission sees merit in both sides of the arguments presented. On the one hand the Commission is in agreement that some value does exist relating to goodwill and the existing embedded customer base but on the other hand the Commission believes that the embedded CPE business is a high risk market. The Commission is also concerned that the Public Staff model for the capital budgeting valuations may not be optimal with respect to unit projections and the nonrecognition of inflation, nevertheless, we believe the Public Staff's models provide a solid, uniform, and acceptable approach for making our decisions in this proceeding. Based upon the foregoing, we are approving a higher equity ratio and correspondingly a lower debt ratio in the capital structure and a higher equity return than we otherwise would have. In reaching these conclusions, regarding the assumptions used in the capital budgeting valuation, the Commission believes it has adequately and fairly compromised the conflicting issues and finds it appropriate to use the Public Staff's model with the only change being a change in the discount rate to 14.44% for all the companies.

The LECs intervening in this proceeding argued that the Public Staff's capital budgeting values, by category of equipment, when divided by the number of units transferred resulted in prices which are above the prices of similar CPE equipment currently on the market which implies that something more than the physical hardware has been assigned a value, i.e., the Public Staff's intangibles. The LECs contend that the only asset which should be valued is the physical hardware. This position was expressed succinctly by Concord witness Long with is statement that "It is the Company's (Concord Telephone Company's) understanding that the purpose of this investigation is to place a value on the instruments themselves." (Tr. Vol. 3, p. 84)

Additional support for their position was provided by Carolina witness Westmeyer who testified that "Any valuation (of CPE) that goes beyond the market value for the hardware also clearly goes well beyond the intent of the

FCC Order for the detariffing of CPE." (Tr. Vol. 1, p. 26) Witness Westmeyer explained the basis for his opinion as follows:

> "The clearest example I can cite is the FCC deregulation plan adopted for AT&T in Docket No. 81-893. In that Docket, the FCC stated that it was using net book as the surrogate for the market value of AT&T's CPE, i.e., the transfer value for detariffing and transferring CPE out of regulation. In addition, the FCC mandated that the sales price of the embedded CPE to customers was also net book plus reasonable transaction costs. Without question, if the FCC had intended the transfer value to include an additional 'value for business,' the transfer value would have had to have been in excess of the mandated sales price." (Tr. Vol. 1, p. 26)

In further support of Carolina's position, Carolina witness Jerominski presented an appraisal value of its single line telephone hardware. Witness Jerominski then compared his hardware appraisal to the capital budgeting value of single line CPE determined by Carolina witness Potter. Since witness Potter's capital budgeting value was within 10% of the hardware appraisal, witness Jerominski declared the capital budgeting value results reasonable.

The Public Staff approach to determining the CPE economic value differed significantly from that of the LECs. Public Staff witness Hoard testified that "Failure to recognize the worth of assets other than solely the hardware value would result in significant cross-subsidization of nonregulated operations by regulated operations. It is imperative that regulated operations be fully compensated for <u>all</u> the assets transferred to nonregulated operations." (Tr. Vol. 3, pp. 242 and 243)

In this regard, the Attorney General agreed with the Public Staff and stated in its closing argument that "When we apply the capital budgeting analysis to that embedded customer base, we must assign a fair value to the whole entity <u>as a business venture</u>. This is <u>not</u> the same thing as appraising the value of the phone sets alone."

The Commission believes the companies' interpretations in this regard are incorrect. While it is true that the FCC found that the in-place sales price of single line CPE for AT&T should be net book value plus transaction costs, and that the transfer value of CPE should be net book value, the companies' interpretation that the FCC intended to value solely hardware in determining the transfer value is contrary to the FCC's statements on the matter. Paragraph 51 of the FCC Order regarding the deregulation of AT&T's CPE operations states:

> "AT&T's arguments regarding the relationship between economic value and net book value also overlook the fact that <u>more than the economic value of physical assets must be considered in order to assess with any accuracy the actual value which will be received by ATTIS. ATTIS will be receiving a 'going concern' in connection with the transfer of the CPE base. Clearly, there is economic value in the goodwill associated with the established CPE business being transferred to ATTIS, and in the customer proprietary information</u>

which relates to the embedded CPE base. These sources of economic value must be taken into account in weighing AT&T's assertions regarding the economic value of the embedded base."

Based on the foregoing, the Commission concludes that the capital budgeting value of customer premises equipment for each LEC is as follows:

Local Exhange Carrier	Capital Budgeting Value
ALLTEL Carolina	$ 953,507
Barnardsville	3,828
Carolina	7,170,961
Central	2,558,307
Citizens	187,137
Concord	1,797,161
CONTEL of NC	898,230
Ellerbe	61,335
Heins	407,388
Lexington	156,040
Mebane Home	102,680
Randolph	92,146
Saluda Mountain	20,993
Sandhill	79,995
Service	12,107

These amounts were calculated using the Public Staff's computer files relating to capital budgeting values, as filed by the Public Staff in accordance with the Commission Order issued December 8, 1988, requesting such information.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6, 7, AND 8

The evidence for these findings of fact is found in the Commission's Final Deregulation Plan and the testimony of the witnesses for the Public Staff and the LECs.

The transfer value of the deregulated customer premises equipment as set forth in the Commission's Final Deregulation Plan issued in this docket on August 26, 1985, is as follows:

"Valuation and Transfer Requirements

All embedded terminal equipment, with the exception of CPE needed by the disabled, and associated reserves will be transferred to unregulated operations or to an unregulated affiliate at December 31, 1987, along with any associated deferred taxes and unamortized investment tax credits. The Commission intends to examine two methods of valuation, net book value and the capital budgeting process, as surrogates for the economic value of the embedded base. The equipment will be valued at the larger of the two overall results for each company in order to best meet the balance requirements established in the Democratic Central Committee v. Washington Metro Area Transit Commission 485 F.2d 786 (D.C. Cir. 1973), Cert, denied sub nom. D.C. Transit System v. Democratic Central Committee 415 U.S. 935 (1974)." (hereinafter Democratic Central Committee)

In this proceeding ALLTEL witness Cornacchione proposed that ALLTEL Carolina and Sandhill transfer their CPE to deregulated operations at their respective capital budgeting values, which are both less than their net book values. Witness Cornacchione testified that in 1981 ALLTEL Carolina in a general rate case proceeding attempted to raise its depreciation rates for CPE but was not allowed to do so; and again in 1986, in its next general rate case proceeding but was again denied its proposed increased depreciation rates. In this regard witness Cornacchione made the following statements:

> "In its last rate filing (Docket No. P-118, Sub 39), ALLTEL Carolina requested amortization of CPE related reserve deficiencies. The Order of the Commission stated that: 'it is not clear in the record what the appropriate transfer value should be for those assets at the time of deregulation; therefore, the Commission cannot make a quantification of a reserve deficiency, nor can the Commission determine conclusively that a reserve deficiency will actually exist at December 31, 1987.' Based on the economic value of the CPE, using the Company method or Public Staff method, it is now apparent that a substantial reserve deficiency does exist for ALLTEL Carolina, Inc. The exact amount will be determined by this Commission Order in this Docket. The Company continues to request a five-year amortization of that reserve deficiency on the regulated Company's books commencing January 1, 1988, as determined in this proceeding." (Tr. Vol. 3, p. 33)

In regard to Sandhill, the Company, in its brief, argues that to transfer these old phones and other equipment at over twice its economic value just does not make sense. The average age at December 31, 1987, of the Sandhill station apparatus account was 12.03 years and the average age of the PBX account was 8.77 years. Based on this, the Company argues that since the equipment is so old already its future life and therefore its economic value is very small even though its net book value is still relatively high. Further, in Sandhill's last general rate case proceeding in 1983, in Docket No. P-53, Sub 47, the Company attempted to increase its depreciation rates on CPE but was not permitted to do so to the extent it had requested.

During the hearing, Public Staff witness Hoard testified that some of the assets of ALLTEL Carolina had "walked", meaning that they were stolen or disappeared. While ALLTEL Carolina does not agree with the assertion of the Public Staff, the Company does state that the assertion does show the pure absurdity of rigidly using net book value as a measure of valuation of the ALLTEL CPE assets as the Public Staff proposes. Assuming the assets are not there as claimed by the Public Staff, how can this increase the value of those assets which are transferred to the deregulated operations? Obviously, the total value of the CPE would be less if all of the assets representing book cost are not there.

ALLTEL witness Cornacchione testified that the Commission must determine the transfer valuations for each company by looking at the individual facts about each company. It is the position of the ALLTEL companies that the Commission should in each case select a value that is reasonable and fair to the ratepayers and to the company rather than just blindly restrict itself to choosing the larger of either the valuation determined by the capital budgeting process or by net book value.

It is the opinion of the Public Staff that the ALLTEL companies' proposal in this regard is inappropriate since the Commission plan defines economic value as the larger of net book value or capital budgeting value. Further, the Public Staff stated that since the economic value of ALLTEL Carolina's CPE would equal its net book value, by definition there would not be a reserve deficiency for ALLTEL Carolina.

The Commission is very concerned about the companies involved in this proceeding whose capital budgeting valuations are lower than their respective net book values. These companies are ALLTEL Carolina, Sandhill, and Barnardsville. The Commission has reviewed the evidence and agrees with ALLTEL that the Commission should establish a value that is reasonable and fair to the ratepayers and to the company. Based on the overall evidence presented and more specifically the evidence relating to the reserve deficiency arising from inadequate depreciation rates and the problem that net book value is overstated because, according to the testimony of the Public Staff, the assets have "walked" (stolen or disappeared), the Commission finds it inappropriate to use net book value for ALLTEL Carolina and Sandhill. However, the Commission is not convinced that the capital budgeting value is entirely appropriate either, considering the evidence presented in this regard. As discussed in the Evidence and Conclusions for Finding of Fact No. 5 the Commission adopted the Public Staff's capital budgeting methodology and by Order issued December 8, 1988, requested that the Public Staff file copies of its computer files relating to the calculations of capital budgeting valuations for each of the 15 telephone companies involved in this docket. On December 12, 1988, the Public Staff filed the requested information with the following caveat: "Because the Public Staff does not regard the capital budgeting methodology as appropriate under the Commission's approved plan for ALLTEL Carolina, Barnardsville Telephone Company, and Sandhill Telephone Company, the values reflected in the enclosed computer files are preliminary and should not be interpreted as the Public Staff's computed capital budgeting values for those companies." Based upon this statement, the Commission concludes that it would also be inappropriate to adopt the capital budgeting value as calculated by the Commission using the Public Staff's models for these three companies. Based upon the foregoing, the Commission finds it appropriate to allow a "compromise-plan approach" for these three companies whose capital budgeting values are below net book value. In this regard, the Commission recognizes that Barnardsville did not intervene in the instant proceeding and thus no testimony was presented addressing the problems discussed by the ALLTEL companies; however, the Commission believes that it would be fair and equitable to treat all three of these companies in the same manner. As a "compromise-plan approach", the Commission finds that the deficiency difference existing between capital budgeting value and net book value should be shared equally by the ratepayers and the stockholders. Therefore, the Commission concludes that the appropriate transfer values for these three companies are as follows:

Local Exchange Carrier	Economic Value
ALLTEL Carolina	$1,855,820
Barnardsville	7,305
Sandhill	114,979

As to the remaining companies, the Commission finds no good reason not to follow its deregulation plan approved August 26, 1985. As set forth in the Commission's deregulation plan for CPE, the economic value of CPE shall be the larger of net book value or the value as determined through the capital budgeting process. The Commission concludes that the appropriate economic value for the remaining companies should be as follows, consistent with our findings discussed in the Evidence and Conclusions for Findings of Fact Nos. 4 and 5:

Local Exchange Carrier	Economic Value
Carolina	$7,170,961
Central	2,558,307
Citizens	187,137
Concord	1,797,161
CONTEL of NC	898,230
Ellerbe	61,335
Heins	407,388
Lexington	156,040
Mebane Home	102,680
Randolph	92,146
Saluda Mountain	20,993
Service	12,107

Based on our findings herein regarding the appropriate economic value compared to net book value of each LEC's CPE we conclude that the resulting gains or losses presented below shall be recorded on the regulated books of account of the LECs:

Local Exchange Carrier	Regulatory Gain or Loss
ALLTEL Carolina	$ (902,313)
Barnardsville	(3,476)
Carolina	5,631,464
Central	10,837
Citizens	170,094
Concord	1,797,161
CONTEL of NC	449,074
Ellerbe	34,288
Heins	347,867
Lexington	156,040
Mebane Home	81,939
Randolph	22,200
Saluda Mountain	20,993
Sandhill	(34,984)
Service	6,606

In regard to the appropriate amortization period of the approved gain or loss, ALLTEL Carolina, Sandhill, and Heins proposed that the resulting gains or losses should be amortized over 5 years beginning January 1, 1988; whereas Carolina and Continental proposed that the gain should be amortized over 3 years beginning January 1, 1988. The Public Staff recommended that the gains should be recorded in a miscellaneous deferred credit account and that

amortization should not commence until specifically ordered by the Commission in a future proceeding.

The Commission concludes that the LECs should record a gain in a regulated miscellaneous deferred credit account or a loss in a regulated miscellaneous deferred charge account on their books of account using the amounts set forth herein. These regulatory gains or losses should remain in these accounts pending direction from the Commission in future proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9, 10, AND 11

The evidence for these findings of fact is found in the testimony of Public Staff witness Hoard, Attorney General witness Perkerson, Carolina witnesses Westmeyer and Toms, Central witness Samuelson, CONTEL of NC witness Erhart and ALLTEL witness Cornacchione. Although the parties agree that the deferred tax reserves and unamortized investment tax credits (ITCs) associated with CPE should be transferred to the nonregulated accounts, the parties differ considerably regarding the specific dollar amount of such reserves. The differences between the parties are due primarily to their respective treatments of (1) excess deferred tax reserves resulting from the lowering of the federal tax rate by the TRA86 from 46% to 34% and (2) underamortized ITCs resulting from the use of a slower rate for amortization than the book life of the related CPE.

The position of the LECs regarding the excess deferred tax reserves, as set forth in the testimony of Carolina witness Westmeyer, Central witness Samuelson, CONTEL of NC witness Erhart, and ALLTEL witness Cornacchione, is that all deferred tax reserves, including any excess reserves, should be transferred to the nonregulated accounts. The companies are concerned that any other treatment could violate the Internal Revenue Service (IRS) normalization rules and thus jeopardize the ability of the Company to retain the benefits of accelerated depreciation. Carolina witness Westmeyer contends that nonregulated operations would be unfairly burdened if the excess deferred tax reserves are not transferred to nonregulated accounts and therefore the principles established in the Democratic Central Committee case, would be violated. Further witness Westmeyer stated that transferring these accumulated deferrals at any value other than book value implies a certainty to future corporate income tax rates which is not supportable in any case.

Carolina offered IRS private letter ruling No. 8730013 (CT&T Hoard Cross-Examination Exhibit No. 3) in support of its position. In the opinion of Carolina this ruling presents the IRS position to be that when an asset is removed from regulation by state regulation action, deferred tax reserves attributable to the property must also be removed. Carolina interprets this ruling to be that normalization rules would be violated if the deferred tax reserves and investment tax credits are retained on the regulatory books of account and flowed through to the ratepayer after the property to which it relates becomes deregulated.

Public Staff witness Hoard and Attorney General witness Perkerson recommended that the excess deferred tax reserves remain with regulated operations and that only reserves required for future income tax liabilities be transferred to nonregulated accounts. Public Staff witness Hoard testified that this treatment of the excess deferred tax reserves is allowable under

current FCC and IRS rulings, and is consistent with all professional literature on the topic, including the Financial Accounting Standards Board's (FASB) recently issued Statement of Financial Accounting Standards No. 96 (SFAS 96), dealing with Accounting for Income Taxes. In this regard Public Staff witness Hoard pointed out that SFAS 96 may require regulated utilities to reclassify the excess deferred tax reserves from the deferred tax reserve account to a regulatory liability account and that the FASB recognizes that it is no longer proper to include this excess deferred tax reserve in the deferred tax reserve account.

In response to Carolina's position relating to IRS private letter ruling No. 8730013, Public Staff witness Hoard stated his opinion as to the relevance of this ruling in response to the question as follows:

> "Q. The letter ruling from the IRS that Mr. Allen asked that the Commission take judicial notice of, Number 8730013, is it relevant to the excess deferred tax reserve question?
>
> A. No, that really doesn't address it at all. I guess that is what I meant when I said there weren't any IRS rulings addressing the excess deferred tax reserve question. That ruling was issued I believe in 1985 before the Tax Reform Act or the taxpayer asked for the ruling in 1985 before the Tax Reform Act of '86 and nothing in the ruling discusses the tax rate change and how excess deferred taxes should be reflected, whether or not they should go with the assets. The ruling just generally discusses the fact that deferred tax reserves and unamortized credits should go with the assets and we don't have any argument with that. It's just that the deferred tax reserves and the credits that go with the assets should have a relationship with the assets. In other words, the deferred tax reserves should be based on the amount of timing differences and the liability that the Company is going to be incurring for taxes in the future." (Tr. Vol. 5, pp. 70 and 71)

Public Staff witness Hoard further testified that the excess tax reserves, as defined in Section 203 of TRA86, are technically no longer deferred tax reserves. Therefore, the excess tax reserves are not subject to the normalization requirements of the Code, but rather the flowback requirements of Section 203 of TRA86.

Carolina presented an exhibit (Carolina Cross Examination Exhibit No. 4) to illustrate its position that the Company's proposed treatment of deferred income taxes would result in a 46% tax benefit to both the regulated and nonregulated segments and that the Public Staff proposed treatment of these deferred taxes would provide a 64% tax benefit to the regulated segment and a 34% tax benefit to the nonregulated segment. Public Staff witness Hoard was cross-examined at some length on this exhibit.

Witness Hoard testified that the exhibit contained errors, was flawed and presented distorted conclusions. In its analysis of the exhibit, the Public Staff pointed out four major flaws as follows:

(1) The tax rate in effect after deregulation under the Company proposed treatment is 34% rather than the 46% used on the exhibit. Under the Company's proposal the nonregulated operations will receive a tax benefit at 46% although it will pay taxes at only 34% with the additional tax benefit resulting in increased nonregulated profits.

(2) The only tax benefits available are those related to tax depreciation, not book depreciation, the depreciation used on the exhibit. Since tax depreciation is normally larger than book depreciation in the early years of an asset's life, and the reverse is true in the later years of its life, the tax benefit percentages presented on the exhibit would have differed substantially. In fact, under normal circumstances the tax benefit percentages would show a larger tax benefit percentage for nonregulated than regulated operations.

(3) The term "tax benefits" as used on the exhibit is not synonymous with deferred taxes. Deferred taxes are the tax effects of differences between tax deductions and book expenses, whereas tax benefits result directly from the tax deductions.

(4) The CPE transferred in this proceeding, for the most part, has been almost completely depreciated for tax purposes. As the CPE is essentially fully depreciated for tax purposes, rather than 40% depreciated at transfer, as found in the exhibit, the exhibit improperly illustrates the situation.

Extensive testimony has been presented by the parties regarding the appropriate treatment of the CPE-related excess deferred tax reserves. The Commission recognizes that due to the lowering of the Federal income tax rate from 46% to 34%, that certain excess deferred tax reserves are reflected in the per books deferred tax reserve amount. In addition, the Commission notes that a private letter ruling has been requested by GTE South concerning the permissibility under current tax law of retaining the excess tax reserves in the regulated accounts for amortization to regulated operations. Upon resolution of the tax questions posed in the GTE South request, the Commission shall issue an Order directing the LECs on the matter. The Commission therefore concludes that the following excess deferred tax reserves should be reclassified to a miscellaneous deferred credit account pending resolution of the tax questions:

Local Exchange Carrier	Excess Deferred Tax Reserves
ALLTEL Carolina	$ 284,587
Barnardsville	315
Carolina	16,894
Central	270,896
Citizens	571
Concord	(2,620)
CONTEL of NC	50,007
Ellerbe	810
Heins	(628)
Lexington	(15,398)
Mebane Home	-
Randolph	1,097
Saluda Mountain	-
Sandhill	15,570
Service	168

The remaining issue regarding the CPE-related deferred tax reserves and unamortized ITCs pertains to the treatment of errors reflected in the per books amounts. The major source of errors is in the per books unamortized ITC amounts and is due to the underamortization of ITCs. Several LECs amortized the CPE-related ITCs over a longer period of time than the depreciation period for the asset. Public Staff witness Hoard testified as follows regarding this issue:

"Under normal circumstances, wherein assets remain in regulated accounts for their entire useful life, the slower rate of amortizing ITCs does not create a major problem. A problem arises, however, when assets are transferred from regulated to nonregulated accounts because not enough of the ITC was amortized through operations during the assets book life. The underamortization of ITCs impacts ratepayers since the underamortization represents ITCs which should have flowed through to ratepayers in prior years." (Tr. Vol. 3, pp. 218 and 219)

ALLTEL Witness Cornacchione disagreed with the Public Staff on this matter and his viewpoint is expressed in his testimony as follows:

"The Public Staff's method of calculating the unamortized investment tax credit relative to CPE, subject to transfer to deregulated operations, is theoretical rather than actual. The Companies [ALLTEL Carolina, Heins Telephone Company, and Sandhill Telephone Company], in compliance with the original FCC Order and the Public Staff's compromise proposal, transferred the actual unamortized ITC related to CPE actually recorded on our books at December 31, 1987. The Public Staff's method essentially retains a portion of the unamortized ITC on the regulated side. This is, again, improper treatment. As is the case of the actual CPE plant and reserve balances, the actual unamortized ITC balances were transferred to deregulated operations." (Tr. Vol. 3, pp. 31 and 32)

The Commission disagrees with witness Cornacchione's argument that the actual book balances must be transferred, regardless of whether they contain

errors. Obviously, errors in the actual book amounts should be corrected prior to transfer. On this matter Carolina witness Westmeyer agreed with the Public Staff that material errors in the actual balances as of the transfer date should be corrected prior to transfer.

The Commission agrees that the underamortization of ITCs, that is, the amortization of ITCs at a slower rate than the book life of the associated assets, would not have created a major problem under normal circumstances, wherein the assets would remain in regulated accounts for their entire useful life. However, a problem arises when assets are transferred out of regulated accounts because not enough of the ITC was amortized through operations during the asset's book life. The underamortization represents ITCs which should have flowed through to ratepayers in prior years. The ratepayers have paid their fair share of the costs of the Companies' embedded CPE investment while it was in the regulated operations, therefore, the Commission concludes that the underamortized ITCs should not be transferred to the unregulated operations.

The Commission concludes that the Public Staff's corrections to several of the LECs' deferred tax reserve and unamortized ITC amounts are appropriate. Therefore, the Commission finds the following CPE-related deferred tax reserve and unamortized ITC amounts appropriate for transfer to the LECs' nonregulated accounts:

Local Exchange Carrier	Deferred Tax Reserves	Unamortized ITCs
ALLTEL Carolina	$1,034,909	$167,775
Barnardsville	1,144	2,565
Carolina	210,820	318,981
Central	985,121	12,014
Citizens	2,073	13,921
Concord	(9,528)	-
CONTEL of NC	181,854	49,263
Ellerbe	3,304	3,165
Heins	(2,285)	5,952
Lexington	(55,997)	33,576
Mebane Home	-	-
Randolph	3,989	1,870
Saluda Mountain	-	-
Sandhill	56,622	21,279
Service	611	503

IT IS, THEREFORE, ORDERED as follows:

1. That effective January 1, 1988, the LECs shall reclassify their embedded gross CPE investment and associated depreciation reserves, from regulated to nonregulated accounts at the amounts set forth in Appendix A, columns (a) and (b), attached hereto.

2. That effective January 1, 1988, the LECs shall reclassify the excess deferred tax reserves set forth in Appendix B, attached hereto, to a miscellaneous credit account. These excess deferred tax reserves shall remain in this account pending further direction from the Commission.

3. That effective January 1, 1988, the LECs shall reclassify the CPE-related deferred tax reserves and unamortized ITCs from regulated to nonregulated accounts at the amounts set forth in Appendix A, columns (d) and (e).

4. That effective January 1, 1988, the LECs shall record a gain in a regulated miscellaneous deferred credit account and a loss in a regulated miscellaneous deferred charge account on their books of account at the amounts set forth in Appendix C, attached hereto. The regulatory gains or losses shall be amortized to the regulated operations of the LECs as directed by the Commission in future proceedings. The companies shall not commence amortization of these amounts until specifically ordered to do so by the Commission.

5. That the Chief Clerk shall mail a copy of this Order to all the regulated local exchange carriers in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of December 1988.

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

APPENDIX A

DOCKET NO. P-100, SUB 81
SUMMARY OF ADJUSTED NET INVESTMENT IN CPE
FOR TRANSFER TO NONREGULATED OPERATIONS

Line No.	Local Exchange Carrier	Gross Investment (a)	Depreciation Reserve (b)	Net Book Value (c)	Deferred Tax Reserves (d)	Unamortized ITCs (e)	Adjusted Net Investment (f)
1.	ALLTEL Carolina	$ 3,307,597	$ (549,464)	$2,758,133	$(1,034,909)	$(167,775)	$1,555,449
2.	Barnardsville	76,657	(65,876)	10,781	(1,144)	(2,565)	7,072
3.	Carolina	28,214,639	(26,675,142)	1,539,497	(210,820)	(318,981)	1,009,696
4.	Central	6,962,086	(4,414,616)	2,547,470	(985,121)	(12,014)	1,550,335
5.	Citizens	1,553,816	(1,536,773)	17,043	(2,073)	(13,921)	1,049
6.	Concord	4,204,410	(4,204,410)	0	9,528	0	9,528
7.	CONTEL of NC	1,710,388	(1,261,232)	449,156	(181,854)	(49,263)	218,039
8.	Ellerbe	51,607	(24,560)	27,047	(3,304)	(3,165)	20,578
9.	Heins	1,124,937	(1,065,416)	59,521	2,285	(5,952)	55,854
10.	Lexington	1,146,391	(1,146,391)	0	55,997	(33,576)	22,421
11.	Mebane Home	927,888	(907,147)	20,741	0	0	20,741
12.	Randolph	124,131	(54,185)	69,946	(3,989)	(1,870)	64,087
13.	Saluda Mountain	0	0	0	0	0	0
14.	Sandhill	685,552	(535,589)	149,963	(56,622)	(21,279)	72,062
15.	Service	108,644	(103,143)	5,501	(611)	(503)	4,387

APPENDIX B

CPE-RELATED EXCESS DEFERRED TAX RESERVES

Line No.	Local Exchange Carrier	Excess Deferred Tax Reserves
1.	ALLTEL Carolina	$ 284,587
2.	Barnardsville	315
3.	Carolina	16,894
4.	Central	270,896
5.	Citizens	571
6.	Concord	(2,620)
7.	CONTEL of NC	50,007
8.	Ellerbe	810
9.	Heins	(628)
10.	Lexington	(15,398)
11.	Mebane Home	-
12.	Randolph	1,097
13.	Saluda Mountain	-
14.	Sandhill	15,570
15.	Service	168

APPENDIX C

REGULATORY GAIN OR LOSS ON TRANSFER OF CPE OPERATIONS FROM REGULATED TO NONREGULATED ACCOUNTS

Line No.	Local Exchange Carrier	Regulatory Gain or Loss
1.	ALLTEL Carolina	$ (902,313)
2.	Barnardsville	(3,476)
3.	Carolina	5,631,464
4.	Central	10,837
5.	Citizens	170,094
6.	Concord	1,797,161
7.	CONTEL of NC	449,074
8.	Ellerbe	34,288
9.	Heins	347,867
10.	Lexington	156,040
11.	Mebane Home	81,939
12.	Randolph	22,200
13.	Saluda Mountain	20,993
14.	Sandhill	(34,984)
15.	Service	6,606

DOCKET NO. P-100, SUB 97

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
A Rulemaking Proceeding to Implement the Provisions of G.S. 62-110(d) Concerning the Shared Use and/or Resale of Telephone Services	) ORDER ADOPTING) PROCEDURES AND) PROMULGATING RULES

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, October 20, 1987

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

APPEARANCES:

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

Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, Post Office Box 1151, 209 Fayetteville Street Mall, Raleigh, North Carolina 27601
and
Gene V. Coker, General Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, Atlanta, Georgia 30309

For Carolina Telephone and Telegraph Company:

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

For Central Telephone Company:

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

For Continental Telephone Company of North Carolina:

F. Kent Burns, Burns, Day & Presnell, P.A., Attorneys at Law, Post Office Box 2479, Raleigh, North Carolina 27602

For Duke University and North Carolina Association of Independent Colleges and Universities:

Mark J. Prak, Tharrrington, Smith & Hargrove, Attorneys at Law, Post Office Box 1151, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602

For Executive Dimensions, Ltd., and Executive Suite Network:

William E. Anderson, DeBank, McDaniel, Heidgerd, Holbrook & Anderson, Attorneys at Law, Post Office Box 58186, Raleigh, North Carolina 27658

For Fairfield Harbour, Inc.:

Lynn Barber and Linda Markus Daniels, Parker, Poe, Thompson, Bernstein, Gage & Preston, Attorneys at Law, 1000 Park Forty Plaza, Suite 200, Durham, North Carolina 27713

For General Telephone Company of the South:

Franklin H. Deak, Attorney, General Telephone Company of the South, 4100, Roxboro Road, Durham, North Carolina 27704

For the North Carolina Department of Justice:

Lorinzo L. Joyner, Associate 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:

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

For Raleigh Technology Group, Inc.:

Roger W. Knight, Wyrick, Robbins, Yates & Ponton, Attorneys at Law, 4700 Homewood Court, Suite 340, Raleigh, North Carolina 27609

and

Harold R. Bailes, Raleigh Technology Group, Inc., Suite 202, 8601 Six Forks Road, Raleigh, North Carolina 27615

For Southern Bell Telephone and Telegraph Company:

J. Billie Ray, Jr., General Attorney, Southern Bell Legal Department, 1012 Southern National Center, Charlotte, North Carolina 28230

and

Len S. Anthony, Attorney, 4300 Southern Bell Center, 675 West Peachtree Street, N.E., Atlanta, Georgia 30375

For United Church Retirement Homes, Inc.:

Paul T. Flick, Jordan, Price, Wall, Gray and Jones, Attorneys at Law, Post Office Box 2021, Raleigh, North Carolina 27602

For the University of North Carolina:

> Edwin M. Speas, Jr., Special Deputy Attorney General, North Carolina Department of Justice, Post Office Box 625, Raleigh, North Carolina 27607

BY THE COMMISSION: On June 22, 1987, the General Assembly of North Carolina enacted legislation (Chapter 445, SB 822) amending G.S. 62-110 to permit the provision of shared use and resale of telephone services and authorizing the Commission to promulgate rules and procedures to govern the provision of such services. The legislation also amended G.S. 62-3(23)g.

On July 21, 1987, the Commission issued an order in this docket scheduling a hearing on October 20, 1987, and requiring public notice. All local exchange companies operating in North Carolina, the Public Staff and the Attorney General were made parties to the proceeding and were required to file comments, proposed rules, and proposed tariffs.

The Commission propounded the following questions to parties as constituting the major issues to be considered in this rulemaking proceeding:

1. What is the appropriate definition of "shared use and/or resale of telephone services?"

2. What is the appropriate definition of "same contiguous premises?"

3. In order to implement the shared use and/or resale of telephone services to persons occupying the same contiguous premises:

   a. What is the appropriate extent of such regulation in general terms?

   b. Consistent with your view of the proper extent of such regulation, what specific procedures and rules on this subject should the Commission adopt? In your answer please include recommendations regarding

      (1) the terms, conditions and rates that should be charged for such services;
      (2) the terms and conditions for interconnection with the local exchange network; and
      (3) mode of certification for such service, if any.

4. By what criteria should the Commission judge whether local service rates for local exchange lines or trunks being shared or resold are "fully compensatory" on a measured usage basis or a message rate basis, as appropriate?

5. (For local exchange companies.) Consistent with your view of what a "fully compensatory" measured usage or message rate is:

   a. Specifically, what does the local exchange company propose as its tariff?

b. Further, what does the local exchange company propose as its tariff for hotel, motel, time share, or condominium complexes pursuant to G.S. 62-3(23)g?

6. Should the Commission permit or approve rates on bases other than measured or message rate service for shared service whenever the service is offered to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs, or students living in quarters furnished by educational institutions, or persons temporarily subleasing a residential premise? In your answer please include your recommendations regarding which, if any, of these institutions or arrangements should be exempt from measured or message rates.

7. Under what terms and conditions should a local exchange company be obligated or be relieved of the obligation to serve persons within its service area where shared or resold service is available on premises?

8. By what criteria should the Commission judge whether a person offering phone service under G.S. 62-110(d) by means of Private Branch Exchange (PBX) or key system has secured enough local exchange trunks from the local phone company to assure quality of service equal to the generally acceptable level of service?

Interventions were filed on behalf of Fairfield Harbour, Inc., AT&T Communications of the Southern States, Inc. (AT&T), United Church Retirement Homes, Inc., Duke University and the University of North Carolina. All petitions to intervene were granted. At the hearing on October 20, 1987, Executive Dimensions, Ltd., Executive Suite Network and Raleigh Technology Group, Inc., petitioned to intervene. These petitions were also granted.

Testimony was prefiled by AT&T, Carolina Telephone and Telegraph Company, Central Telephone Company, Continental Telephone Company, General Telephone Company, the Public Staff, Southern Bell, Duke University, United Church Retirement Homes, Inc., and the University of North Carolina. At the hearing on October 20, 1987, statements of position from the North Carolina Hotel and Motel Association, Meredith College, the North Carolina Association of Independent Colleges and Universities, Elon College, Wake Forest University, and United Church Retirement Homes, Inc., were received for the record.

Testimony was received at the hearing from the following persons: Robert S. Peake, Associate Director for Utilities Management, University of North Carolina at Chapel Hill; Miriam D. Tripp, Director of Telecommunications, North Carolina State University; Norman H. Sefton, Assistant Business Manager - Communications, Duke University; Jacklyn A. Mickle, Staff Manager, Regulatory Organization, Southern Bell Telephone and Telegraph Company; Bruce H. Branyan, Director of External Affairs, AT&T; Jon R. Hamm, Cost of Service Manager, Local Revenue Requirements Department, Carolina Telephone and Telegraph Company; Clayton E. Rawn, Government and Industry Relations Manager - North Carolina, Central Telephone Company; Christopher K. Fallis, Contel Service Corporation; Robert L. Mitchell, Usage Sensitive Service Program Manager, General Telephone Company of the South; and Lu Ann Riffe, Communications Engineer, Public Staff Communications Division.

Based on all of the evidence of record in this docket, the exhibits presented, and G.S. 62-110 as amended by the 1987 General Assembly, the Commission now makes the following

FINDINGS OF FACT

1. The North Carolina Utilities Commission has jurisdiction pursuant to G.S. 62-110, as amended by the 1987 General Assembly, consistent with the public interest and notwithstanding any other provision of law, to adopt procedures for the purpose of allowing shared use and/or resale of any telephone service provided to persons who occupy the same contiguous premises, provided that there shall be no networking of any services authorized under this statute whereby two or more premises where such services are provided are connected, and provided further that the certificated local exchange telephone company shall be the only provider of access lines or trunks connecting such authorized service to the telephone network, and that the local service rates approved by the Commission for local exchange lines or trunks being shared or resold shall be fully compensatory and on a measured usage basis where facilities are available or on a message rate basis otherwise.

2. The appropriate definition of "shared use and resale of telephone services" also referred to as "shared tenant services" or "STS" is "a telecommunication arrangement where two or more unrelated parties located on the same contiguous premises utilize a common telephone service."

3. The appropriate definition of "same contiguous premises" is "property under common ownership or management that is not separated by property owned or managed by others. The property will still be considered contiguous even if intersected by a public thoroughfare if, absent that thoroughfare, the property would be contiguous."

4. The statutory prohibition against networking ensures that two or more premises where shared tenant services are provided may not be connected through shared or commonly accessed facilities.

5. The exemption from the definition of the term "public utility" in G.S. 62-3(23)g now extends to time share or condominium complexes operated primarily to serve transient occupants. The appropriate definition of "primarily to serve transient occupants" with reference to G.S. 62-3(23)g is time-share or condominium complex in which greater than 50% of the units are occupied by persons who occupy these units for periods of less than three months during any twelve-month period.

6. The continued provision of flat rate local service to parties offering service to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs, students living in quarters furnished by educational institutions or persons temporarily subleasing a residential premise, provided that such service is not resold, is reasonable and in the public interest. These patrons will be collectively referred to as the "exception group." The Commission does not have statutory authority to either expand the groups eligible for such flat rate local service or to waive the requirement that such service must be shared rather than resold. Service is regarded as resold whenever a separate charge is made for the service.

7. Providers of shared/resold services should initially be allowed to offer their services only to end-users who would ordinarily be business customers of the LEC. This restriction does not apply to the groups exempted from measured/message rate service.

8. Intercom calling between end-users within the same contiguous premises of a sharing and/or resale arrangement is reasonable and appropriate and will be allowed.

9. The right and obligation of the LEC to provide local service directly to any end-user located within its certificated service area shall continue to apply to premises where shared and/or resold telephone service is available. STS providers must allow the LEC reasonable access to any end-user who desires service directly from the LEC. This access shall be provided to the LEC free of charge.

10 The public interest will be served by adopting rules providing for the certification of STS providers including:

(a) The filing of an application with the Commission setting forth the address and identity of the applicant, the address and description of the premises to be served, and the applicant's commitment to abide by the Commission's rules and orders. Upon approval of the application, the applicant must notify the LEC in writing of its certification and describe the proposed service;

(b) A requirement that STS providers must order sufficient facilities from the LEC to avoid hindering LEC network operations and call processing;

(c) A requirement that prior to beginning operation, STS providers shall notify proposed users in writing of certain limitations relating to E911 emergency service, the portability and reuse of an assigned telephone number and the availability of intercept service upon a move or transfer of service, as well as the option of end-users to have direct service from the LEC; and

(d) A requirement that STS providers shall not interfere with the LEC's right to provide service directly to any person or entity in a shared service and/or resale area and that the STS provider shall provide the LEC with reasonable access to end-users free of charge.

11. STS providers may share and/or resell local exchange telephone service, MTS and WATS provided by a public utility to end-users located on the same contiguous premises.

12. The rules and regulations included in Appendix A, attached hereto, are just and reasonable and shall be adopted as Chapter 14 of the Rules and Regulations of the North Carolina Utilities Commission.

13. G.S. 62-110(d) authorizes the Commission to establish rates for shared and/or resold local exchange services. The rates for local exchange lines or trunks being shared or resold must be fully compensatory and on a measured usage basis where facilities are available or on a message rate basis otherwise. The fact that the operations of a STS provider may or may not fall

within the definition of the term "public utility" contained in G.S. 62-3 does not affect the obligation of the provider to pay measured or message rates as required by G.S. 62-110(d), unless the provider falls within the exception group approved by this Order.

14. The appropriate measured rate for STS service is 80% of the flat rate of the type of access line being shared and/or resold, plus a per-call rate of five cents ($0.05) per initial minute and two cents ($0.02) per each additional minute with a 50% discount during the off-peak period. The alternative message rate should be the same flat access line rate as for measured service with a usage rate of twelve cents ($0.12) per message. These measured and message rates shall also apply to those entities covered by G.S. 62-3(23)g.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is found in G.S. 62-110 as amended by the 1987 Session of the North Carolina General Assembly.

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

The definitions adopted in these findings of fact are those proposed by the Public Staff and are substantially in accord with those proposed by most of the other parties.

Most parties were generally in agreement that the term "shared use and resale of telephone services" should be defined as "a telecommunication arrangement where two or more unrelated parties located on the same contiguous premises utilize a common telephone service."

The statutory restriction limiting the shared use and/or resale of service to persons occupying the "same contiguous premises" is necessary in order to reasonably limit the size of STS installations and, thus, avoid the creation of potentially large, unregulated telephone companies which could cream-skim or engage in other unnecessary sharing arrangements which might not be in the public interest. In the absence of reasonable limitations on the scope of a STS operation, select groups could establish shared tenant service installations, and, in effect, largely displace the local exchange company from its franchised right and obligation to provide local service. Over time, responsibilities for planning and providing service could become unnecessarily complex, revenues to the LECs could suffer, and reasonable rates for local service could be threatened.

For the reasons set forth above, the term "same contiguous premises" should be defined as contiguous property under the control of a single owner or management unit which is not separated by property owned or managed by others. Property which is intersected by a public thoroughfare will still be considered contiguous if it would be contiguous in the absence of the thoroughfare. This definition allows parties with a commonality of interest, such as shopping centers, airports, hotels, motels, colleges, university complexes, and commercial complexes to share and/or resell local service while prohibiting the development of "pocket telephone companies" to the detriment of the general ratepaying body.

Duke University and the University of North Carolina proposed a broader functional definition of "same contiguous premises." The Commission finds that there is no basis in the record to support so broad a reading of the language of the statute.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is found in G.S. 62-110(d) and the testimony of Southern Bell witness Mickle.

The statutory prohibition on "networking", which is defined by G.S. 62-110(d) as the connection of two or more premises where STS services are provided, is needed to prevent sharing and/or resale arrangements from circumventing the "same contiguous premises" limitation. If separate contiguous premises could be interconnected, the "same contiguous premises" limitation in the statute could be avoided. Furthermore, toll calling boundaries could also be avoided. As a result, it is necessary to prohibit separate sharing and/or resale areas from being connected through shared or commonly accessed facilities which are either privately provided or dedicated local exchange company facilities.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

In rewriting G.S. 62-3(23)g, the General Assembly added time share or condominium complexes "operated primarily to serve transient occupants" to the list of those entities, already including hotels and motels, to which the term "public utility" does not apply. However, the legislation also provided that local services to those entities would be "rated in accordance with the provisions of G.S. 62-110(d)", mandating measured or message rates.

As an aid to decide who is to be exempt from obtaining a certificate to operate a shared use or resale arrangement, the Commission must decide on the appropriate definition of the term "operated primarily to serve transient occupants" as applied to time share and condominium complexes.

Fairfield Harbour said that the terms meant that over 50% of the units in such a complex are used by persons who occupy the premises as other than their permanent residence. The Public Staff felt that this definition was too broad, and suggested that over 50% of the units should be in a hotel-type pool with restrictions on the owners' usage of the unit. "Transient occupants" would be "occupants, whether owners or not, who reside in condominium complex units on a temporary, brief basis of no longer than one month's duration."

The Commission has decided to take a middle course which it hopes will be easy to administer. The appropriate definition of "primarily to serve transient occupants," with reference to G.S. 62-3(23)g, is a time-share or condominium complex in which greater than 50% of the units are occupied by persons who occupy those units for less than three months during any twelve-month period.

A time-share or condominium complex meeting these requirements would be exempt from certification requirements under this Order, but would, of course, pursuant to statute have to pay measured or message rates. However, a time-share or condominium complex which did not meet these requirements would

not be able to offer shared and resale services because the Commission has made the policy decision as set out in finding of fact number 7 not to allow shared and resale service to residential customers (other than in the exception group) at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

G.S. 62-110(d) specifically authorizes the Commission to exempt from measured or message rates shared service offered to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in quarters furnished by educational institutions, or persons temporarily subleasing a residential premise. These patrons will be collectively referred to as the "exception group."

Two major questions arise with respect to this provision. First, what is the nature of the Commission's authority in general and with respect to the private and state universities? Second, should the Commission exempt the listed entities from the payment of measured or message rates?

There are several important points one should note when analyzing this provision. First, this provision speaks exclusively to shared service, not to resale service or shared and/or resale service. Second, the exemption is conditioned on the nature of the recipients, rather than the providers, of the services. There is no attempt to distinguish between the profit or nonprofit status of the providers. Also, as to the the exception groups, the telephone service is of a residential and personal rather than a commercial nature.

The meaning of terms, especially technical or legal terms, is inseparable from the historical context in which they exist. Traditionally, the telephone companies in their tariffs have prohibited the resale of telephone service, but shared service has been permitted to certain groups. The distinction between shared service and resold service has hinged on whether a separate charge is made. If a separate charge is made, then the service is considered to be for resale, even though there may be no profit motive whatsoever.

In fashioning the language regarding the exceptions groups, the Legislature used the term "shared service." Given the Legislature's specific use of this term and the specific meaning associated with it, the Commission is not at liberty to construe it any differently from its traditional interpretation in this state. 73 Am. Jur. 2d, Statutes, Sec. 239; Sutherland, Stat. Const., Sec. 47.30 (4th Ed.)

Moreover, other language in the statute conferring general authority on the Commission to promulgate rules does not allow the Commission to overlook or vitiate specific provisions in the statute itself. Sound principles of statutory construction compel this result. 73 Am. Jur. 2d, Statutes, Secs. 191 and 214.

Bearing these fundamental principles in mind, the Commission examines the universities' argument in greater detail.

Duke University. The brief filed by Duke University and the North Carolina Association of Independent Colleges and Universities (NCAICU) is fundamentally concerned with the regulatory power granted to the Commission by

G.S. 62-110(d) as revised. The brief concludes that "...the Commission possesses manifest authority to (1) exempt such organization from any requirements imposed on shared/resold service providers generally; and (2) provide for continued flat rate local lines and trunks to Duke and other NCAICU member educational institutions' telephone systems." The Commission agrees that it possesses wide authority with respect to the first point, subject to considerations of discrimination. On the second point, the Commission's discretion is directly constrained by the language of the statute.

G.S. 62-110(d) permits shared use and/or resale of telephone service subject to five conditions:

1. The service is provided to persons occupying the same contiguous premises.
2. No networking is allowed.
3. The local telephone company is the only provider of access lines or trunks being shared or resold.
4. Rates for service being resold shall be fully compensatory.
5. Rates for service being resold shall be on a measured usage or message basis.

The Commission is authorized to grant an exception to the requirement for measured or message basis rates "for shared service whenever the service is offered to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in quarters furnished by educational institutions, or persons temporarily subleasing a residential premise." It is significant that this exemption is conditioned on the nature of the <u>recipients</u> rather than the <u>providers</u> of the service. Flat rates may be authorized for service to be shared by patrons or patients of hospitals, nursing homes, and the like without regard to the profit or nonprofit status of the provider of that service. The statute does not address the question of service shared with or resold to persons who are not in the groups listed. The Commission cannot conclude, for instance, from the exemption of hospital patients, that the intent of the Legislature was to exempt hospitals in general with respect to resale to other non-affiliated persons. Also, it must be noted that the telephone service for which the statute allows an exemption is service of a residential or personal rather than a commercial nature. Finally, the exemption is expressly for "shared" service and not for "resold" service, a distinction which has been acknowledged in the tariffs of the various LECs for many years. <u>See</u>, for example the General Customer Service Tariff of General Telephone Company Section S2.2.1(a) and (b) (prohibition of receipt of compensation for service).

The sentence following the exemption sentence instructs the Commission to issue rules implementing the authorized service and "notwithstanding any other provision of law" to regulate the "terms, conditions, and rates charged for such services." Duke reads this provision as allowing the Commission to ignore the requirements set forth in the previous sentence and grant exemption from measured or message rates, or indeed from any requirement, to whomsoever it will. When this sentence is read in context, however, it clearly refers to

regulation of the relationship between the provider of shared or resold service and the end-user of the service. The Commission is granted broad power to regulate this relationship but is not authorized to deviate from the previously stated provisos of the statute, such as contiguous premises, no networking, and measured or message rates. This reading avoids the anomaly of a statute essentially repealing itself within the space of two sentences. The phrase "notwithstanding any other provision of law" refers to law external to G.S. 62-110(d), not to G.S. 62-110(d) itself. Duke's reliance on this provision of the statute for the Commission's authority to grant exemptions from measured or message rates beyond those specifically listed is misplaced.

In addition, Duke's arguments concerning the Legislature's intent in adopting G.S. 62-110(d) are without foundation. It is correct that as originally introduced, the bill made no reference to patrons of hospitals or students of colleges. The proviso allowing the Commission to exempt the offering of shared service to patrons of hospitals, nursing homes, and so on, or students living in quarters furnished by educational institutions from measured or message rates was drafted by the Public Staff and added as a Senate floor amendment at the request of the Public Staff. The intent of the proviso on its face is clearly to allow the continued sharing of service by the given entities with the listed groups (patrons and students). When Duke speaks of continuing the status quo and maintaining the traditional exemption of certain entities, it overlooks the fact that the telephone companies' tariffs have never allowed reselling the service by anyone. They did exempt sharing by the specified groups. Duke misinterprets the evidence concerning the traditional exemptions and appears to have been providing resold telephone service without authorization for years.

The statute plainly says shared use and/or resale except in the proviso in question herein. The terms "shared use" and "resale" are never used synonymously. The proviso plainly states: "the Commission may permit or approve rates on bases other than measured or message for shared service..." (Emphasis added). The plain language of the statute dictates acceptance of the Commission's interpretation without resort to statutory construction. It is well established that if the language of the statute is clear and unambiguous, there is no room for judicial construction, and the Commission must give the statute its plain meaning. State ex rel. Utilities Commission v. Southern Bell, 288 N.C. 201, 217 S.E. 2d 543 (1975). As it happens, Duke has shown no legislative intent to the contrary. As pointed out earlier, many hospitals and nursing homes are for-profit institutions. There is no distinction in the statute between for-profit and not-for-profit institutions, but rather, the exemption allows shared use of a personal or residential nature (rather than commercial) by the listed groups (patrons and students). General principles of statutory construction cannot be applied to interpolate or superimpose limitations or additional words which produce a meaning other than the plain meaning. Rickenbacher v. Rickenbacher, 290 N.C. 373, 226 S.E. 2d 347 (1976) and State v. Camp, 286 N.C. 248, 209 S.E. 2d 754 (1975). Arguably, the Commission has the authority to require for-profit hospitals that share service, for example, to pay measured rates, while allowing not-for-profit hospitals that share to pay flat rates, subject to considerations of discrimination. This is the distinction made by the LECs to which Duke refers in its brief. For either type of hospital to resell service or to share with anyone other than patients, measured rates and a certificate would be required. No other interpretation of the statute is lawful.

University of North Carolina. The University of North Carolina (UNC) argues that the Commission does not have the authority to adopt rules that apply to the University because "(w)hile not expressly stated the Commission's authority presumably is to regulate the shared use and resale of telephone services provided to 'persons' by 'public utilities.'" UNC argues that it is neither a "person" nor a "public utility." Further, UNC cites the general proposition that statutes do not apply to the state unless expressly provided by the General Assembly. Yancey v. Highway Commission, 222 N.C. 106, 22 S.E. 2d 256 (1942). UNC would seem to be arguing that no requirements, including certification requirements, can be imposed upon it.

UNC's presumption as to the meaning of the statute is incorrect. The Commission's authority under G.S. 62-110(d) is obviously much broader than regulating the shared use and resale of telephone service by "public utilities." The Commission had that authority prior to the enactment of G.S. 62-110(d). The statute furthermore does not limit regulation to sharing and resale by "persons." The statute reads in relevant part: "...for the purpose of allowing shared use and/or resale provided to persons..." (Emphasis added). The statute itself does not limit the Commission's authority to any type of entity. The only logical interpretation is that the Commission may regulate anyone who shares or resells telephone service. The effect on the telephone companies' revenues is the same regardless of the identity of the reseller.

UNC's arguments that the Commission has the authority to exempt it from regulation for shared use and resale of telephone services fail for the same reason Duke University's arguments fail. The Commission has no discretion concerning the levying of measured or message rates for resale or for shared use by the phone companies for other than the listed exempt groups. If the Legislature had intended to exempt universities and colleges or any entity from the measured or message rate requirement, other than the listed entities sharing service with the exempt groups, it would have done so expressly and clearly and not in such a way as UNC suggests, which would gut the entire meaning of the statute.

UNC's broader definition of "contiguous premises" for the alleged purpose of preventing fragmentation is unnecessary. As long as UNC is providing telephone service to itself, between its campus in Asheville and its campus in Chapel Hill or wherever, it is not reselling telephone service.

Finally, UNC also contends that it should not be subject to regulation by the Commission because of the holding in Yancey v. Highway Commission, 222 N.C. 106, 22 S.E. 2d 256 (1942). This case is inapposite. Even if Yancey might have applied otherwise, the Commission's authorization by this statute to adopt procedures "notwithstanding any other provision of law" is sufficient to support the rules recommended by the Commission. This phrase was used not once, but twice, in G.S. 62-110(d). Websters New World Dictionary (2d Edition) defines "notwithstanding" as "in spite of." The courts which are reported to have construed this word or phrase agree. See, generally, 28A Words and Phrases 150-151 (1987 Cumulative Annual Pocket Part). As noted above, the correct application of this phrase is to law external to G.S. 62-110(d). The General Assembly must have intended by the use of this phrase in conjunction with grants of authority to allow the Commission to create comprehensive scheme of regulation for shared and resale service and apply it,

among other objects, to state instrumentalities. After all, law includes case law. "It is always presumed that the legislature acted with care and deliberation and with full knowledge of prior and existing law." State v. Benton, 276 N.C. 641, 658, 174 S.E. 2d 793 (1970).

The certification requirements imposed by the Commission in this Order are not burdensome. Indeed, a certificate would not be required of an entity serving an exception group with shared service. It is only if the entity were engaging in resale service that a certificate would be required. In that event, the LEC and the Commission should have no option but to require measured or message rates.

The Commission is sensitive to the fact that the statute may cause inconvenience to some of the providers to exception groups. For instance, Duke University testified that it currently provides optional phone service to its students and makes a separate charge to them for it. As noted before, this would appear to be illegal even under the present tariffs. There may also be instances of retail establishments, such as barbershops, which rent space from a university and receive phone service from it. This arrangement would need to be changed to comply with the law. The Commission is prepared to allow a reasonable time for such providers to come into compliance.

The Commission concludes that continuation of flat rate service for the groups listed in the statute is in the public interest and should be ordered. The Commission further concludes that only those groups specifically mentioned in the statute can be exempted from measured or message rates. The Commission concludes that such entities as may be out of compliance with these provisions shall be granted a reasonable time to come into compliance.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The Public Staff advocated that providers be should limited at the present time to reselling service to end-users who would ordinarily be business customers, thus prohibiting service to residential subscribers other than those in the groups exempted from measured or message rates. The Public Staff asserts that this limitation will tend to protect a relatively unsophisticated group of subscribers and at the same time limit erosion of the LEC's certificated rights and local revenue. The Commission notes that no potential resellers or sharers present at the hearing objected to this proposed rule. Of the LECs present at the hearing, only Carolina and Central objected to the proposed rule. The prohibition of sharing and/or resale for residential subscribers is subject to change in the future when the Commission has a greater base of experience from which to evaluate this service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The universities and the only retirement home presenting testimony, United Church Retirement Homes, Inc., indicated that the majority of the telephone calls placed by their end-users were intracampus calls. That is, such calls were originated and terminated within the same contiguous premises (i.e., university or retirement home premises). Since G.S. 62-110(d) permits shared use and resale of local service which is a form of limited competition for local service, it seems reasonable that intercom calling within a STS area should be permitted. If not, the reasonable exercise of this new authority and

full use of customer equipment would be unreasonably circumscribed. The Commission concludes that such calling should be permitted. Furthermore, the Commission tends to agree with the testimony of Public Staff witness Riffe that intercom calling among end-users on the same contiguous premises should not be considered to be shared use of local exchange service, particularly where the end-users do not share local exchange access lines or centrex station lines.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence supporting this finding of fact is found in the testimony and exhibits of Southern Bell witness Mickle, Continental witness Fallis, and Public Staff witness Riffe.

G.S. 62-110(d) continues the right and obligation of the local exchange company to provide local service directly to any person located within its certificated service area including persons located within areas where shared or resold service is available. This requirement is necessary to afford tenants their right to individual telephone service at reasonable rates and subject to conditions approved by this Commission. This requirement also serves as a "safety valve" for end-users who may become dissatisfied with the service provided by the sharing and/or resale operation. Furthermore, it ensures end-users of high quality reasonably priced telephone service because the provider of the shared service must provide quality service or the end-user may simply order direct service from the local exchange company. However, the STS provider often controls access to those facilities necessary for the local exchange company to reach the end-users. Therefore, the local exchange company's right and obligation to provide direct service and the end-user's right to request direct service from the local exchange company is worth very little if the STS provider refuses to grant the LEC reasonable access. To prevent this, the property owner and/or the STS provider will be required to allow the LEC reasonable access to any end-user who desires local service directly from the LEC. This access shall be provided free of charge.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10, 11, AND 12

The evidence supporting this finding of fact is found in the testimony of Southern Bell witness Mickle and Public Staff witness Riffe.

Minimal and streamlined certification procedures similar to those adopted for competitive pay telephone providers should apply to shared tenant service arrangements. Although the certification requirements should be kept at a minimum, they must be adequate to ensure that STS providers are complying with the rules and regulations of this Commission, the tariffs of the local exchange companies, and the laws of the State. The minimum information necessary to ensure such compliance should consist of: the address and identification of the STS provider, a description of the boundaries and address of the STS location, and the STS provider's agreement to comply with the rules adopted by the Commission for the sharing and resale of local service. Furthermore, upon the granting of a certificate, the STS provider must notify the local exchange company in writing of its certification and describe its proposed service. Additionally, STS providers should be required to order sufficient facilities from the LEC to avoid degradation of the LEC's network. They should also be required to notify all proposed users of STS service that there will be limitations relating to E911 emergency service, the portability and reuse of

telephone numbers, and the availability of intercept service upon a move or transfer of service. They must also advise the end-user of the option of direct service from the LEC. Such certification procedures will provide the Commission with a means to monitor STS market activity and will assist the Commission in determining the need to further govern this industry.

The rules proposed in this docket by the Public Staff would allow STS providers to share and/or resell not only local service but also "MTS and WATS provided by a public utility." Witness Riffe testified that the Public Staff believes that in addition to sharing and reselling local exchange services, most STS providers will also desire to provide long distance services to their clients. Witness Riffe recommended that the Commission should not require a certified STS provider who adheres to the following requirements to apply for a separate long distance certificate:

1. The STS provider may resell only MTS or WATS provided by a public utility; and

2. The STS provider provides long distance services to clients on the same contiguous premises only.

Witness Riffe further testified that if the STS provider does not adhere to both of the listed requirements, he should be required to apply for and receive a full long distance certificate. Witness Riffe also recommended that institutions who provide shared local service to end-users in the exception group and who agree to resell only MTS and WATS should be allowed to charge rates for such resold long distance service which do not exceed AT&T's current MTS rates. The rule proposed by the Public Staff does not otherwise set a cap or limit on the rates which other STS providers may charge for resold MTS and WATS.

Carolina Telephone Company takes the position that G.S. 62-110(d) applies only to the sharing and/or resale of local telephone service and that certification as a STS provider does not and should not as a matter of law equate to a certification as a long distance reseller.

G.S. 62-110(d) now provides, in pertinent part, as follows:

> "The Commission shall be authorized, consistent with the public interest and <u>notwithstanding any other provision of law</u>, to adopt procedures for the purpose of allowing shared use and/or resale of <u>any</u> telephone service provided to persons who occupy the same contiguous premises..." (Emphasis added).

The Commission concludes that the statutory language set forth above, in particular the emphasized language, grants the Commission the discretion to authorize the sharing and/or resale of <u>any</u> telephone service, including local service, MTS, and WATS, if such authorization is consistent with the public interest. This being the case, the Commission agrees with the Public Staff that it is in the public interest to allow STS providers to share and/or resell not only local service, but, if they choose to do so, to also resell MTS and WATS provided by a public utility to end-users on the same contiguous premises. The Commission believes that this authorization is in the public interest because it will greatly simplify the certification procedures applicable to

those STS providers who agree to resell only MTS or WATS services since these providers will not be required to apply for and receive a certificate of public convenience and necessity pursuant to G.S. 62-110(b) and the procedures adopted in Docket No. P-100, Sub 72. If a STS provider is unable or unwilling to adhere to both of the conditions adopted by the Commission upon recommendation by the Public Staff, he will be required to apply for and receive a full long distance certificate as a reseller pursuant to G.S. 62-110(b) and will be subject to the much greater degree of regulation that attends such certification. The Commission views this ruling as an appropriate exercise of the discretionary authority provided by G.S. 62-110(d). The Commission will also adopt the recommendation of the Public Staff which sets a cap or limit on the rates which providers may charge to end-users in the exception group for resold MTS and WATS; i.e., the charges may not exceed AT&T's current MTS rates.

The rules and regulations set forth in Appendix A are generally those proposed by the Public Staff, except for certain modifications adopted by the Commission. Most other parties did not contest these rules and regulations or offer alternatives to them. Therefore, the Commission concludes that the rules and regulations set forth in Appendix A are reasonable, and the Commission adopts Appendix A as Chapter 14 of the Commission's Rules and Regulations.

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

I. G.S. 62-110(d) GRANTS THE COMMISSION THE AUTHORITY TO ESTABLISH RATES FOR SHARED AND/OR RESOLD LOCAL EXCHANGE SERVICES.

Prior to the enactment of G.S. 62-110(d), the resale of local exchange service was prohibited in North Carolina. Similarly, the sharing of local exchange service, with very limited exceptions, was also not permitted. The enactment of G.S. 62-110(d) authorized the Commission, for the first time, to adopt procedures for the purpose of allowing the resale and/or sharing of local telephone service. This statute expressly provides that if the Commission decides to allow the sharing and/or resale of service, the Commission shall, consistent with the public interest and notwithstanding any other provision of law, establish rates for the resale of local service which are fully compensatory and on a measured or message rate basis. The Raleigh Technology Group, Inc., asserts that the Commission must establish rates for resold local exchange services, PBX trunks in particular, on the same basis as non-resold services. The Commission finds this position to be without merit. G.S. 62-110(d) expressly requires the application of a message or measured rate to resold services, notwithstanding any other provision of law. As a result, other statutes relating to the establishment of rates such as G.S. 62-140, cannot be used to invalidate the measured and message rates which must be established pursuant to G.S. 62-110(d). Therefore, the Commission is not only authorized but is required to establish rates which are fully compensatory, in the public interest, and on a measured or message rate basis for resold local exchange services. No unreasonable discrimination results to any STS provider who must pay measured or message rates as a condition to being authorized to share and/or resell telephone services pursuant to G.S. 62-110(d). Entities who share and/or resell local service will in all likelihood place more usage on the facilities being resold than would an ordinary business customer using those same or similar facilities. Furthermore, the STS provider should be able to serve the totality of the needs of his clients with fewer access line facilities. These advantages, as asserted by STS providers in particular,

serve to justify the requirement that they pay measured or message rate. No unreasonable discrimination results from the statutory mandate that STS providers, with limited exceptions, must pay measured or message rates for the local services provided to them by the LECs.

II. THE FACT THAT THE OPERATIONS CONDUCTED BY A STS PROVIDER MAY OR MAY NOT FALL WITHIN THE DEFINITION OF PUBLIC UTILITY CONTAINED IN G.S. 62-3 DOES NOT AFFECT ITS OBLIGATION TO PAY MEASURED OR MESSAGE RATES AS REQUIRED BY G.S. 62-110(d).

Executive Suites does not deny that it shares telephone service with its tenants. However, it does allege that since it only offers telephone service to its tenants and not to the general public and does not charge its tenants separately for telephone service, it is not a public utility and, therefore, it should not be subject to the measured or message rate structure required by G.S. 62-110(d). Unfortunately for Executive Suites, the fact that it may or may not be a public utility, as that term is defined by G.S. 62-3, is not relevant to the application of G.S. 62-110(d) to its operations.

G.S. 62-110(d) provides that if the Commission authorizes the sharing and/or resale of local exchange service, the rates established for such service must be on a measured or message rate basis except for service shared by "patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs, or students living in quarters furnished by educational institutions, or persons temporarily subleasing a residential premise." Only this very limited group of subscribers may share telephone service on other than a measured or message rate basis. Executive Suites does not contend that it falls within this exception group. All other subscribers in the State of North Carolina, whether they are public utilities or not, must pay measured or message rates if they share or resell local exchange service. Therefore, the fact that Executive Suites may or may not technically be a public utility is not relevant. If Executive Suites shares telephone service with its tenants, it must pay the same measured or message rate established by the Commission for all other shared and/or resold local services.

III. THE MEASURED AND MESSAGE RATES ESTABLISHED IN THIS PROCEEDING MUST BE FULLY COMPENSATORY.

G.S. 62-110(d) requires that the rates established by the Commission for local service sharing and resale must be "fully compensatory and on a measured usage basis where facilities are available or on a message rate basis otherwise." The issue then becomes: what is the proper rate level in order to meet the statutory standard of "fully compensatory?"

Southern Bell witness Mickle and Contel witness Fallis explained that in a shared tenant services arrangement end-users typically share or "pool" PBX trunks to access the public switched network rather than purchase facilities individually. This sharing of trunks concentrates the STS traffic and results in reduced demand for local exchange lines or trunks. As a result, the LEC will likely receive less revenue because it is providing fewer lines than if it served each end-user directly. However, this reduction in access lines is not necessarily accompanied by a reduction in calling volume; thus the LEC's switching costs are likely to remain the same.

Furthermore, while the number of active working lines provided by the LEC to a given location may be reduced, the LEC's total outside plant may not be appreciably affected. These outside plant facilities may be engineered years in advance of a customer's decision to provide STS; further, access lines must be available so that the LEC can meet any and all customer demand in a timely manner. Therefore, while the LEC may well be receiving less revenue due to the reduction in access lines required to serve a particular STS installation, its costs for switching and outside plant facilities may remain essentially the same. As a result, in order for the rates established by this Commission for the sharing and resale of local service to be "fully compensatory" they must recover these costs and avoid a substantial shift of this revenue requirement to other services.

Importantly, the reduced demand for individual access lines which occurs when a STS arrangement is being utilized could result in a corresponding loss of revenues available to subsidize other services such as residential service. Southern Bell witness Mickle clearly explained that:

> The impact of STS is to remove many small users from this mix and replace them with a single (and typically large) PBX with very heavy usage. The aggregation of several small customers into a single large PBX customer produces a significant reduction in the number of lines. Of course, the current LEC rate structure depends upon each of these lines producing a subsidy to offset the cost of other services (i.e., residential service). A reduction in business lines as expected in an STS environment, would remove a portion of that subsidy, thereby creating pressure to increase local rates.

Therefore, in order for the rates established by the Commission to be fully compensatory, they must be set at a level designed to produce a reasonable amount of contribution that has traditionally been provided by these business subscribers as a subsidy to basic service. This is consistent with "value of service" pricing principles long endorsed by this Commission.

All of the parties submitting proposed rates advocate a fixed monthly element for each access line plus local usage charges for each minute of use. Most all parties propose a time-of-day discount. Although none of the companies initially filed cost studies to justify their rates, General, Southern Bell, and Carolina all filed, at the request of the parties, summary cost studies as late-filed exhibits. The incremental cost studies submitted by Southern Bell and General indicate that usage costs for peak period initial minutes range between $0.0222 and $0.02572 and between $0.009 and $0.01148 for peak additional minutes. These studies also indicate that costs during off-peak periods range between $0.00221 and $0.0046 for initial minutes and $0.0018 and $0.0006 for each additional minute. Carolina filed the results of an embedded or fully allocated cost study which indicate that the originating traffic sensitive cost for a local call to a non-EAS point ranges from $0.0179 to $0.0374 per each minute of use and from $0.0196 to $0.0461 per each minute of use for a local call to an EAS point. Carolina states that its study was based upon average, around-the-clock usage of the local network and does not reflect consideration of peak periods of usage.

Southern Bell asserts that a fully compensatory measured rate for it would consist of 80% of the comparable flat rate trunk or individual business line

being resold plus a usage charge of 5 cents for the first minute (which also includes call set-up costs) and 2 cents for each additional minute thereafter. This is the tariffed rate proposed by Southern Bell. Also included within this rate structure is a 50% time-of-day discount for off-peak evening and weekend usage and a client listing charge in the amount of $1.15. In those few areas where technical limitations prevent Southern Bell from providing measured rate service, the Company proposes to use its existing message rate level of 12 cents per message as set forth in its General Subscriber Service Tariff Section A3. Importantly, the usage charges would only apply to outgoing calls. Thus, subscribers will only be billed for their actual usage when they originate the call.

Southern Bell initially proposed usage rates of 6 cents for the first minute and 2 cents for each additional minute thereafter. These rates were based in part upon a 1985 levelized incremental unit cost (LIUC) study which determined the forward-looking incremental costs of local usage based upon the use of 100% analog facilities. According to Southern Bell, the results of this study indicated that rates of 6/2 cents were necessary in order to be fully compensatory.

However, subsequent to the filing of direct testimony in this proceeding, Southern Bell completed a new LIUC study. This new study predicts Southern Bell's incremental local usage costs for the future where the network will be using primarily digital technology. The results of this study indicate that due to the increased use of digital facilities and other technological advancements, Southern Bell's forward looking costs of incremental usage will decrease. In anticipation of this trend, Southern Bell proposes to reduce the first minute usage charge to 5 cents from 6 cents as originally proposed. Witness Mickle testified that at a level of 5 cents and 2 cents with discounts, the usage charge for a typical call would average 7.7 cents.

It should be noted that the new LIUC study projects Southern Bell's local usage costs once the majority of analog switches have been replaced with new digital switches. This is an assumption which the Company says has not yet occurred and will not occur for a number of years. Therefore, Southern Bell asserts that the costs contained in the new study, while indicating the expected trend, do not reflect the Company's current costs of providing service. The true costs fall somewhere between the results of the old analog-based 1985 LIUC study and the results of the new digital-based study. This is why Southern Bell says that it amended its original proposal of 6 cents/2 cents to 5 cents/2 cents.

Southern Bell further asserts that its proposed pricing of non-traffic sensitive costs at 80% of the comparable flat rate trunk or individual business line is appropriate due to the increased use of digital switches which have lower usage sensitive costs yet higher non-traffic sensitive costs than analog facilities. Furthermore, Southern Bell witness Mickle testified that this charge more accurately covers the costs of individual business lines based upon current embedded cost of service studies. Thus, Southern Bell states that both the usage sensitive and non-traffic sensitive charges it has proposed are compensatory.

Pursuant to Intervenor request and Order of the Commission during the hearing, Southern Bell filed certain late-filed exhibits. These late-filed

exhibits analyze the revenue impact of Southern Bell's proposed STS rates if five (5) actual multi-tenant building service arrangements are converted to STS. These exhibits demonstrate that the converted STS arrangements priced at the Company's proposed STS rates will produce net revenues comparable to the net revenues generated by the existing individual service arrangements. This provides further support that the rates proposed by Southern Bell are appropriate to cover costs and continue a reasonable level of contribution. Based on its proposed STS rates, the implementation of shared and resold service resulted in a loss in revenue to Southern Bell in four out of five cases and a resulting decrease in utility costs for the STS clients. Although these case studies used Southern Bell's present and proposed rates exclusively, the Commission believes that similar results would be obtained from the use of other local exchange companies' present rates, the 80% flat rate ratio and the usage rates of Southern Bell. Contrary to the assertions made by the Raleigh Technology Group, Inc. (RTG), in particular, the Comission does not believe that Southern Bell's STS impact analysis was based upon "blatantly invalid assumptions."

Carolina Telephone Company witness Hamm testified as follows with respect to the STS rates which his Company considers to be "fully compensatory:"

> "To be considered as 'fully compensatory,' local service rates for lines or trunks providing interconnection for a shared use/resale provider should, at a minimum, cover each local exchange company's fully allocated costs. Since the service is supplemental in nature, a reasonable amount of contribution is appropriate. The rates proposed in the attached tariff include a flat rate component of sixty percent of the appropriate trunk rate, plus local usage charges of $.04 for the first minute and $.02 for each additional minute, or fraction thereof. The usage rate for calls to EAS points would be $.05 for the first minute and $.03 for each additional minute, or fraction thereof. Where equipment is not available to measure local usage, a composite rate of $.10 per message should be charged for all messages completed within the local calling scope or to EAS points. Local usage charges will not apply to calls to the Company business office, repair service, directory assistance, or for 911 emergency service (if applicable). Normal tariffed charges will apply to calls placed to Directory Assistance. The proposed usage rates are based on a fully allocated cost study specific to Carolina Telephone. Company specific rates should be used since it is the only means to assure that rates are fully compensatory as required by statutes."

General Telephone Company witness Mitchell testified as follows with respect to the STS rates which his Company considers to be "fully compensatory:"

> "General believes that a 'fully compensatory' measured rate tariff should include a monthly recurring charge designed to cover the nontraffic sensitive central office and loop costs, and per call and per minute rates to cover the traffic sensitive costs of switching and transport. As an initial rate design, General proposes that its recurring charge be set at 80 percent of the current automatic access line rate and that usage be charged at a rate of 4 cents per call set-up and 2 cents per conversation minute, with a 50

percent discount for off-peak usage. In addition, General believes it essential to add a distance sensitive usage rate element when local calling scopes are significantly enlarged through extended area service."

Central Telephone Company witness Rawn and Continental Telephone Company witness Fallis both supported adoption of measured service rates based upon 60% of the access line rate plus $0.06 for the initial minute and $0.02 for each additional minute. These rates were the measured rates for Public Telephone Access Service (PTAS) which were in effect at the time of the hearing in this case.

In its proposed Order, the Public Staff took the position that the Commission should adopt the measured and message rates for STS service which were proposed by Southern Bell for uniform application to the LECs. The Commission agrees with the position taken by the Public Staff.

Based upon all of the evidence in this case, the Commission concludes that the rate levels proposed by Southern Bell, 80% of the comparable flat rate, $0.05 per each initial minute, $.02 per each additional minute, and a 50% off-peak discount, are appropriate for implementation by all LECs. The Commission believes that these STS rates should initially be set on a uniform basis, but should be subject to change in a general rate case filed by any LEC. Upon presentation of evidence supporting a different rate level in a general rate case, the Commission may establish company-specific rates based upon that LEC's situation at that time. The Commission believes that the STS rates adopted by this Order will in fact be "fully compensatory" to all LECs. The cost studies submitted by Southern Bell, General Telephone Company, and Carolina Telephone Company lead the Commission to conclude that the rates adopted herein will produce a reasonable but not excessive level of contribution and should generally leave the LECs in a basically revenue-neutral position. The Commission also believes that the approved STS rates reflect valid value of service pricing principles which must be considered in establishing fully compensatory rates.

The Commission further concludes that the measured and message service rates proposed in their briefs by the Raleigh Technology Group, Inc. and Executive Suites do not meet the statutory test of being "fully compensatory." The Commission believes that the rates proposed by these parties are too low and that they would not provide a reasonable level of contribution above the cost of providing STS service. As a result, the Commission is concerned that the STS rates proposed by RTG and Executive Suites could result in a substantial shift of the revenue requirement to other services to the possible detriment of basic local rates. Based upon Southern Bell's STS revenue impact analysis, the Commission believes and concludes that the STS rates proposed by RTG and Executive Suites would not leave the LECs in a basically revenue-neutral position and would not, therefore, be fully compensatory. The STS rates approved in this proceeding will certainly be subject to reveiew and revision over time, either in this docket or in future general rate cases filed by the LECs.

The Commission also concludes that the message rate alternative as proposed by Southern Bell should be adopted for all companies. Southern Bell's

message rate proposal reasonably approximates the levels of measured rates herein found appropriate.

The measured and message rates adopted for STS providers shall also be applicable to those entities covered by G.S. 62-3(23)g.

IT IS, THEREFORE, ORDERED, as follows:

1. That the local exchange operating companies be, and hereby are, required to file tariffs for sharing and resale of service in accordance with the conclusions and findings of fact stated herein not later than thirty (30) days from the date of this Order. The effective date of these tariffs shall be sixty (60) days from the date of this Order.

2. That Chapter 14 of the North Carolina Utilities Commission's Rules and Regulations shall be as set forth in Appendix A.

3. That the form identified as "Application For Special Certificate to Offer Shared and/or Resold (STS) Telephone Service" attached as the Appendix to Chapter 14 adopted hereinabove is adopted as the appropriate form for a reseller or sharer to complete to become certified.

4. That the measured rates the LECs shall charge for service to STS providers, other than those providers entitled to flat rate service, shall be 80% of the current flat rate for the type of access line being resold and $.05 per minute for the initial minute and $.02 per minute for each additional minute during peak periods with a 50% discount on usage rates during off-peak periods; the message rates that the LECs shall charge for service to STS providers not entitled to flat rate service and not served by facilities capable of offering measured service shall be as proposed by Southern Bell. These measured and message rates shall also apply to those entities covered by G.S. 62-3(23)g.

5. That all services furnished to STS providers not specifically treated herein shall be furnished at the tariffed rates of the individual companies.

6. That any STS provider otherwise entitled to exemption from measured or message rates in the provision of shared telephone service to its patrons or students but which is currently engaged in some degree of resale service to its patrons, students, or others, shall have six months from the date of this Order in which to draw up a plan for submission to this Commission detailing what steps the provider intends to take in order to qualify for a continued exemption from measured or message rates. In the interim, the LEC serving any such STS provider shall allow that provider to continue to subscribe to local service pursuant to the Company's lawfully approved business flat rates.

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

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A

CHAPTER 14
SHARING AND/OR RESALE OF TELEPHONE SERVICE

Rule R14-1. Application. This Chapter governs sharing and/or resale of telephone service as authorized by G.S. 62-110(d).

The relationship between sharers/resellers (providers) and the local exchange telephone company shall be governed by the filed tariff of the telephone company except as provided elsewhere in this Chapter.

Rule R14-2. Definitions.

(a) Same contiguous premises. Property under common ownership or management that is not separated by property owned or managed by others. Property will be considered contiguous even if intersected by a public thoroughfare if, absent the thoroughfare, the property would be contiguous.

(b) Shared use and resale of telephone service. A telecommunication arrangement where two or more unrelated parties located on the same contiguous premises utilize a common telephone service. This arrangement is also referred to as "shared tenant services" or "STS."

(c) Provider. The subscriber to the local exchange telephone company offering shared and/or resold service to others.

(d) End-user. The party to whom resold or shared service is provided. End-users are persons or firms which are considered business subscribers under the regulations of the local exchange telephone company or are members of the exception group.

(e) Exception group. End-users who share service provided by a provider and who are patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in quarters furnished by educational institutions, or persons temporarily subleasing residential premises.

Rule R14-3. Certificate. Every provider whose end-users are not all within the exception group shall obtain a certificate from the Commission. Application shall be made on the form specified in the Appendix to this Chapter. One certificate is required for each same contiguous premises to be served. Upon approval of the application, the STS provider shall notify the local exchange company in writing of its certification and shall describe the proposed service.

Rule R14-4. Service Which Can be Shared or Resold. The provider may share/resell local exchange telephone service, MTS and WATS provided by a public utility to end-users located on the same contiguous premises.

Rule R14-5. Contract. A provider shall have a written contract with each end-user not within the exception group which shall contain the following provisions:

(a) A statement of the terms and conditions of service including current rates and termination charges, if any;

(b) A statement that the user may obtain service directly from the local telephone company;

(c) The name and telephone number of a representative of the provider to whom complaints should be addressed;

(d) A statement that a user may submit unresolved complaints about quality of service to the Utilities Commission;

(e) A statement that at least thirty days written notice will be given prior to any rate increase;

(f) A statement that the contract shall be voidable at the option of the end-user and without further liability to the end-user if the contract is breached by the reseller or sharer;

(g) A statement specifying when rates may be changed and the amount of increase that may be imposed during the contract period;

(h) A statement that rates, charges, payment arrangements, rules on disconnection and deposit requirements are not regulated by the North Carolina Utilities Commission;

(i) A statement specifying (a) the limitations of E911 emergency service regarding proper identification of the caller and the caller's location whenever a call is placed from a STS station and (b) the limitations on portability or reuse of the assigned telephone number upon a move or transfer of service and (c) the limitations regarding intercept service provided by the local exchange company for direct inward dial (DID) numbers; and

(j) A copy of this Chapter of the Rules and Regulations.

Rule R14-6. Local exchange company access. Providers shall allow the local exchange company reasonable access to end-users who desire service directly from the local exchange company. Such access shall be provided to the local exchange company free of charge.

Rule R14-7. Provision of local access lines. The certificated local exchange telephone company shall be the only source of access lines or trunks connecting resold or shared service to the telephone network.

Rule R14-8. Networking. Interconnection of end-users of different providers or between end-users of the same provider not occupying the same contiguous premises must be through the local exchange company or certified long distance carrier.

Rule R14-9. Quality of Service. Every provider is required to secure adequate local exchange trunks to ensure an adequate quality of service. The probability of blocking objective to be used in evaluating the adequacy of service is P.01.

Rule R14-10. Intercom calling. Intercom calling among end-users shall be permitted without restriction.

Rule R14-11. Exception group. Providers may share local service and resell MTS and WATS to end-users within the exception group defined in Rule R14-2(e) subject to the following conditions:

(a) All end-users must occupy the same contiguous premises;

(b) Separate charges for MTS and WATS may not exceed AT&T's current MTS rates; and

(c) No separate charge is made for local service.

APPENDIX
APPLICATION FOR SPECIAL CERTIFICATE TO
OFFER SHARED AND/OR RESOLD (STS) TELEPHONE SERVICE
STS SPECIAL CERTIFICATE NO. ________

Note: To apply for Special Certification, Applicant must submit a filing fee of $25.00 and the typed original and 8 copies of this document to the Commission at the following address:

Chief Clerk
North Carolina Utilities Commission
Post Office Box 29520
Raleigh, North Carolina 27626-0510

DATE OF APPLICATION ________________
APPLICANT

____
(NAME)

____
(STREET)

____
(CITY, STATE, ZIP)

TELEPHONE (   )____________________
ADDRESS AND DESCRIPTION OF PREMISES TO BE SERVED AND SERVICES TO BE OFFERED: (A map may be attached)
REPRESENTATIVE TO WHOM COMPLAINTS SHOULD BE ADDRESSED

____
(NAME)

____
(STREET)

____
(CITY, STATE, ZIP)

TELEPHONE (   )____________________

As the provider of resold and/or shared service, I certify that I have read and agree to abide by the Rules in Chapter 14 of the North Carolina Utilities Commission attached as Appendix A to this Application.

_______________ Date

_______________ Signature of Applicant

_______________ 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___.

_______________ Notary Public

My Commission expires: _______________

DOCKET NO. P-100, SUB 99

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Quality of Service Objectives for Local) ORDER REVISING
Exchange Telephone Companies) PROPOSED RULE

BY THE COMMISSION: On January 5, 1988, the Commission entered an Order in this docket instituting a rulemaking proceeding to formally adopt a uniform set of quality of service objectives for the regulated local exchange telephone companies (LECs) operating in North Carolina. The Commission attached proposed Rule R9-8 as an appendix to the Order and requested interested parties to file comments regarding that rule not later than Friday, February 5, 1988.

It has been brought to the attention of the Commission that subsection (b) of proposed Rule R9-8 does not contain all of the exceptions which have been approved by the Commission. Therefore, the Commission concludes that good cause exists to enter this Order revising the proposed rule as set forth on Revised Appendix A attached to this Order.

In addition, ALLTEL Carolina, Inc., Heins Telephone Company, and Sandhill Telephone Company filed a motion in this docket on January 25, 1988, requesting an extension of time until Friday, February 19, 1988, to file comments regarding proposed Rule R9-8. The Commission concludes that good cause exists to grant the requested extension of time to all parties.

IT IS, THEREFORE, ORDERED that proposed Rule R9-8 be, and the same is hereby, revised in conformity with Revised Appendix A attached hereto and that

any interested party may file comments regarding this proposed rule not later than Friday, February 19, 1988.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of January 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

REVISED APPENDIX A

Rule R9-8 - Service Objectives for Local Exchange Telephone Companies.

Each regulated local exchange telephone company shall perform and provide service in accordance with the following uniform service objectives:

(a) 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 and 10db
Intrastate toll transmission loss (dialed test no.)	95% or more between 3 and 12db
EAS trunk noise	95% or more 30 dbrnc or less
Intrastate toll trunk noise	95% or more 33 dbrnc or less
Operator "0" answertime	90% or more within 10 secs
Directory assistance answertime	85% or more within 10 secs
Public paystations found out-of-order on test	10% maximum
Business office answertime	90% or more within 20 secs
Repair service answertime	90% or more within 20 secs
Initial customer trouble reports (excludes subsequent reports)	4.75 or less per 100 access lines
Repeat reports	1.0 report 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	0.1% or less of total

completed within 14 working days	access lines
Regrade application held orders not completed within 14 working days	1.0% or less of total access lines

(b) Exceptions - The following are exceptions to the uniform general service objectives set forth above:

(1) Operator "0" answertime for Southern Bell shall be an average of 3.2 seconds or less.
(2) Directory assistance answertime for Southern Bell shall be an average of 6.0 seconds or less.
(3) Business office answertime for Southern Bell shall be that 90% of offices achieve adjusted variance of 1.0 - 1.6 and no office should exceed 1.6 for 3 times a year.
(4) Repair service answertime for Southern Bell shall be an average of 13 seconds or less.
(5) New service held orders not completed within 30 days for Southern Bell shall be 0.1% or less of total access lines.
(6) There is no service objective for Southern Bell for regrade application held orders.
(7) Customer trouble reports (initial reports only) for Continental Telephone Company of N.C. shall be 6.0 or less per 100 access lines.
(8) Repeat trouble reports for Continental Telephone Company of N.C. shall be 1.3 reports or less per 100 access lines.

DOCKET NO. P-100, SUB 99

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Quality of Service Objectives for Local Exchange Telephone Companies) ORDER ADOPTING RULE R9-8

BY THE COMMISSION: On January 5, 1988, and January 26, 1988, the Commission entered Orders in this docket instituting a rulemaking proceeding to consider adoption of a uniform set of quality of service objectives for the regulated local exchange companies (LECs) operating in North Carolina. The Commission proposed Rule R9-8 entitled "Service Objectives for Local Exchange Telephone Companies" for comment and solicited comments from interested parties.

On February 19, 1988, the North Carolina Telephone Association, Inc. (NCTA), representing eighteen (18) signatory LECs, filed the following comments and recommendations in this docket:

> "The rulemaking proceeding established by the Commission in Docket No. P-100, Sub 99, proposes the establishment of Rule R9-8. This Rule provides for the standardization of service objectives for all LECs, with stated exceptions. NCTA supports the principle of high quality standards for the industry but, as the number of exceptions indicate, complete uniformity is difficult to achieve. The varied current exceptions are indicative of the distinctive

characteristics of each LEC and reflect technological differences as well as size and geographical differences. As technological advances are made and measurement capabilities change, necessary service objective alterations may be expected and desirable creating, perhaps, additional exceptions on a company by company basis over time.

"Each LEC represented by NCTA is committed to the provision of high quality telephone service to North Carolina subscribers. In keeping with this commitment, each LEC monitors, along with the Public Staff, established quality of service measurements to ensure the continual maintenance of an appropriate level of service. The current surveillance procedures encourage objective attainment while recognizing essential service considerations such as weather, geography, technological advancements or limitations, and economics. These considerations are applicable to each LEC in varying degrees and may, on occasion, affect stated objectives on a company by company basis with the concurrence of this Commission. NCTA believes the existing procedures established to ensure the provision of high quality telephone service are working well and does not perceive a need for alteration at this time."

Carolina Telephone and Telegraph Company also filed comments on February 19, 1988. In its comments, Carolina endorsed the comments filed by NCTA and urged the Commission to not adopt Rule R9-8. Carolina takes the position that the adoption of a uniform rule for service objectives would reduce the Commission's flexibility to recognize the different operating circumstances of jurisdictional companies and make it more difficult for the Commission to adjust standards as changing conditions warrant.

The record also reflects individual comments that were filed by Continental Telephone Company of North Carolina, Inc., on January 28, 1988.

On March 8, 1988, the Public Staff filed comments in this docket stating that it has been actively moving toward uniform service objectives for all LECs since 1985. The Public Staff takes the position in its comments that "...it would be reasonable to evaluate the telephone service provided by the LECs, based upon a set of uniform service objectives." To that end, the Public Staff proposed that the Commission adopt a set of service objectives which are very similar to those initially proposed by the Commission as Rule R9-8.

On March 9, 1988, the Attorney General filed comments in this docket asserting that:

"...the fruits of uniform quality telephone service should be enjoyed by all telephone subscribers in North Carolina regardless of their geographical location or serving local exchange company. Even though the reservations of NCTA and Carolina are well-taken, uniform service standards seem a reasonable and logical way to proceed to a state-wide quality standard for adequate telephone service."

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based upon a careful consideration of the comments filed in this docket, the Commission concludes that good cause exists to adopt a set of uniform service objectives for the LECs and that Rule R9-8 should reflect the recommendations of the Public Staff. By adopting this rule, we do not mean to infer or indicate in any way that this action is necessitated by or required to alleviate specific service problems. G.S. 62-131(b) requires all public utilities in this State to furnish "adequate, efficient and reasonable service." We believe the LECs are in fact making every effort to provide their customers with telephone service of the highest possible quality. This being the case, we see no harm in adopting Rule R9-8. This rule is not meant, in any way, to preclude flexibility in considering future circumstances that may justify changes in or exceptions to these quality of service objectives.

IT IS, THEREFORE, ORDERED that Rule R9-8, 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 20th day of December 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A

Rule R9-8 - Service Objectives for Local Exchange Telephone Companies. Each regulated local exchange telephone company shall perform and provide service in accordance with the following uniform service objectives:

(a) 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	95% or more between 2 and 10db
Intrastate toll transmission loss	95% or more between 3 and 12db
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 seconds or an *EAA in seconds
Directory assistance answertime	85% or more within 10 seconds or an *EAA in seconds
Public paystations found out-of-order	10% maximum
Business office answertime	90% or more within 20 seconds or an *EAA in seconds
Repair service answertime	90% or more within 20 seconds or an *EAA in seconds
Initial customer trouble reports (excludes subsequent reports)	4.75 or less per 100 access lines
Repeat reports	1.0 report or less per 100 access lines

Out-of-service troubles cleared within 24 hrs....	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 30 days..................................	0.1% or less of total access lines
Regrade application held orders not............. completed within 30 days	1.0% or less of total access lines

(b) Exceptions - The following are exceptions to the uniform general service objectives set forth above:

(1) Customer trouble reports (initial reports only) for Contel of North Carolina shall be 6.0 or less per 100 access lines.

(2) Repeat trouble reports for Contel of North Carolina shall be 1.3 reports or less per 100 access lines.

(c) This rule shall not preclude flexibility in considering future circumstances that may justify changes in or exceptions to these service objectives.

*EAA = Equivalent Average Answertime

DOCKET NO. P-100, SUB 101
DOCKET NO. P-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 101

In the Matter of
An Investigation of Alternative Operator Services

DOCKET NO. P-100, SUB 84

In the Matter of
Issuance of Special Certificates for Provision of Telephone Service by Means of Customer Owned Pay Telephones

ORDER ESTABLISHING INVESTIGATION OF ALTERNATIVE OPERATOR SERVICES AND MORATORIUM ON ISSUANCE OF CERTIFICATES

BY THE COMMISSION: Through complaints, certification hearings, and other sources of information, the Commission has become aware of issues associated with alternative operator services (AOS) warranting further investigation. These include questions as to whether such offerings are in the public interest and to what degree they should be regulated. The Commission has received four applications for certificates of public convenience and necessity involving AOS

either partially or entirely, and the Commission has held hearings on three of these applications.[1] However, no certificates for AOS have been granted and the Commission is of the opinion that there should be a moratorium on the granting of such certificates pending the completion of a thorough investigation and the formulation of a general policy.

At a minimum, the issues warranting further investigation into AOS include the following: (1) high and excessive rates; (2) lack of sufficient notice to or opportunity for the end-user, usually in a transient or captive context, to make an informed choice regarding such services; (3) billing and collection abuses; and (4) illicit operation by uncertificated AOS companies.

Nature of AOS. Typically, an AOS provider is a reseller who provides long distance and operator services to payphones, hotels, motels, hospitals, and similar institutions. It is important to remember that in these contexts the subscriber of the service is not the end-user.[2] Typically, the AOS provider pays a commission to the contracting party to allow it to offer its operator and long distance services to end-users on the contracting party's premises. Thus, both the AOS provider and the contracting party have little incentive to keep rates low. Also, since the end-user is using a payphone or is staying at a hotel, motel, hospital or the like, and may therefore be said to be in a transient or captive context, substantial questions arise concerning adequacy of customer notice. Indeed, it is not uncommon for end-users to be unaware that they are using an AOS service and to be shocked by the size of the charges when they receive their bills.

Billing for AOS can be done in several ways. Sometimes calls can be paid for at the hotel or motel checkout desk. AOS services can often be billed through major credit cards. Some AOS providers bill through contracts with local exchange companies (LECs). There is reason to believe that AOS operators uncertificated to provide intrastate service have been using the billing services of LECs to bill such calls for them. Billing through an LEC is desirable to an AOS because an LEC can cut off the phone service of a customer who does not pay those charges on his phone bill.

Activity on AOS Elsewhere. The Federal Communications Commission (FCC) does not currently regulate interstate AOS services but has been receiving complaints concerning them. This Commission and other state commissions have jurisdiction only over intrastate AOS services. The growth of AOS providers

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1 Central Corporation, filed July 17, 1987, heard November 4, 1987; Military Communications Center (MCC), filed December 31, 1987, heard March 1, 1988; International Telecharge, Inc., (ITI), filed November 16, 1987, heard February 16, 1988; American Operator Services, Inc., (AOS, Inc.), filed January 14, 1988. MCC has the contract to provide payphone service on certain military bases and seeks to use the services of Automated Communications, Inc., to be its AOS carrier.

2 The terminology the Commission will use to describe these parties is as follows: AOS provider, meaning the AOS company; contracting party, meaning the payphone owner, hotel, motel, etc. with whom the AOS provider contracts; and end-user or customer, meaning the person who actually utilizes the service to receive operator assistance in making a call.

has been explosive. At the present time, there are nearly 35 AOS providers operating nationally or regionally. Other states have begun to address AOS issues. For instance, Alabama has suspended intrastate AOS services pending the establishment of a general policy and has issued a cease and desist order to all AOS providers offering intrastate service without proper certification. Florida plans to hold a hearing on whether, among other issues, AOS is in the public interest and has established an interim policy limiting rates. Tennessee has conducted a show cause proceeding concerning billing and collection by AOS, while the Virginia Commission has issued a warning to consumers regarding the existence of interstate AOS. Other states that are dealing with the issue at some level include New Jersey and Washington. The AOS issues that the several states have been dealing with are similar or identical to those in this state.

North Carolina Legal Context. The Commission is of the opinion that any AOS provider, before offering intrastate service, must obtain a certificate of public convenience and necessity pursuant to the provisions of N.C.G.S. 62-110(a) and (b). Specifically, N.C.G.S. 62-110(b) states:

> The Commission shall be authorized to issue a certificate to any person applying to the Commission to offer long distance services as a public utility defined in G.S. 62-3(23)a.6, provided that such person is found to be fit, capable and financially able to render such service, and that such additional service is required to serve the public interest effectively and adequately. . . .

Thus, a threshold question is whether AOS is in fact in the public interest. The Commission needs to conduct a comprehensive and thorough investigation to properly answer this question.

In addition to the public interest question, there is the question of appropriate rates. The control which the Commission has over rates charged by AOS providers appears to be imperfect. This is not due to deficiency in statute but to the manner in which the Capped Rate Plan (P-100, Sub 72) is drawn. The Commission did not have an opportunity to foresee the AOS contingency when it provided that resellers were free to raise rates upon adequate notice to customers. The Commission was contemplating the more conventional situation in which, for example, an informed business customer compares rates at his leisure in making his choice among resellers. It was thought in this context preferable to rely on the market to provide the best rates to these informed end-users. This is decidedly not the case in the AOS situation where the end-user is transient or captive and the "customer"--i.e., the contracting party--stands to benefit from high AOS rates. Thus, it is legally possible for an AOS provider to propose lower rates during certification proceedings and, after receiving certification, to raise its rates if it can comply with the notice provisions.

This leads to another important issue--that of notice to end-users. The Commission has the authority, as a condition of certification, to require AOS providers to enter into contracts with contracting parties to provide for notice to end-users. The Commission may have some direct regulatory control over hotels and motels under N.C.G.S. 62-3(23)g. While this provision exempts hotels and motels from public utility status, it also makes this exempt status contingent upon the prominent display of applicable charges in each area where

occupant rooms are located. The provision of adequate notice and the precise terms of such notice are fit subjects for investigation by this Commission.

In the payphone context, there are provisions of the Public Telephone Access Service Rules promulgated in Docket No. P-100, Sub 84. In that tariff the Commission has limited the amount that can be charged on a long-distance call to the applicable A.T.& T. or LEC MTS rates (including applicable operator assistance or person-to-person charges) plus $0.25.[3] The Commission is of the opinion that while this language is sufficient to restrict the charges of an AOS serving a payphone, it too is a fit subject for investigation with a view to greater clarification.

Lastly, it should be noted that statutes and regulations, no matter how elegantly and artfully drawn, are of limited usefulness if they are not obeyed. The Commission has reason to believe that some uncertificated AOS providers are providing service intrastate. This must cease and desist.

The Commission is further of the opinion that it should send out the questions set out in Appendix A to all LECs regulated by this Commission, to all interexchange carriers (IXCs) regulated by this Commission, to the AOS providers who have sought certification, to the Public Staff and Attorney General to the holders of COCOT certificates, and to certain other persons. After assessing responses, the Commission will either promulgate appropriate rules or hold further hearings. The Commission is further of the opinion that the public interest requires that there be a moratorium on the granting of certificates to AOS providers until the weighty public policy questions raised herein have been settled.

IT IS, THEREFORE, ORDERED as follows:

1. That all AOS providers that are not certificated by this Commission to provide intrastate service and which are in fact providing intrastate service cease and desist from doing so;

2. That no certificates of public convenience and necessity be issued to AOS providers pending the outcome of this investigation;

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3 Rule R13-1(c) reads in relevant part:

...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...

3. That any local exchange company providing billing and collection services for the intrastate services of an uncertificated AOS providers shall immediately cease and desist from doing so and shall provide a list to the Commission no later than April 8, 1988, (copy to the Communications Division of the Public Staff) showing the name and address of each AOS provider for which the local exchange company was providing intrastate billing and collection services at the time the local exchange company received this Order; provided, further that should the Commission approve AOS service in the future, before providing billing and collection services to an AOS provider, each local exchange company shall obtain a copy of the AOS provider's North Carolina certificate of public convenience and necessity;

4. That the LECs regulated by this Commission, the AOS providers which have sought certification, the Public Staff, the Attorney General, and the IXCs regulated by this Commission be made parties of this proceeding;

5. That the Chief Clerk shall serve a copy of this Order to all parties to Docket No. P-100, Sub 84, the North Carolina Hotel and Motel Association, and the North Carolina Hospital Association; and

6. That the filings of comments in this docket be made according to the following schedules:

a. By the AOS providers, no later than Friday, April 22, 1988.
b. By all other parties no later than Friday, May 6, 1988.
c. By all parties, including AOS providers, wishing to file reply comments, no later than Friday, May 27, 1988.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of March 1988.

NORTH CAROLINA UTILITIES COMMISSION
Gail Lambert Mount, Deputy Clerk

(SEAL)

APPENDIX A

QUESTIONS TO PARTIES CONCERNING ALTERNATIVE OPERATOR SERVICES

A. Is certification of Alternative Operator Services (AOS) companies required to serve the public interest? If not, what restrictions should be applicable to ensure that intrastate service is not provided by AOS companies?

B. Is certification of AOS companies for both interLATA and intraLATA long distance service in the public interest? If not, what restrictions should be applicable?

C. Does the Commission have the authority to grant certificates to AOS companies to provide local service, such as operator assisted or credit card local calls?

D. If the Commission does have the authority to grant certificates to AOS companies to provide local service, is this in the public interest? If not, what restrictions should be applicable?

E. If certification of AOS companies is in the public interest, then

1. What filing and certification requirements should apply to AOS applicants?

2. Should the Capped Rate Plan (Docket No. P-100, Sub 72) be changed to enable the Commission to fully regulate AOS rates?

3. Should AOS companies be treated as a separate class of interexchange carriers? If so:
   (a) How should AOS companies be defined?

   (b) What specific rules and regulations should apply to them?

4. Should access to AOS companies be permitted by dialing "0"? If not, how should AOS companies be accessed?

5. What methods should customer-owned pay telephone providers be permitted to use in routing calls to AOS companies?

6. Should Rule R13-1(c) apply when those pay telephones subscribe to AOS companies? If not, what changes should be made?

7. AOS companies be permitted to handle emergency calls? If so, what service standards should be required for handling emergency calls which are received by AOS companies? If not, what rules should apply to the provision of access to emergency service?

8. Should AOS companies be permitted to contract with local exchange telephone companies to provide billing services for calls made using telco calling cards? If so, what restrictions should apply?

9. What type of notice should be required of AOS companies and others to ensure that the public is adequately informed of the name of the service provider and the rates to be charged for services?

DOCKET NO. P-100, SUB 103

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Financial and Operating Reporting) FINAL ORDER ADOPTING RULE R9-9 SETTING
Requirements for Telephone Companies) FINANCIAL AND OPERATING REPORTING
) REQUIREMENTS FOR TELEPHONE COMPANIES

BY THE COMMISSION: By Commission Rule R9-2, the North Carolina Utilities Commission adopted the Uniform System of Accounts (Part 31) for telephone companies as prescribed by the Federal Communications Commission (FCC). On May 15, 1986, the FCC adopted a new Uniform System of Accounts (USOA) for use

by telephone companies as set forth in Title 47, Part 32 of the Code of Federal Regulations, which became effective on January 1, 1988.

On December 18, 1987, the Commission issued an Order in Docket No. P-100, Sub 98, revising Commission Rule R9-2, adopting the new Uniform System of Accounts. The new USOA adopted by this Commission differs from the old USOA in several respects. Besides renumbering and retitling the accounts, the new USOA disaggregates plant accounts, requires expensing of many costs which were formerly capitalized, and adopts Generally Accepted Accounting Principles.

Presently, most of the telephone companies file a Quarterly Surveillance Report (T.S.-1) with the Commission. This report was initiated as the result of a formal request by the Commission Staff on April 25, 1972, for the stated purpose of enabling the Commission to maintain current information on earnings and cost trends in the telephone industry.

Due to adoption of the new USOA and changes in the telecommunications industry since the reports were first filed over sixteen years ago, the Public Staff and Commission Staff (Commission Staffs) have proposed revisions to the T.S.-1 reporting requirements.

On July 29, 1988, the Commission issued an Order allowing all interested parties to file with the Commission written comments regarding the proposed revisions to the T.S.-1 reporting requirements. Attached to said Order was a copy of a Proposed Order Adopting Rule R9-9, a copy of proposed Rule R9-9, and a set of sample T.S.-1 report forms to be followed in the implementation of the revised T.S.-1 reporting requirements in the event the proposals were adopted by the Commission.

Written comments in this matter were filed by Central Telephone Company, Contel of North Carolina, Inc., ALLTEL Carolina, Inc., Heins Telephone Company, Sandhill Telephone Company, Mebane Home Telephone Company, Carolina Telephone and Telegraph Company, Southern Bell Telephone and Telegraph Company, North State Telephone Company, Citizens Telephone Company, The Concord Telephone Company, Lexington Telephone Company, GTE South, Incorporated, the Public Staff, and the Attorney General.

The comments filed by the parties address the general issues of filing frequency, reporting of nonregulated information, prior period comparisons and filing dates. Comments were also addressed to certain specific schedules set forth in the sample T.S.-1 report forms which were attached to the proposed order.

The telephone companies commenting objected to the proposed monthly reporting format as being administratively burdensome. Further, they have stated that the current quarterly reporting is sufficient to reflect current information on earnings and cost trends and do not feel the benefits of monthly reporting balance the costs that will be incurred.

The Public Staff contends that the companies have exaggerated the claim that the proposed monthly reporting requirements are overly burdensome. The Public Staff points out that, among other things, the Staffs have taken a flexible approach in that the companies may be allowed to substitute current company-generated schedules for the specific schedule formats proposed by the

Staffs when the substance of the company-generated schedules are comparable. Further, the Public Staff notes that many of the schedules, i.e., Nos. 1, 2, 2-1, 5, and 6, or comparable substitutes are internally generated by every company each month and could be filed with the Commission.

The Attorney General in his comments also supports the proposed monthly reporting in that it is more timely and would offer a more accurate picture of actual month to month financial changes.

Upon consideration of the comments filed in the docket, the Commission is of the opinion that monthly reporting is a preferable mechanism with which to have an effective financial and operating reporting system. However, the Commission in reaching a decision in this matter must also weigh the benefits of monthly reporting with the associated costs incurred to implement such a system. Accordingly, the Commission concludes that any and all company-generated schedules or comparable substitutes for the specific schedule formats set forth in the attached schedules which are prepared on a monthly basis, including but not limited to Nos. 1, 2, 2-1, 5, and 6, should be filed with the Commission on a monthly basis. The adequacy of substitute schedules will be indicated by a joint letter from the Director of Finance and Statistics - Commission Staff and Director of Accounting - Public Staff to the appropriate company officials upon review of the substitute schedules. The remainder of the schedules shall be filed on a quarterly basis in the format set forth in the attached samples.

The next general area of disagreement among the parties concerns the reporting of information by the companies about their nonregulated operations. The companies contend that data related to competitive, nonregulated services is proprietary and should be filed and disclosed only under some form of protective order or proprietary cover.

The Public Staff states that the companies are involved in several diverse nonregulated lines of business and, therefore, it is unable to understand the value of aggregate nonregulated information to a potential competitor. Also, the Attorney General points out that the reporting requirements are not detailed as to specific lines of business and contends that the requirements are of such a general and aggregate nature that proprietary information will not be discernable.

The Commission, upon reviewing the comments filed, is concerned about the consequences of disclosure to competitors of detailed information about the companies' nonregulated operations. However, the Commission is also desirous of monitoring the allocation of costs between the regulated and nonregulated operations and is not persuaded how any disclosure of aggregate nonregulated information would adversely affect the companies.

The Commission, therefore, concludes that the companies shall file with the Commission the information regarding its aggregate nonregulated operations as set forth on the attached schedules without any restrictive use being placed thereon. The Commission further concludes that the method of allocation and the amounts of costs allocable or allocated between regulated and nonregulated operations must be accounted for an reported in full.

With regard to the prior period comparability of data, the companies state that on January 1, 1988, they started keeping their books and accounts under the new USOA Part 32 instead of the old Part 31 and, therefore, the data from 1987 to 1988 would not be comparable or valid. Several companies suggest that such requirements for prior year comparisons should be delayed until 1989 to assure comparability. The Commission finds that position to be reasonable.

The final area of general disagreement among the parties concerns filing dates. Southern Bell states that the reports should be filed 60 rather than 45 days after the last day of the period under report, as the separations process which allocates costs between interstate and intrastate jurisdictions requires 45 days. Then, an additional 15 days is necessary to adequately summarize and adjust the data for reporting.

The Commission notes that the proposed Rule R9-9 provides that a company may request and be granted an extension of time of 15 days within which to file the reports if such time is needed. Therefore, the Commission concludes that the 45 day time period as set forth in the proposed Rule R9-9 should be retained.

The revised T.S.-1 report shall be filed with the Commission in a manner consistent with the conclusions reached above concerning filing frequency, reporting of nonregulated information and prior period comparisons and said schedules attached hereto should be amended to be consistent with the Commission's conclusion reached herein, especially with regard to the reporting period and prior period comparisons. The T.S.-1 report shall contain the following schedules:

(1) Total Company Balance Sheet - current year and prior year
(2) Total Company Income Statement - current year and prior year
(2-1) North Carolina Operations Income Statement - current year and prior year
(3) Calculation of Intrastate Rate Base
(4) Calculation of Intrastate Net Operating Income for Return
(5) Analysis of Telecommunications Plant in Service - North Carolina operations
(6) Analysis of Depreciation Reserve - North Carolina operations
(7) Analysis of Salaries and Wages - current year and prior year
(8) Long-term Debt Interest Charges - total company
(9) Preferred Stock Issuances and Dividends - total company
(10) Miscellaneous Information Concerning Common and Preferred Stock, Access Lines, Toll Settlements (average schedule companies only), and Number of Employees

Following is a discussion of each schedule.

Total Company Balance Sheet - Current Year and Prior Year

This schedule is a detailed balance sheet as of the end of the current reporting period, with comparative information for the prior year. This schedule shall contain information pertaining to regulated and nonregulated operations for all the states in which the company operates.

Total Company Income Statement - Current Year and Prior Year

This schedule is a detailed income statement for the reporting period and for the twelve months ending with the current reporting period (year-to-date information may be substituted if twelve months ended information is unavailable), with comparative information for the prior year. This schedule shall contain information pertaining to regulated and nonregulated operations for all the states in which the company operates.

North Carolina Operations Income Statement - Current Year and Prior Year

This schedule is a detailed income statement for the reporting period and for the twelve months ended with the current reporting period (year-to-date information may be substituted if twelve months ended information is unavailable), with comparative information for the prior year. This schedule shall contain information pertaining to regulated and nonregulated operations for the company's North Carolina operations.

Calculation of Intrastate Rate Base

This schedule lists and totals the items comprising rate base as of the end of the reporting period in accordance with Commission policies and procedures. Presented on the schedule are the following amounts for each rate base item:

(a) Total Company
(b) Total - North Carolina Operations
(c) Regulated - North Carolina Operations
(d) Total Intrastate - North Carolina Operations
(e) Intrastate IntraLATA Toll - North Carolina Operations
(f) Intrastate InterLATA Toll - North Carolina Operations
(g) Intrastate Local - North Carolina Operations

For purposes of this report, cash working capital should be computed based on the ratio of cash working capital to net telecommunications plant in service per the company's last rate case order. Separations factors used should be the most recent annual factors available.

Calculation of Intrastate Net Operating Income for Return

Major classifications of operating revenues, expenses, and taxes comprising net operating income for return and the allocation of fixed charges are presented on this schedule. The following amounts for the twelve months ended with the current reporting period (year-to-date information may be

substituted if twelve months ended information is unavailable) are presented for each major classification:

(a) Total Company
(b) Total - North Carolina Operations
(c) Regulated - North Carolina Operations
(d) Total Intrastate - North Carolina Operations
(e) Intrastate IntraLATA Toll - North Carolina Operations
(f) Intrastate InterLATA Toll - North Carolina Operations
(g) Intrastate Local - North Carolina Operations

Separations factors used should be the most recent annual factors available.

Analysis of Telecommunications Plant in Service

This analysis presents the beginning and ending Total (regulated and nonregulated) North Carolina balances, along with the additions, retirements, transfers, and adjustments for each plant account for the reporting period.

Analysis of Depreciation Reserve

This analysis presents the beginning and ending Total (regulated and nonregulated) North Carolina balances, along with the depreciation, book cost of assets retired, cost of removal, salvage value, and other adjustments related to each plant account for the reporting period.

Analysis of Salaries and Wages

This schedule presents the distribution of salaries and wages among the major expense classifications and capital categories (e.g. telecommunications plant in service, telecommunications plant under construction) for the reporting period, the twelve months ended with the current reporting period (year-to-date information may be substituted if twelve months ended information is unavailable), with comparative information for the prior year.

Long-Term Debt Interest Charges

This schedule presents on a Total Company basis for each item of long-term debt the following information:

(a) Issue date
(b) Maturity date
(c) Face amount
(d) Amount outstanding as of end of reporting period
(e) Interest rate
(f) Interest booked for twelve months ending with the reporting period
(g) Calculation of interest annualized on outstanding long-term debt

Preferred Stock Issuances and Dividends

This schedule presents on a Total Company basis for each item of preferred and preference stock the following information:

(a) Issue date
(b) Par value amount
(c) Amount outstanding as of end of reporting period
(d) Amount of related premium or discount
(e) Dividend rate
(f) Preferred dividends booked for twelve months ending with the reporting period
(g) Calculation of dividends annualized on outstanding preferred and preference stock

Miscellaneous Information

Statistical Data - For preferred, preference, and common stock, the amount of dividends declared during the reporting period and year to date and the dividend rates should be presented. Also the number of common stock shares outstanding as of the end of the reporting period should be presented.

Access Line Data - The number of Total Company and Total North Carolina residential, business, and total access lines as of the end of each month in the reporting period should be presented.

Toll Information (Average schedule companies only) - The following intrastate settlements information should be provided by companies settling on the nationwide average schedule bases for each month in the reporting period and year to date by exchange:

(a) Average revenue per message
(b) Number of messages
(c) Average settlement per message

Employee Information - The number of employees as of the end of each month of the reporting period and the number at the same dates in the prior year on a Total Company and Total North Carolina basis should be provided.

Upon consideration of all of the information on this matter including the parties' comments, the Commission concludes that Rule R9-9, attached as Appendix A, should be added to the Commission Rules and Regulations.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R9-9, as set forth in Appendix A, is incorporated into the Commission Rules and Regulations.

2. That the initial filing should begin with the reporting period ended December 31, 1988.

3. That the adequacy of the schedule formats filed by the companies pursuant to Rule R9-9 shall be indicated by a joint letter from the Director of

Finance, Statistics, and Planning - Commission Staff and Director of Accounting - Public Staff to company officials.

4. That the local exchange telephone companies shall continue filing the Interim Surveillance Reports on a quarterly basis for the last quarter of 1988.

5. 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 29th day of November 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Rule number corrected by Errata Order dated January 11, 1989.

(See Official File in Chief Clerk's Office for Schedules.)

APPENDIX A

RULE R9-9. FINANCIAL AND OPERATING REPORTING REQUIREMENTS FOR TELEPHONE COMPANIES

A) All local exchange telephone companies shall file the following financial and operating information with the Public Staff and the Commission Staff:

(1) Total Company Balance Sheet - Current year and prior year
(2) Total Company Income Statement - Current year and prior year
(2-1) North Carolina Operations Income Statement - Current year and prior year
(3) Calculation of Intrastate Rate Base
(4) Calculation of Intrastate Net Operating Income for Return
(5) Analysis of Telecommunications Plant in Service - North Carolina operations
(6) Analysis of Depreciation Reserve - North Carolina operations
(7) Analysis of Salaries and Wages - North Carolina operations
(8) Long-term Debt Interest Charges - Total Company
(9) Preferred stock Issuances and Dividends - Total Company
(10) Miscellaneous Information on Access Lines, Number of Employees, Common and Preferred Stock Dividends, and Toll Settlements (average schedule companies only)

B) All company-generated schedules or comparable substitutes for those schedules listed above which are prepared on a monthly basis shall be filed with the Commission on a monthly basis. The remainder of the schedules shall be filed on a quarterly basis.

C) These statements shall be filed 45 days after the last day of each month unless unusual circumstances dictate that additional time is needed, whereupon the telephone company may request and be granted up to an additional

15 days to complete the statements. The telephone companies shall file these statements with the North Carolina Utilities Commission - Finance, Statistics, and Planning Division and the Public Staff - Accounting Division.

DOCKET NO. P-100, SUB 106

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Tariff Revisions to Implement Changes in	)	ORDER REQUIRING
Franchise and Sales Tax Laws	)	TARIFF REVISIONS

BY THE COMMISSION: On December 15, 1988, the Public Staff filed a motion in this docket whereby the Commission has been requested to enter an Order requiring all local exchange telephone companies (LECs) in North Carolina to file revised tariffs containing appropriate reductions to eliminate the three and twenty-two hundredths percent (3.22%) franchise tax component of rates and charges for services which will be subject to the six and one-half percent (6.5%) sales tax under N.C.G.S. 105-164.4(4c) instead of the three percent (3%) sales tax under N.C.G.S. 105-164.4(4a) effective with the implementation of the sales tax increase.

In support of its motion, the Public Staff states that:

> "...on July 6, 1987, the General Assembly amended Chapter 105 of the General Statutes to provide that the 3.22% franchise tax and 3% sales tax apply only to local telecommunications services and not to intraLATA or interLATA toll services and private telecommunications services and to impose a new 6 1/2% sales tax on those services no longer subject to the franchise tax. Act of July 6, 1987, Ch. 557, 1987 Sess. Laws 212. There has been some confusion as to whether local, i.e., intraexchange, private telecommunications services are subject to gross receipts tax under the new law, which is effective January 1, 1989. While the Public Staff believes that the interpretation and application of tax laws are matters between the LECs and the Department of Revenue, we are concerned that there be no double recovery from ratepayers if and when the sales tax is increased on certain telecommunications services."

The Commission concludes that good cause exists to grant the motion filed by the Public Staff. The Commission agrees with the position taken by the Public Staff that the interpretation and application of state tax laws are generally matters between the LECs and the Department of Revenue and that there should be no double recovery from ratepayers if and when the sales tax is increased on certain telecommunications services.

IT IS, THEREFORE, ORDERED that the LECs be, and the same are hereby, required to file revised tariffs in conformity with the provisions of this Order and Chapter 557 of the 1987 Session Laws. The LECs shall file simultaneous tariff reductions for all services to which they intend to apply the new 6.5% sales tax.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of December 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

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	)	ORDER PROPOSING AMENDMENTS TO
a Bond--Rulemaking Proceeding	)	RULES R7-37 AND R10-24

BY THE COMMISSION: On September 2, 1987, the Commission issued an Order promulgating Rules R7-37 and R10-24 relating to bonds of water and sewer companies required by G.S. 62-110.3. Paragraph (e) of these rules provides that acceptable securities are as follows:

(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.

The Public Staff and the Attorney General have taken the position that the security required under these rules should be in the form of a certificate of deposit or other equally liquid security. If a utility proposes to post a non-liquid security under subparagarph (4) above, the Public Staff and the Attorney General further recommend that a hearing should be held to determine if the form of the proposed security under subparagraph (4) serves the public interest and if the amount of the bond should be higher due to its lack of liquidity.

Upon consideration of the position of the Public Staff and the Attorney General, the Commission is of the opinion that it should propose the amendment to paragraph (e)(4) of its Rules R7-37 and R10-24 as hereinafter set forth below. The proposed amendment to these rules will become effective if within 30 days after the issuance of this Order no comments opposing the amendment are filed with the Commission. In the event that comments opposing the amendment are filed with the Commission, the Commission will consider the written comments and issue a further order thereon.

The Commission is further of the opinion that paragraph (e)(3) of the Rules should also be amended to permit as acceptable securities certificates of deposit drawn on and accepted by savings and loan associations incorporated in North Carolina.

IT IS, THEREFORE, ORDERED as follows:

1. That subparagraph (3) of paragraph (e) of Rules R7-37 and R10-24 be rewritten to read as follows:

"(3) Certificates of deposit drawn on and accepted by commercial banks and savings and loan associations incorporated in the State of North Carolna."

2. That subparagraph (4) of paragraph (e) of Rules R7-37 and R10-24 be rewritten to read as follows:

> "(4) Such other evidence of financial responsibility deemed acceptable to the Commission. If the utility proposes to post evidence of financial responsibility other than that permitted in (1), (2), and (3) above, a hearing will be held to determine if the form of the proposed security serves the public interest and if the amount of the bond proposed by the utility should be higher due to its lack of liquidity. At this hearing the burden of proof will be on the utility to show that the proposed security under subparagraph (4) and the proposed amount of the bond will be in the public interest."

2. That the proposed amendments to paragraph (e)(3) and (4) of Rules R7-37 and R10-24, as set forth above, shall become effective on and after 30 days after the issuance of this Order unless the Commission receives written comments within 30 days after the issuance of this Order opposing the amendments thereto. In the event that written comments are filed with the Commission opposing the amendments, the Commission will consider the written comments and issue further order in this docket. Written comments with respect to the proposed amendments set forth above should be sent to the following address:

Chief Clerk
North Carolina Utilities Commission
Post Office Box 29510
Raleigh, North Carolina 27626-0510

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of March 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

NOTICE TO WATER AND SEWER COMPANIES
REGULATED BY THE NORTH CAROLINA UTILITIES COMMISSION

INFORMATION ON THE WATER AND SEWER BOND REQUIREMENT

The Commission has received many inquires concerning the implementation of the new bond requirement for water and sewer companies which was established by the General Assembly in 1987. This bond requirement is applicable to all applications for franchises filed with the Commission on and after October 1, 1987. At the time it approves a new franchise, the Commission will require a bond in an amount not less than $10,000 nor more than $200,000.

In response to inquiries received by the Commission, the following questions and answers have been developed for your information:

1) Q. What franchises and transfer of franchises will be subject to the bond requirement?

A. The bond requirement applies only to applications for franchises filed on and after October 1, 1987. Once a franchise becomes subject to the bond requirement, the bond requirement will continue to attach to transfers of that franchise. If an application for a franchise was filed before October 1, 1987, no bond is required, and the franchise may be transferred without requirement of a bond.

2) Q. Pursuant to statute the Commission will require a bond in an amount not less than $10,000 nor more than $200,000. Will there be a specific rule of thumb used by the Commission in making its decision as to the bond amount required?

A. The Public Staff has recommended that the following formula be used as a general guideline in determining the bond amount:

B = ($200 x P) - ($25 x E)

Where B = bond amount

P = proposed number of customers to be served in the newly applied-for service area

E = existing number of customers already served in previously approved service area(s).

For example, if the Applicant were applying for a new franchise to serve 60 new customers and already has certificated franchises serving 80 customers, the bond amount would be $10,000 calculated as follows: ($200 x 60) - ($25 x 80) = $10,000. Of course the use of this formula may be limited, since the bond amount must be not less than $10,000 nor more than $200,000. In recommending this formula, the Public Staff stated that, depending on each company's specific circumstances, it may recommend more or less than produced by the formula.

In making the determination of the bond amount required, the Commission will examine all the evidence on a case-by-case basis and may then require the amount produced by use of the Public Staff formula or some other amount based on the specific circumstances of each case.

3) Q. What is an acceptable security for the bond?

A. The Commission Rules R7-37(e) and R10-24(e) presently provide that 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.

In response to positions taken by the Public Staff and the Attorney General, the Commission has issued an Order proposing to amend number (4) to read as follows:

"(4) Such other evidence of financial responsibility deemed acceptable to the Commission. If the utility proposes to post evidence of financial responsibility other than that permitted in

(1), (2), and (3) above, a hearing will be held to determine if the form of the proposed security serves the public interest and if the amount of the bond proposed by the utility should be higher due to its lack of liquidity. At this hearing the burden of proof will be on the utility to show that the proposed security under subparagraph (4) and the proposed amount of the bond will be in the public interest."

This amendment will become effective within 30 days after the date of this Notice unless written opposition to the proposed amendment is filed with the Commission. A copy of the Commission's Order proposing the amendment to (4) is included in this mailing to you.

The Commission has also proposed an amendment to number (3) to allow certificates of deposit drawn on savings and loan associations.

4) Q. How may a certificate of deposit be posted as security?
A. The deposit may be a certificate of deposit with any bank or savings and loan association.

United Carolina Bank (UCB) is the custodian for the Utilities Commission.

All instruments, whether or not it is a certificate of deposit, will be held by United Carolina Bank as the custodial agent of the Commission. Unless the security is a certificate of deposit with UCB, the minimum annual handling fee will be $115 to be paid by the utility company. The name, address and telephone number of the person to contact at UCB is as follows:

United Carolina Bank Trust Group
ATTENTION: Ginger Carter Floars
3605 Glenwood Avenue
Raleigh, North Carolina 27612
Telphone: (919)782-7100 ext. 270

A certificate of deposit should be registered as follows:

"UCB as Custodian for the N.C. Department of Commerce FBO (Name of water or sewer utility company)"

The tax identification number to be assigned to this instrument will be as follows: 56-6068972. You should instruct your bank or savings and loan that all interest payments must be paid by check to United Carolina Bank, Attn: Debbie Stephens, P. O. Box 632, Whiteville, North Carolina 28472. The certificates are normally set up to pay interest either quarterly, semi-annually or annually. UCB will send interest checks to the water or sewer utility company on the 10th and 25th of each month. UCB must collect all interest earned on securities for Form 1099 reporting responsibilities to the IRS.

United Carolina Bank will charge the utility's account for custodial services rendered semi-annually each April and October. The fee structure is as follows:

Annual Base Fee Per Account (The annual base fee will be payable semi-annually)	$100.00
Annual Charge Per Company Per Issue Held (This fee will be paid semi-annually)	$ 15.00
Activity Fee Charge Per Security Transaction e.g., (delivery, receipt, sale or maturity)	$ 20.00
Charge For Each Check Written	$ 2.00

If all of the issues (or securities) held in the account are deposits with United Carolina Bank, the annual base fee will be $50.00 per year payable semi-annually.

One calendar annual statement will be mailed to each company at no additional charge.

If you have further questions concerning this Notice and the new bond requirements, you may also write or call the Public Staff and the Utilities Commission as follows:

Public Staff-North Carolina Utilities Commission
Attn: Jerry Tweed, Director, Water and Sewer Division
Post Office Box 29520
Raleigh, North Carolina 27626-0520
Phone: (919) 733-5610

North Carolina Utilities Commission
Attn: Wilson B. Partin, Jr., Deputy General Counsel
Post Office Box 29510
Raleigh, North Carolina 27626-0510
Phone: (919) 733-3969

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of March 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-100, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Revision on Certain Rules in Chapter 7 and Chapter 10 of the Rules and Regulations of the North Carolina Utilities Commission	)))	ORDER PROMULGATING RULE R7-4(d) AND REVISING RULES R7-20(f) AND (g) AND R10-12

BY THE COMMISSION: This matter was initiated by a letter from the Carolina Chapter of the National Association of Water Companies (CCNAWC) requesting the Commission to amend Rules R7-20(f) and (g) and to adopt rules pertaining to returned check charges and fees for second notices or cut-off notices.

On October 13, 1987, the Commission issued its Order Instituting Rulemaking Proceeding in this docket. The Commission served this Order on all water and sewer companies regulated by the Commission. These companies were requested to file comments on the proposed rules revisions or additions shown in the Order by December 4, 1987.

Comments were received from the Public Staff and two water companies. The Public Staff supported all the proposed rule changes and/or additions except proposed rules addition R7-4(e), which pertained to a fee for second notice or cut-off notice. The response from the two companies was in support of all the proposed rule changes or additions. Upon consideration of the letter filed by CCNAWC, the comments filed by the Public Staff and the water companies, and the entire record in this proceeding, the Commission concludes that Rules R7-20(f), R7-20(g), and R10-12 should be revised, that Rule R7-4(d) should be added to the present rules, and that the proposed rule R7-4(e) should be denied, as hereinafter set forth.

IT IS, THEREFORE, ORDERED as follows:

1. That Rules R7-20(f), R7-20(g), and R10-12 of the Commission Rules and Regulations are hereby revised as set forth in Appendix A, attached hereto, and are hereby, as revised, incorporated into said rules and regulations.

2. That Rule R7-4(d), as shown on the attached Appendix A, is hereby added to the Rules and Regulations of the North Carolina Utilities Commission.

3. That the rule pertaining to a fee for sending second notice or cut-off notice (proposed rule R7-4(e)) is hereby denied.

4. That the rules promulgated by this Order shall be made a part of the Rules and Regulations of the North Carolina Utilities Commission and shall become effective on and after the date of this Order.

5. That a copy of this Order and Appendix A be served upon all water and sewer companies regulated by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of April 1988.

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

APPENDIX A

DOCKET NO. W-100, SUB 6
ADDITIONS AND REVISIONS TO WATER AND SEWER RULES
ADDITION TO RULE R7-4

Rule R7-4. Approval of Rate Schedules, Rules and Regulations.
(d) Charge for Returned Checks - Each water utility shall file tariffs with the Commission to impose charges in an amount to be approved by the Commission for checks tendered on a customer's account and returned for insufficient funds. This charge shall apply regardless of when the check is tendered.

REVISION OF RULE R7-20(f) and (g)

Rule R7-20. Utility's Discontinuance of Service.
(f) Reconnection Charge - Whenever the supply of water is turned off for the violation of rules and regulations, nonpayment of bill, or fraudulent use of water, the utility may make a reconnection charge, approved by the Commission, payable in advance, for restoring the service. The fee shall be no more than fifteen dollars ($15.00); except, if the utility proves that its actual and reasonable cost for restoring the service is greater than fifteen dollars ($15.00), the fee may be set at no more than the proven cost.

(g) When Water Turned Off at Customer's Request - When for any valid reason the supply of water has been turned off at the customer's request, the utility shall charge for restoring service the fee approved by the Commission. The fee shall be no more than fifteen dollars ($15.00); except, if the utility proves that its actual and reasonable cost for restoring the service is greater than fifteen dollars ($15.00), the fee may be set at no more than the proven cost.

REVISION OF RULE R10-12

Rule R10-12 Extension of Mains.
(a) General Provisions

(1) A bona fide customer as referred to in subsections (b) and (c) hereinafter shall be a customer of permanent and established character, exclusive of the real estate developer or builder, who receives sewer service at a premises improved with structures of a permanent nature.

(2) Any facilities installed hereunder shall be the sole property of the utility.

(3) The size, type, quality of materials, and their location will be specified by the utility, and the actual construction will be done by the utility or by a constructing agency acceptable to it.

(4) Adjustment of any difference between the estimated cost and the reasonable actual cost of any collection system extension made hereunder will be made within 60 days after the actual cost of the installation has been ascertained by the utility.

(5) In case of disagreement or dispute regarding the application of any provision of this rule, or in circumstances where the application of this rule appears impracticable or unjust to either party, the utility, application or applicants may refer the matter to the Utilities Commission for settlement.

(6) Extensions for temporary service will not be made under this rule.

(b) Extensions to Service Individuals

(1) The utility will extend its sewer collection system to serve new bona fide customers at its own expense, other than to serve subdivisions, tracts, housing projects, industrial or residential developments, or organized service districts, when the required total length of the sewer collection system extension from the nearest existing sewer collection system is not in excess of 100 feet per service connection. If the total length of the sewer collection system extension is in excess of 100 feet per service connection applied for, the applicant or applicants for such service shall be required to advance to the utility before construction is commenced that portion of the reasonable estimated cost of such extension over and above the estimated reasonable cost of 100 feet of the sewer collection system extension per service connection, exclusive of the cost of service connections and exclusive of any costs of increasing the size or capacity of the utility's existing facilities used or necessary for supplying the proposed extension. The money so advanced will be refunded by the utility without interest in payments equal to the reasonable actual cost of 100 feet of the sewer collection system extension, for which advance was made for each additional service connection, exclusive of that of any customer formerly served at the same location. Refunds will be made within 180 days after the date of first service to a bona fide customer. No refunds will be made after a period of 5 years from the date of completion of the sewer collection system extension, and the total refund shall not exceed the amount advanced.

(2) Where a group of five or more individual applicants request service from the same extension, or in unusual cases after obtaining Commission approval, the utility at its option may require that the individual or individuals advance the entire cost for the sewer collection system extension as herein provided and the utility will refund this advance as provided in subsection (c) (2) of this rule.

(3) In addition to refunds made on the basis of service connections attached directly to the extension for which the cost was advanced as provided in subdivision (1) of this subsection, refunds also will be made to the party or parties making the advances in those cases where

additional bona fide customers are serviced by a subsequent sewer collection system extension, supplied from the original extension upon which an advance is still refundable, whenever the length of such further extension is less than 100 feet per service connection. Such additional refunds will equal the difference between the 100-foot allowance per service connection and the length of each required subsequent extension multiplied by the average cost per foot of the extension used as the basis for determining the amount advanced. In those cases where subsequent customers are served through a series of such sewer collection system extensions, refunds will be made to the party or parties making the advances in chronological order beginning with the first of the extensions in the series from the original point of supply, until the amount advanced by any party is fully repaid within the period of 5 years as specified above. In those cases where two or more customers have made a joint advance on the same extension, refunds will be made in the same proportion that each advance bears to the total of said joint advance. Where the utility installs a sewer collection system larger than that for which the cost was advanced to serve an individual or individuals, and a subsequent extension is supplied from such sewer collections systems, the original individual or individuals will not be entitled to refunds which might otherwise accrue from subsequent extensions.

(c) Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial or Residential Developments or Organized Service Districts

(1) An applicant for a sewer collection system extension to serve a new subdivision, tract, housing project, industrial, or residential development, or organized service district shall be required to advance to the utility before construction is commenced the estimated reasonable cost of installation of such facilities, including the estimated reasonable cost associated with the installation of any reasonable and prudent amount of excess capacity, if any, upon approval by the Commission. If additional facilities are required specifically to provide service exclusively for the service requested, the cost of such facilities may be included in the advance upon approval by the Commission.

(2) The funds so advanced will be subject to refund by the utility without interest to the party or parties entitled thereto. The total amount so refunded shall not exceed the amount advanced. Refunds will be made under the following method:

<u>Proportionate Cost Method:</u>
For each service connection directly connected to the extension, exclusive of that of any customer formerly served at the same location, the utility will refund within 180 days after the date of first service to a bona fide customer that portion of the total amount of the advance which is determined from the ratio of the allocated capacity of the sewer facilities acquired to the total allocated capacity of the sewer facilities for which the cost was advanced. No refunds will be made after a period of 5 years from the date of completion of the main extension.

DOCKET NO. E-2, Sub 539

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition by Fries Textile Company to Enforce PURPA Contract Rights with Reference to Carolina Power & Light Company	) FINAL ORDER) OVERRULING) EXCEPTIONS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 15, 1988, at 2:00 p.m.

BEFORE: Chairman Robert O. Wells, Presiding; Commissioners Robert K. Koger, Sarah Lindsay Tate, Edward B. Hipp, Ruth E. Cook, J. A. "Chip" Wright, William W. Redman, Jr.

APPEARANCES:

For the Complainant:

Jerry B. Fruitt, 1042 Washington Street, Post Office Box 12547, Raleigh, North Carolina 27605
For: Fries Textile Company

For the Respondent:

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

BY THE COMMISSION: On September 29, 1987, Fries Textile Company (Fries or Complainant) filed a complaint with the Commission asking the Commission to require Carolina Power & Light Company (CP&L to purchase power from the Complainant under Rate Schedule CSP-9A and further asking the Commission to waive the renewability requirement as to the contract between CP&L and the Complainant. On October 7, 1987, the Commission issued an Order serving the complaint on CP&L. On October 22, 1987, CP&L filed its Answer asserting the Rate Schedule CSP-10 is now the appropriate rate for a contract with Fries and that CP&L has maintained that Fries must agree to the standard renewability clause. On October 22, 1987, Fries filed a letter with the Commission stating that the Answer was not satisfactory and that a hearing was requested. The Commission scheduled a hearing on the complaint for November 24, 1987.

The complaint was heard as scheduled before Hearing Examiner Wilson B. Partin, Jr. The Complainant offered the testimony of its President, Ralph Walker, Jr.; CP&L offered the testimony of Project Engineer Norman Lynn Pendleton.

The Hearing Examiner issued a Recommended Order Denying Complaint on January 29, 1988. By the Recommended Order, the Hearing Examiner made findings of fact and concluded and ordered that the appropriate rate schedule for the contract between CP&L and Fries is Rate Schedule CSP-10 and that Fries must be

able to meet the renewability requirement should it elect to enter into a contract with CP&L.

On February 9, 1988, the Complainant filed Exceptions to the Recommended Order. By an accompanying Motion, the Complainant requested an expedited oral argument on the exceptions. The Commission issued an Order on February 11, 1988, scheduling oral argument for the time and place indicated above. The hearing was held as scheduled. Counsel for the Complainant and CP&L respectively presented oral argument to the Commission on the exceptions filed by the Complainant.

On the basis of the oral argument and an examination of the entire record in this proceeding, the Commission finds and concludes that the Exceptions filed by the Complainant on February 9, 1988, should be denied and that the Recommended Order Denying Complaint issued by the Hearing Examiner on January 29, 1988, should be affirmed and adopted as the Final Order of the Commission for the reasons set forth therein.

IT IS, THEREFORE, ORDERED that the Exceptions filed by the Complainant on February 9, 1988, should be, and the same hereby are, denied and that the Recommended Order Denying Complaint issued on January 29, 1988, should be, and the same hereby is, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of February 1987.

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

Commissioner Robert K. Koger concurs.
Commissioner Edward B. Hipp dissents.
Commissioner Ruth E. Cook joins in Commissioner Hipp's dissent.

COMMISSIONER ROBERT K. KOGER, CONCURRING:

I concur in the decision of the majority to affirm and adopt the Recommended Order Denying Complaint issued by the Hearing Examiner. The Hearing Examiner concluded that Fries is entitled to sign a contract at the current Rate Schedule CSP-10, but not at the old Rate Schedule CSP-9, and that Fries must meet the same renewability requirement as other cogenerators and small power producers who elect long-term, levelized rates. I agree with those conclusions and with the reasoning and principles by which the Hearing Examiner reached those conclusions.

This is not a certification proceeding. Since the Fries project is located in Virginia, this Commission has no authority to certify it. State ex rel. Utilities Commission v. Eddleman, 320 NC 344,, 360-62 (1987). This is a complaint proceeding in which Fries seeks to require CP&L to contract with Fries on terms not now available to other cogenerators and small power producers. By denying this complaint, the Commission is not shutting the door on a contract with Fries. I hope that some agreement can be reached whereby this project can go forward and North Carolina can benefit from it. But I do not want to see a contract at the expense of North Carolina ratepayers. By denying this complaint, the Commission is only denying preferential contract

terms for the Fries project. The dissent suggests that regardless of our prior orders and practices, we should relax our usual requirements in this case in the interest of gaining the five megawatts of power that Fries wishes to sell to CP&L. I cannot agree.

To begin with, I want to emphasize my commitment to cogeneration and small power production and my pride in this Commission's accomplishments in this area. In our first PURPA proceeding in 1980-81, which I had the privilege of chairing, the Commission found "merit in offering qualifying facilities a choice between firm, long-term contracts and adjustable annual contracts, as long as the energy and capacity credits properly reflect the value of such production over the time period(s)." The Commission ordered our electric utilities to develop long-term levelized avoided cost rates in order to give cogenerators and small power producers the financial advantages inherent in such rates. The Commission made long-term levelized rates available to all. When, in the 1984 PURPA proceeding, the Commission limited the availability of long-term levelized rates for non-hydro projects, we continued the availability of these rates for all hydro projects.

CP&L also has an excellent record of dealings with cogenerators and small power producers. CP&L filed a status report with the Commission in Docket No. E-100, Sub 53, on October 27, 1986, showing that 24 separate cogenerators and small power producers were producing power for CP&L's system as of that date at a total contract capacity of over 153 megawatts. Since that time, CP&L has filed reports in Docket No. E-100, Sub 41, showing that additional contract capacity of 178 megawatts from cogenerators and small power producers has come on line from October 1986 through 1987.

Turning to the case at hand, it cannot seriously be argued that CP&L will fail to meet its projected need for new capacity unless it gets this five megawatts from Fries. CP&L's latest 10-year forecast of its load and generating capability, filed March 30, 1987, in Docket No. E-100, Sub 14, shows projections for additional cogeneration capacity (which includes hydro capacity such as that offered by Fries) as follows:

1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
46	160	10	10	-					

These cogeneration capacity needs are expected to be realized (and, in fact, likely to be exceeded) in that most of the projected needs are to be met by known projects. For example, about 150 of the 160 megawatts needed in 1988 represent cogeneration facilities of Cogentrix which have already come on line. In regard to the remaining projected needs, CP&L's most current status report on its cogeneration and small power production activities, filed January 29, 1988, in Docket No. E-100, Sub 41, lists eight new cogeneration and small power production projects that have signed a contract with CP&L but have not yet begun producing power. These eight projects represent a total capacity of approximately 108-111.5 megawatts. The same report lists eight cogeneration and small power production projects, representing a total capacity of approximately 122 megawatts, with which CP&L is continuing its discussions and which may be developed. Thus, it is clear that even if not all of these projects are in fact developed, CP&L has ample resources from which to meet its projected needs for additional cogeneration capacity over the next ten years. It is true that CP&L projects additional capacity from sources other than

cogeneration. For example, it projects purchases of 100 megawatts in 1991 and 400 megawatts in 1992. As to the projected need for 100 megawatts in 1991, suffice it to say that numerous options (including purchases from other utilities and displacement) are available. The 400-megawatt purchase represents a known purchase power contract with Duke Power Company for the period January 1992 through December 1997. This power will be purchased at a price projected to average 6¢/kWh in 1992-97 dollars. Fries requests a contract at the 10-year levelized rate under Rate Schedule CSP-9, which I estimate would average 5.6¢/kWh in current dollars. Thus, the Duke purchase compares quite favorably with a purchase under a contract as requested by Fries.

Finally, I cannot share the dissent's confidence that Fries' wheeling agreement with Appalachian Power (which is essential to the sale of power to CP&L) will be renewed at the end of its 12-year term. The dissent feels that the risk of non-renewability is insubstantial in light of the national policy on wheeling now being developed. The national policy on wheeling 12 years from today is unknown. Whether Appalachian Power will renew its wheeling agreement with Fries is also unknown. What is known is that Appalachian Power has agreed to wheel for only 12 years. Thus, while we are looking at CP&L's need for additional capacity in the future, we should consider the possibility that Fries' five megawatts of capacity may have to be added back into CP&L's additional capacity needs in the year 2000 when the current wheeling contract ends.

The need for stable, dependable capacity in the long run (for a time period comparable to the life of a generating unit that the utility can avoid by purchasing cogenerated power) was the reason behind this Commission's requirement that cogenerators and small power producers who choose the advantages of long-term levelized rates give the assurance of a renewability clause. I see no reason to waive that requirement, which we uniformly require of other cogenerators and small power producers. Nor do I see any reason to allow Fries to sign a contract at a rate that is no longer in effect. CSP-9 is not today's avoided cost rate. If the Commission approves a contract at that rate, the difference in cost will come out of the pockets of North Carolina ratepayers.

It should be reiterated that Fries and CP&L are free to enter into a shorter-term contract or to negotiate for a rate outside the tariff rates if circumstances dictate. Given that Fries can guarantee a renewal period of 7 years beyond a 5-year contract term, it may be reasonable for CP&L to offer a rate to Fries in excess of the 5-year levelized tariff rate. I hope that the parties will pursue these options, and I hope that some negotiated agreement, based on the unique facts of this case, can be reached whereby this project can go forward and North Carolina ratepayers can share in its benefits.

Robert K. Koger

HIPP, COMMISSIONER, DISSENTING. I dissent from the majority Order because (1) it falls far short of observing the purposes of the Public Utility Regulatory Policies Act (PURPA), the North Carolina statute adopting PURPA, and the Commission's own policy adopting PURPA regulations for cogeneration and small power production; (2) it ignores the provisions of the Commission's load forecast Order of August 18, 1986, calling on Carolina Power & Light Company (CP&L) to acquire the equivalent of 720 MW of generation from cogeneration or

purchased power by 1991 in lieu of the high cost Mayo 2 scrubber requirements; and (3) it deprives the customers of CP&L of the lowest cost new long term generation available.

The majority Order denies approval of the Fries hydro generation application on the extremely technical and unmeritorious grounds that Fries had only an application to sell power under the CP&L tariff CSP 9A and no signed contract with CP&L, and that the wheeling needed from Appalachian Power was not assured beyond 12 years and the option to renew was therefore not acceptable. In my view, these grounds are not substantial in light of the public policy involved, and should be waived by the Commission, and the Fries hydro power should be welcomed as an addition to CP&L's generation capacity for the following reasons.

First, the national PURPA policy as adopted by the North Carolina Legislature and the North Carolina Utilities Commission is designed to promote small power production and to utilize alternate means of generation. It applies especially to renewable energy sources such as the hydro power offered by Fries. The goal is to spare the nation's resources, as well as the power companies and their customers, from building large expensive central station generators with the accompanying air pollution and water pollution associated with coal fired steam plants. The Fries hydro project of 5 megawatts is the largest hydro project offered to North Carolina since the advent of the PURPA program in 1978. The owner has expended $3,900,000 in purchasing and upgrading the hydro generation in reliance upon the CP&L tariffs approved and ordered by the Utilities Commission. Fries stands ready to sign the option to renew as provided in the most recent Orders for purchase of small power production. The defect alleged by the majority Order is that Fries depends upon wheeling the power for X miles over Appalachian Power, and that Appalachian Power will not contract for wheeling beyond 12 years.

The Commission provision for the the option to renew contains the specific and definite condition that the option to renew is subject to arbitration if the parties cannot agree upon its terms, 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(27)a) ... 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 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 avoided cost rate and other relevant factors or (2) set by arbitration...

The Commission, by providing for arbitration recognized that an option to renew a 10 or 15-year contract would certainly be faced with situations which might have to be settled outside of the agreement of the contracting parties, i.e., by arbitration. The National Electric Policy is rapidly moving toward a

wheeling system of which this Commission should take notice to recognize that any chance that Fries could not get this power wheeled to CP&L after the first 12 years agreed upon is so remote as to be insufficient grounds to deny this application. Further, as noted above, provision for an option to renew is expressed as "the standard levelized rate options... should include a condition making contracts at those options renewable for subsequent term(s)...". The Commission's use of the verb "should" is consistent with the dictionary definition "should... 6/ used in auxilliary function to express a desire or request in a polite or unemphatic manner or to tone down a direct or blunt statement." [O'Henry - should you wish to look at it.] Also, "should... (d) futurity in polite or unemphatic requests or in statements with implications of uncertainty or doubt ..." Webster's New World Dictionary, Second College Edition. If the Commission had intended an absolute mandatory requirement for an option it would normally have said that the "levelized rate option... shall include a condition making contracts at those options renewable."

The majority Order and the Recommended Order which it adopts makes the point that the application of Fries to CP&L was not signed prior to April 7, 1987, when the Commission reduced the avoidable rates in CSP 10. Fries requested that the certificate grant the CSP 9A rates in effect in June 1986, based upon its application and correspondence from CP&L which indicated that even though CP&L had filed for reduced rates under CSP 10 that the pending application of Fries was still being negotiated at the CSP 9A rates. The project is feasible under the CSP 9A rates and is not feasible under the CSP 10 rates. CP&L stated that it did not contest any of Fries statement of facts, which included that Fries had purchased and renovated the generation in reliance upon the CSP 9A rates, and that its correspondence to Fries, even after CSP 10 had been filed, indicated that the Fries agreement was still being negotiated in terms of the CSP 9A rates.

Simple fairness in dealings by a public utility in carrying out Commission Orders should enable parties to rely upon communications prescribing tariff conditions, and expenses undertaken thereon. This is not an ordinary contract between a buyer and a seller dealing at arm's length - it is instead a small power producer who has applied to furnish power under a CP&L tariff as ordered by the Utilities Commission. The tariff is the offer to buy which CP&L is obligated to honor under its franchise. The application to provide the small hydro production to CP&L is the acceptance of the tariff and its conditions. The blanks in the application are simply for CP&L to fill in its calculations of the rates. Fries will sustain irreparable damage from its expenditure of $3,900,000 made in reliance upon its application under the CP&L tariff and CP&L's correspondence requiring that Fries acquire title to the property. The agreement is a formality of the terms of the tariff. To deny the application after the plant is constructed in reliance on a tariff on the grounds that it was not signed while CSP 9A was the approved rate and that the wheeling option is inexact, is to render substantial injustice and harm to Fries without good cause and on irrelevant, immaterial, and technical grounds.

This case is much more about public utility law than it is contract law. Yet the majority decision treats it as if it were purely a matter of contract law between Fries and CP&L. It does not give appropriate weight to the Commission's primary function as a utility regulatory tribunal to protect the public interest.

CP&L cannot buy the energy involved here at prices and on terms of its own choosing. It has to pay prices fixed by the Commission and settle on terms prescribed by the Commission. The terms are basically determined in this case as matters of public policy, to encourage small power production and cogeneration for the public good of this nation's and this state's energy policy. This policy points to one decision -approve the purchase of the Fries power by CP&L. There is no sound or substantial reason to deny the application for securing this hydro power. The reasons given by the majority to deny the application, i.e., (1) the undecided status of Appalachian wheeling after the year 2000, and (2) the signatures that were still not affixed on CSP 9A on April 30, 1987, do not contravene the public policy of providing small power production, and are actually not essential to the real issue in this case, and they should be waived.

Second, the majority Order violates the Commission's own Order in its Load Forecast Docket E-100, Sub 50, of August 18, 1986. CP&L Table 1 attached to the 1986 Order shows 720 megawatts of power needed in 1991 from Mayo 2. The Commission finds this source to be unreasonably expensive and approves a plan to replace that capacity with cogeneration or purchased power, as follows:

> "Witness Montague testified that the Company, in anticipation that scrubbers might be necessary for Mayo Unit No. 2, had been investigating various options for providing replacement capacity at a cost lower than Mayo Unit No. 2 with scrubbers. He discussed in some detail the extent to which CP&L is involved in negotiations with other utilities for purchase options and in negotiations with cogenerators. Witness Montague stated the extent that CP&L's strategy is to minimize capital investment in the near term by considering the purchase of power from other utilities and cogenerators. ..."

With 1991 less than three years away, Mayo 2 has now been cancelled and the 1991 power need reduced to 100 MW needed by 1991, and 400 MW needed in 1992. Commission's 1987 load forecast letter to the Governor of June 16, 1987. The new Fries small power production is the most suit-able replacement power that can be obtained. The additional 400 MW of the 720 MW planned from Mayo 2 is being replaced by a 400 MW purchase from Duke Power Company for 5 years from 1992 to 1997, at 6¢ a KWH. Under the CSP 9A sought by Fries, CP&L would pay only 5.6¢ KWH on a 10-year contract, and under CSP 10 demanded by CP&L it would pay only 3.5¢ KWH, far below the 6¢ KWH CP&L is paying Duke, and under the Fries application, CP&L would have an option up to 24 years, without the fuel escalation it would face in such a long term fossil steam contract.

The Fries generation, combined with purchased power and other cogeneration, is the ideal way to replace a material part of this remaining 100 MW 1991 shortage, as found by the Commission in the 1986 Order and the 1987 letter update. The provisions of the Load Forecast Order itself should mandate the waiver of any technical defects in the Fries application and approve the Fries certificate so that this 5 megawatts will be available for the 12 assured years offered, i.e., through the year 2000 and for the additional 12 years available under the Fries option to renew, subject only to the contingency of a third party wheeling agreement which the Commission could duly notice is not a substantial risk under the national wheeling policy being developed by the Federal Energy Regulatory Commission.

Third, the majority Order deprives the customers of CP&L of the low cost hydro power of the Fries small hydro plant. The plant was acquired, at the insistence of CP&L that Fries have title to the plant, at a total renovated cost of $750.00 per killowatt. This is substantially below any known source of generation available to CP&L as long term firm generation over the period from 1988 to 2000 (firm delivery) and with option to renew through 2018 as firm generation subject only to the national wheeling policy. This is cheaper than costs of approximately $1270 a killowatt for coal generation at Mayo 2 or the $4,500 a killowatt for nuclear generation recently completed by CP&L, not counting the fuel cost savings from the Fries hydro generation or the fuel escalation over the 24 years of the tender with the option to renew. In addition, the hydro power would have no damage to the environment, being an existing hydro plant.

It is understandable that the Hearing Examiner did not assume to have the authority which the Commission has to waive the technical defects in the contract negotiations which he considered disqualified the Fries application. The Commission, as the policymaking tribunal, has such authority to waive its own technical requirements to achieve its vastly more important policy goals of securing low cost small hydro power for CP&L's 1991 generation needs.

This Commission has instituted a Least Cost Generation Docket for the express purpose of seeking improvements in its policies and procedures for securing small power production, cogeneration, and conservation and other alternatives to large expensive main station power plants. It seems wholly inconsistent with the Commission's posture of seeking least cost generation to turn down the first almost perfect tender of small power hydro generation on the insubstantial grounds expressed by the majority in denying the Fries application.

CP&L sold 16% of its generating capacity to North Carolina Municipal Power Agency No. 3 as approved in Docket E-2, Sub 44, on November 12, 1981. Much of this power went to municipalities which had not previously been in CP&L's service territory. It has increased measurably the need for additional generation by CP&L.

In the sale of cogeneration power by Cogentrix to CP&L, the Commission modified its Order allowing CSP 7 to go into effect so that Cogentrix could be given the benefit of the prior CSP 6 avoided cost rates in effect when it was negotiating its sale to CP&L, although there was no final contract, on the grounds there was a letter of intent from CP&L to Cogentrix. The Commission's action was based upon the need for essential fairness in dealings to acquire cogeneration power. Docket No. E-100, Sub 41A, Jan. 22, 1985, Avoided Rates for Qualifying Facilities, pp. 4,5. The same fairness required in reliance upon the CP&L tariffs should be extended to the Fries application. Reliance on CP&L tariffs and the Commission's overview of their administration is placed in substantial doubt when Fries has expended $3,900,000 in reliance upon the tariff with knowledge of the parties, and is now denied an application on such technical grounds and such insubstantial reasons. It would be far better to say to these parties and to the public generally that the Commission believes in small power production and will administer its rules and regulations in a manner which will welcome a small power producer who has built a plant in reliance upon the Commission's Order and the tariffs filed by CP&L pursuant to those Orders.

Harsh and rigid enforcement of laws forced England to adopt a system of Equity Courts to obtain essential justice. The same sense of fairness caused the founding leaders of North Carolina to abolish the distinctions between law and equity courts and to make both law and equity available in the same tribunal, to the end that equity and justice should prevail for all in this state. N.C. Const., Art. IV, Sec. 3, Sec. 13; G.S. 62-60, G.S. 62-65.

Looking at the equities in this case, there is everything to gain and nothing to lose by approving the certificate to Fries, and conversely, there is much to lose and nothing to gain by the majority Order denying the application. CP&L consumers, the public interest in least cost energy and small hydro production, and Fries all lose under the majority Order - the consumers because they are denied low cost hydro power, Fries because it has spent $3,900,000 in reliance on Commission Orders and CP&L tariffs. CP&L would not lose anything if the Fries application is approved. The only reason for CP&L to resist the application is to be sure they do not violate any Commission rules and wind up with the purchase power expense disallowed. The Commission can settle that by approving the application and the CSP 9A contract rate, with the renewal and the wheeling approved as tendered. There is everything to gain and nothing to lose by such approval.

So the Commission has a strong opportunity to increase the reserves of CP&L to meet its 1991 - 2012 load growth through existing renewable energy capacity at a rate which is extremely reasonable over the time span proposed, and without any fuel cost to escalate. It can at the same time advance its stand for least cost power generation and demonstrate that it supports all reasonable efforts to obtain clean, renewable sources of alternative energy.

All of this the Commission can do by reconsidering the majority Order and approving the Fries application and no one will suffer to complain, but all will take heart and rejoice at the capacity to re-consider, when time allows, as it still does here.

Edward B. Hipp, Commissioner

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	)	ORDER REQUIRING FURTHER INVESTIGATION INTO ALTERNATIVE ROUTES
v.	)	
Duke Power Company,	)	
Respondent	)	

HEARD: December 14, 1987, Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

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

APPEARANCES:

For the Complainant:

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For the Respondent:

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BY THE COMMISSION: On August 7, 1986, Gynn Valley, Inc., doing business as Camp Gwynn Valley (the "Camp") 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 in 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 in 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.

The matter came on for hearing as scheduled on March 10, 1987, before a Panel of three Commissioners. 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.

On September 29, 1987, the Panel issued Recommended Order Dismissing Complaint, with Commissioner Wright dissenting.

On October 13, 1987, the Commission issued an Order granting extension of time to file exceptions.

On October 26, 1987, the Complainant and the Attorney General each filed exceptions to the Recommended Order and requested oral argument before the full Commission.

On November 10, 1987, the Commission issued an Order scheduling oral argument on exceptions for Monday, December 14, 1987.

On December 10, 1987, Duke Power Company filed a memorandum in support of the Recommended Order Dismissing Complaint.

The exceptions came on for oral argument before the full Commission as scheduled on December 14, 1987. Counsel for the parties were present and presented oral argument.

Based upon the exceptions and the oral argument thereon, the Recommended Order issued September 29, 1987, the testimony and exhibits presented at the hearing on March 10, 1987, and the entire record in this docket, the full Commission makes the following:

FINDINGS OF FACT

1. Complainant Gwynn Valley, Inc., operates a camp for young children near Brevard, North Carolina. The Camp is accredited by the American Camping Association and has been in operation for 46 years.

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 its franchised service 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 south of the Camp 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 the Camp has taken an appeal from the Order of the Clerk awarding compensation.

8. Duke seeks to condemn 3.2 acres of Camp property along the Camp's northern boundary in order to build its 44 kilovolt (44kv) transmission line from Duke's Calvert 100kv transmission line north of the area to a new substation lot named the Rich Mountain Retail Substation. The 44kv line will initially be carried on wooden poles 45 to 50 feet tall.

9. The land sought to be condemned is Camp land immediately adjacent to the Camp's entrance and runs across a hillside, or upland meadow, used by the Camp for creative writing, nature walks, horseback riding, Sunday vespers, sunset viewing, and camp fires.

10. The transmission line will be clearly visible from the entrance road and from the interior of the Camp property where the main camp buildings are located. From the entrance the 68-foot right-of-way cut through the woods at the top of the hill will be clearly visible.

11. If the transmission line is built across the Camp property as presently proposed, the line will significantly impact the activities of the Camp described above, especially Sunday vespers, because the line will run almost directly between the high end of the meadow and the summer setting sun. There is no other place on the Camp property that offers a panoramic view of the setting sun.

12. Camp Gwynn Valley is a camp for young children, some as young as five years of age. A central organizing principle of the camp is to develop and encourage children in environmental awareness, personal creativity, and non-competition.

13. The transmission line as presently sited will have a significant environmental impact on the Camp, which can be only slightly mitigated, if at all, by planting or fencing along the line.

14. In its pre-filed testimony, the Camp proposed six alternative routes for the proposed transmission line. At the hearing the Camp abandoned three of these alternatives, including the alternative of running the line underground. The other three alternatives were the subject of extensive testimony and cross-examination. These alternatives are the "Connestee Road", the "new substation", and the "original substation" alternatives. Each of these alternatives presented advantages and disadvantages with respect to environmental impact, cost, and the ability of Duke to efficiently serve its load. When the environmental impact of the proposed siting of the line across Camp Gwynn Valley is taken into account, these alternatives merit further investigation by Duke and, ultimately, further consideration by the Commission.

15. The abuse of discretion standard is applicable to this proceeding. The Commission must take a "hard look" and determine whether or not Duke acted arbitrarily and unreasonably in locating and siting the proposed transmission line in question, taking into account the environmental consequences of the proposed line and any reasonable alternative routes, the costs associated therewith, and the ability of Duke to efficently serve its load.

16. The Commission does not have sufficient evidence before it on the present record to make the "hard look" determination required by Finding 15 with respect to the alternative routes.

CONCLUSIONS

I.

The Commission concludes that it has jurisdiction to hear and determine this 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 Recommended Order recognized and accepted the ruling in the Kirkman case that the Commission has jurisdiction to hear and determine complaint proceedings brought by landowners against electric utilities with respect to the siting of transmission lines across the property of the landowners. Kirkman v. Duke Power Company, 64 Report of the North Carolina Utilities Commission, Orders and Decision 89 (1974) (Docket No. E-7, Sub 152) (hereinafter the "Kirkman case"). In this case, which involved the construction of a transmission line across the 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. 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 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 presents 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. In neither case had condemnation proceedings been instituted nor had any condemnation decision been reached by the Superior Court. We must decide, therefore, whether or not the Commission should assume jurisdiction where there is already pending the eminent domain proceeding in the Superior Court of Transylvania County.

The Recommended Order concluded as follows: "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." (emphasis original). In its Recommended Order, the Panel majority reviewed the history of Duke's efforts to site the line in question. The Panel majority further noted the pendency of the condemnation action in the Superior Court of Transylvania County with respect to the parties Duke and Camp Gwynn Valley and the property which was the subject matter of the Complaint. The Panel concluded that the Superior Court was the appropriate forum to adjudicate the matters in dispute between the Complainant and Duke. The Recommended Order stated:

> "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.
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> "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."

The full Commission is of the opinion, and so finds and concludes, that the conclusions and decision of the Recommended Order adopting the "flagrant abuse of discretion" standard and deferring jurisdiction to the Superior Court of Transylvania should be vacated and set aside as hereinafter set forth.

The Commission concludes that the scope of its jurisdiction in this matter is broader than that found by the Recommended Order. G.S. 62-2(5) provides that the policy of the State is "[t]o encourage and provide harmony between public utilities, their users and the environment." (Emphasis added). G.S. 62-30 provides that the Commission "shall have and exercise such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties."

Chapter 113(A)-3 of the North Carolina Environmental Policy Act of 1971 declares that "it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all of its citizens, safe, healthful, productive and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance." (Emphasis added).

G.S. 113A-4(1) provides that "the policies, regulations, and public laws of this State shall be interpreted in accordance with the policies set forth" in the Act.

Construed together, these statutes give this Commission jurisidction to hear and determine complaints such as this one, as was clearly recognized by the Commission in the Kirkman case.

In the Kirkman case, the Commission stated:

"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." 64 Orders and Decisions at pp. 94-95.

The Commission is further of the opinion that the standard of review enunciated in the Kirkman case is applicable in this case, that is, whether in siting the transmission line complained of, the utility acted arbitrarily and unreasonably in light of the policies declared in the North Carolina Environmental Policy Act. The "flagrant abuse standard" adopted by the Recommended Order imposes an impossibly high burden of proof for the Complainant; the end result of this standard is that there will simply be no remedy at all for the Camp. The Commission notes that the "arbitrary and capricious" standard is applicable to transmission line locations in eminent domain proceedings. See, e.g., Duke Power Co. v. Ribet, 25 N.C. App. 87 (1975). We reaffirm the standard announced in the Kirkman case.

The Recommended Order compared the respective jurisdictions of this Commission and the Superior Court and properly concluded that since the Court and the Commission can apparently afford different remedies to the parties with respect to the siting of the transmission line, the question of concurrent jurisdiction did not arise. The Recommended Order further concluded, and properly so, that, in the absence of concurrent jurisdiction, the Commission had the discretion to accept or decline jurisdiction of the Camp Gwynn complaint. In deciding to decline jurisdiction, the Recommended Order further concluded that the eminent domain pending in the Transylvania Superior Court provided 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." The Recommended Order noted that the Camp's assertion that the proposed transmission line would destroy the purpose of the Camp could be adequately litigated in the condemnation case, in that the Camp would receive "just compensation" from the Court for such injury.

The Commission is of the opinion, and so concludes, that the Panel majority, in deferring to the jurisdiction of the Superior Court, failed to adequately weigh the mandate imposed upon the Commission by G.S. 62-2(5), the Kirkman case, and the North Carolina Environmental Policy Act.

The Attorney General in its proposed Order contended that the environmental concerns raised as an issue in this case is a matter of this Commission's primary jurisdiction. In United States v. Western Pacific Railroad Co., 352 U.S. 59, 63-64, 77 S.Ct. 161, 165, (1956), the United States Supreme Court made a succinct statement of the essential features of the doctrine of primary jurisdiction:

"The doctrine of primary jurisdiction, like the rule requiring exhaustion of administrative remedies, is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties. 'Exhaustion' applies where a claim is cognizable in the first instance by an

> administrative agency alone; judicial interference is withheld until the administrative process has run its course. 'Primary jurisdiction,' on the other hand, applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views."

In 4 Davis, Administrative Law Treatise § 22:1 (1983), the nature and function of primary jurisdiction are discussed as follows:

> "The doctrine of primary jurisdiction usually does nothing more than allocate power between courts and agencies to make initial determinations. It usually does not allocate power to make final determinations, although occasionally it does. . . . If the question is one of fact or of discretion within the agency's area of specialization, substitution of judicial judgement may be inappropriate, and primary jurisdiction may allocate final power to the agency.
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> "When a court and an agency have concurrent jurisdiction to decide a question, the most common reason for a court to hold that the agency has primary jurisdiction is that the judges, who usually deem themselves to be relatively the generalists, should not act on a question until the administrators, who may be relatively the specialists, have acted on it. Even when administrators lack identifiable expertise, still a court may want them to fit the particular decision into their activity."

The Complainant and the Attorney General have raised the issue of the environmental impact of the proposed transmission line upon the Camp and the purpose for which the Camp is conducted. Both parties argue that the scope of the Commission's powers with respect to electric public utilities and the Environmental Policy Act make the Commission uniquely qualified to deal with the environmental impact of the line upon the Camp. The Commission agrees. In so deciding, the Commission has compared the authority of the Superior Court and the Commission with respect to the environmental issues. The Superior Court of Transylvania County has some power to refuse to condemn the Camp's property. However, it is not at all clear that it would have the power to refuse to condemn the property in this particular case. The governing statute makes only an oblique reference to the Court's power not to condemn. G.S. 40A-28(e) provides what shall happen "if, on appeal, the Judge shall refuse to condemn the property." However, the statute does not say for what reasons the Court may refuse to condemn the property. There are North Carolina cases that state that the "arbitrary and capricious" standard applies to line locations. See, e.g., Duke Power Co. v. Ribet, 25 N.C. App. 87 (1975). There are, however, no North Carolina cases which deal with how a court is to factor environmental harm into this standard. It is not at all clear that the claims presented by the Camp, if found to be true by a Superior Court, would be sufficient grounds to prevent condemnation.

On the other hand, the Commission has an express mandate from the General Assembly "[t]o encourage and promote harmony between public utilities, their users and the environment." G.S. 62-2(5). In response to this mandate, the Commission has construed together the Public Utilities Act and the Environmental Policy Act and has concluded that the Commission "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." The Kirkman case, supra.

In view of the specific delegation of authority to the Commission "to encourage and promote harmony between public utilities, their users and the environment", and the uncertainty of the Superior Court's authority to deal with environmental issues in a condemnation proceeding in a manner consistent with the letter and spirit of the Environmental Policy Act of 1971, the Commission concludes that it must accept jurisdiction of the Complaint and make determination thereon. This conclusion is especially compelling when the Commission considers that, unlike the Superior Court, it can order that the line complained of be routed to another location.

We are mindful, however, that the Superior Court of Transylvania County presently has jurisdiction over the parties and the land in quo in the eminent domain proceeding before it and that the Superior Court may proceed independently to a final judgment in that case. Based upon information available to the Commission, the Superior Court has not yet entered final judgment in the eminent domain proceeding. (According to the parties, the case is currently on appeal to the Superior Court from an Order of the Clerk.)

In order that the Commission may fully consider the environmental consequences of the proposed line siting across the Camp and the alternative sitings proposed by the Camp, the Commission will request the parties to this proceeding to apply to the Superior Court of Transylvania County for an Order deferring further proceedings in that Court until the Commission has had the opportunity to complete its deliberations in this case.

II.

The Commission concludes that Duke should undertake further investigation into the alternatives proposed by the Camp.

The Recommended Order found that there was no flagrant abuse of discretion by Duke in the planning and routing of the transmission line at issue in this proceeding and dismissed the Complaint. The effect of the Recommended Order, of course, was to leave undisturbed the location of the transmission line across the entrance and the hillside of the Camp.

The Commission elsewhere in this Order has rejected the flagrant abuse of discretion standard adopted by the Recommended Order and has approved the abuse of discretion standard of the Kirkman case: that is, the Commission must determine whether or not Duke acted arbitrarily and unreasonably in locating the transmission line complained of, taking into account the policies declared in the Environmental Policy Act of 1971.

The Complainant and the Attorney General in their Briefs and proposed orders have directed the Commission's attention to the comparable federal legislation dealing with environmental matters. The federal courts have developed a substantial body of law on an agency's standard of review under the National Environmental Policy Act of 1971, 42 U.S.C. § 4321, et seq. The North Carolina Environmental Policy Act of 1971 is closely modeled on the federal act. Its statement of the environmental matters to be considered in a case of this type is almost a verbatim repetition of the federal requirements. Compare G.S. 113A-4(2) with 42 U.S.C. § 4332(2)(c). There has been extensive federal environmental litigation but very little State environmental litigation. The federal courts have concluded that the federal agency, in applying the arbitrary and capricious standard in environmental matters, must take a "hard look" at the environmental consequences of the proposed action and of any reasonable alternatives thereto. Natural Resources Defense Council v. Morton, 458 F.2d 827, 838 (1972) quoted with approval in Kleepe v. Sierra Club, 427 U.S. 390 (1976). Unless the reviewing courts are satisfied that this "hard look" has been taken, they will require the agency to make further study of the proposed action and the alternatives.

The Recommended Order summarized the evidence relating to Duke's acquisition of the transmission line siting at issue in this proceeding, particularly the lengthy negotiations that took place between the Camp and Duke prior to Duke's institution of the condemnation proceeding in 1984. The Recommended Order also noted that Duke had considered alternative routings of the line and, according to the testimony of its witness Blackley, had rejected them because of environmental or costs considerations or both. (See testimony of Shem Blackley, Vice President-Transmission, Tr. Vol. 1, pp 140ff.)

The Camp proposed six alternative routes for the line in its pre-filed testimony. At the hearing, the Camp largely abandoned three of these alternatives, including the alternative of running the line underground. The other three alternatives (the First, Second, and Fifth Alternatives in Dr. Boyd's pre-filed testimony) were the subject of extensive testimony and cross-examination at the hearing. These alternatives may be termed the "Connestee Road" alternative, the "new substation" alternative, and the "original substation" alternative. They may be briefly summarized as follows:

The Connestee Road alternative would run close to the presently proposed line but on the other side of the State road (Connestee Road) at the Camp's entrance, and largely out of view from the Camp, rather than across the Camp's meadow. The parties agreed that this alternative will pass a potentially significant Indian archeological site which, in the opinion of the North Carolina Department of Cultural Resources, may be eligible for inclusion on the National Register of Historic Places.

The new substation alternative proposes that Duke's 44kv line be run off the 100kv line a mile or so closer to Brevard and then run southeasterly to a new substation on U.S. Highway 276. Duke opposed this alternative mainly because the new substation would be further away from the center of Duke's load at Connestee Falls and the Caesars Head area.

The original substation alternative comes off the Calvert 100kv line a mile or so from Tuckers Creek retail, crosses U.S. Highway 276, goes up Mill Cove, then comes directly south up the steep side of Becky Mountain and down

across a fairly flat mountain plateau to the original substation location. Duke's witness Blackley testified that this alternative is the same as the route originally proposed by Duke. (Duke abandoned this route when it was unable to acquire the original substation from its owner, the Connestee Falls Development Company. Duke made no offer to purchase the original substation or to acquire it by eminent domain.)

The parties directed much testimony and cross-examination toward the advantages and disadvantages of the proposed route across the Camp property and the alternative routes proposed by the Camp. The evidence focused on three major factors: the impact on the environment of the transmission line siting, the cost of each alternative route as compared to the Camp Gwynn siting, and the effect of the alternatives on the ability of Duke to serve efficiently its growing load in the Connestee Falls-Caesars Head area. The Camp offered to reimburse Duke the $39,450 spent by the Company thus far on its right-of-way acquisition for the present siting, plus the substation costs, if the Company relocated the line to one of the three alternatives proposed by the Camp. Attention was also directed towards Duke's abandonment of its original route when it was unable to obtain the original substation from the Connestee Falls Development Company. Mr. Blackley admitted that this was the "best route", yet Duke unexplainedly abandoned this route without attempting to purchase the original substation land or initiating eminent domain proceedings to acquire it. The testimony and cross-examination also explored the extent to which Duke considered alternative routes such as those suggested by the Camp.

The evidence in this case is sufficient to support a finding that the proposed line siting at issue will have a significant environmental impact upon the purpose of the Camp and its activities. See the testimony of Howard Boyd, President of Gwynn Valley, Inc., and the General Manager of the Camp; Lenore Kemfer; Nora Shepard, whose daughters have attend the Camp; Dr. Robin Rose, Assistant Summer Director of the Camp; and Janet Freeman, Riding Director of the Camp. The evidence also discloses that the alternative routes proposed by the Camp would greatly ameliorate or would eliminate the impact upon the Camp. The Commission is of the opinion, however, that there is not sufficient evidence to enable it to take a "hard look" and evaluate the alternatives in order to determine if they are environmentally less damaging than the proposed line siting across the Camp. Nor is the Commission satisfied that Duke itself has taken a sufficiently "hard look" at the alternatives proposed by the Camp to determine if they are environmentally less damaging than the line siting at issue in this case. For example, Mr. Blackley in his direct testimony offered no objection to the "best route" (original substation) alternative on specific environmental grounds, although he did state on cross-examination that the use of this route would create a "ridge line effect"; he offered no further explanation.

Upon consideration of all the evidence in this proceeding, the exceptions of the Camp and the Attorney General to the Recommended Order, and the oral argument of the parties, the Commission will order that Duke further investigate the alternatives recommended by the Camp--or any other alternative routing which Duke may choose to examine--and evaluate the environmental consequences of the alternatives as compared with the proposed siting across Camp Gwynn Valley, the costs of the alternatives, and the ability of Duke to efficiently serve its load over the alternative routes.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke make further investigation, in a manner consistent with the findings and conclusions of this Order, into the alternative routes proposed by the Camp, as well as any additional alternative routes it may choose, and report to the Commission the results of its investigation. The Camp's recommended alternatives to be investigated pursuant to this Order are the Connestee Road alternative, the new substation alternative, and the original substation alternative. In its investigation Duke shall consider the environmental impact of the alternatives as compared with the proposed siting across Camp Gwynn Valley, the costs of the alternatives, and the ability of Duke to efficiently serve its load over the alternative routes.

2. That Duke shall complete its investigation and file a report thereon with the Commission within six months after the date of this Order. A copy of the report shall be served upon the other parties at the time of filing.

3. That Camp Gwynn Valley and Duke are hereby requested to apply to the Superior Court of Transylvania County, either jointly or separately, for an order of that Court deferring further proceedings in the eminent domain action until the Commission has completed its deliberations in this proceeding.

4. That the Exceptions to the Recommended Order in this docket are allowed as hereinabove set forth.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of April 1988.

NORTH CAROLINA UTILITIES COMMISSION
Gail Lambert Mount, Deputy Clerk

(SEAL)

Commissioners Koger and Tate dissent. They would affirm the Recommended Order.

DOCKET NO. E-7, SUB 430

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Bob Crohn, Chairman, Residents of Chestnut Hills Drive, 10932 Chestnut Hills Drive, Matthews, North Carolina 28105; and Leon G. and Julia Winn, 714B Stirrup Court, Matthews, North Carolina; and Zachary and Tamara Kaminsky, Complainants v. Duke Power Company, Respondents	)	ORDER PROVIDING NOTICE AND OPPORTUNITY TO BE HEARD PURSUANT TO G.S. 62-73

HEARD: Tuesday, February 2, 1988, Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, at 11:00 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; Commissioners Ruth E. Cook, J. A. "Chip" Wright, and Sarah Lindsay Tate (Chairman Robert O. Wells, Commissioners Robert K. Koger and William W. Redman, Jr., to read the record and participate in the proceeding.)

APPEARANCES:

For the Respondents:

Steve C. Griffith, Jr., Attorney at Law, Duke Power Company, 422 S. Church Street, Charlotte, North Carolina 28242
For: Duke Power Company

For the Public Staff:

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

For the Attorney General:

Karen E. Long, Assistant Attorney General, N. C. Department of Justice, Post Office Box 628, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On January 5, 1988, Bob Crohn, Chairman of the Residents of Chestnut Hills Drive, Matthews, North Carolina, filed a complaint in this docket against Duke Power Company. The complaint alleged that Duke was in the process of clearing a right of way for the purpose of installing 100 kv transmission lines within approximately 100 feet, or closer, of the existing residential property lines in the Chestnut Hills Road area of Mecklenburg County. "The existence of the transmission lines will cause harm and danger in both personal bodily health and resale value of property." The Complainants further alleged that the "relief sought is to have Duke relocate the site path of the transmission line to a choice of areas currently available." The Complainants also requested a restraining order disallowing Duke from continuing with its current plans until a new route can be procured. (This Complaint will sometimes be referred to as "the Crohn Complaint.")

By Order issued January 15, 1988, the Commission served the Crohn Complaint on Duke Power Company and also granted relief in the nature of a temporary restraining order. Duke was ordered not to begin or continue the construction of the transmission line complained of until further Order of the Commission. Duke was afforded the opportunity to respond and show cause why the restraining order should not be continued pending the determination of this case.

By Order issued January 21, 1988, the Commission, at the request of Duke, scheduled oral argument on the continuation of the restraining order for Monday, January 25, 1988, in Raleigh.

Thereafter, by Order issued January 25, 1988, the Commission, at the request of Duke, rescheduled oral argument to February 2, 1988, in Raleigh.

The restraining order was extended until the Commission could issue a further Order in this docket, such Order to be issued by the Commission no later than February 5, 1988.

On February 1, 1988, additional complaints in this docket were filed by Leon G. and Julia Winn and Zachary and Tamara Kaminsky against Duke Power Company. The complaints of these parties also related to the transmission line that is at issue in the complaint of Mr. Crohn and other Chestnut Hills residents. The Kaminsky Complaint alleged that Duke was locating its proposed transmission line nearby ("only 60 feet") their home, into which they have put their lifetime savings. The complaint expressed environmental and health concerns over the location of the transmission line. The complaint of Mr. and Mrs. Winn also addressed concerns about the effect of the proposed transmission line upon their home, including concerns about health and the environment. The Complaint alleged the existence of "an additional 60 foot right of way for a 100,000 volt transmission line across our property at 7148 Stirrup Court in Matthews." The complaint further alleged that Duke has stated to the Winns that it is going to cut all trees in Duke's 60 foot right-of-way and another 39 full grown hardwood trees in the Winns' immediate backyard.

By Order issued February 1, 1988, the complaints of the Kaminskys and the Winns were served on Duke Power Company.

On February 2, 1988, Duke filed in this docket the following:

1. The Answer, Motion to Dismiss, and Motion to Dissolve Temporary Restraining Order with respect to the Crohn Complaint;

2. Memorandum in support of Motion to Dissolve Temporary Restraining Order; and

3. Affidavit of Shem K. Blackley, Jr., Duke's Vice President of Transmission.

On February 8, 1988, Duke filed its Answer and Motion to Dismiss the complaints of Leon and Julia Winn and Zachary and Tamara Kaminsky.

In its Answers to the Crohn complaint, Duke, in further answer and defense, alleged that it is required to expand its facilities, including transmission lines, to satisfy the demand for electricity; that the proposed transmission line complained of is to be constructed on a right-of-way acquired by Duke in October 1986 from Marsh Mortgage Company; that the right-of-way does not cross any of the Complainants' property; that the right-of-way agreement permits Duke to clear the right-of-way of trees for construction of the transmission line; that the actions complained of are lawful activities by Duke conducted pursuant to the right-of-way agreement and are in furtherance of its public service obligation to provide electric service to the using and consuming public; that the complaint cites no statutory or regulatory provision violated by Duke in the construction of the proposed transmission line; and that the requirements for issuance of a temporary restraining order or preliminary injunction are not satisfied by the allegations of the Complainants in that the Complainants do not allege irreparable harm or show that the Complainants will likely succeed on the merits. The Answer further alleges that Complainants bought their property more than a year after the right of way

was acquired by Duke and that the right of way was a matter of public record and therefore the Complainants knew or should have known of the existence of the right-of-way and that Duke could or would most likely construct a transmission line on such right-of-way.

With respect to the Answer in response to the complaints of the Winns and the Kaminskys, Duke further alleged that the proposed transmission line complained of by these Complainants is to be constructed on a right-of-way acquired by Duke in February 1986 by a right-of-way agreement between Duke and Gerald and Leila Morris; that the right-of-way was filed in the Union County Register of Deeds Office on March 4, 1986, and became a matter of public record; that the right-of-way agreement permits Duke to clear the right-of-way of trees and construct a transmission line; that this newly acquired right-of-way runs parallel to a previously existing right-of-way which already has a 100 kv transmission line; and that the maps filed on the public record with the right-of-way agreement reflect both rights-of-way. Duke further alleges with respect to the Winn and Kaminsky complaints that the Complainants bought their property and built their homes with the existing 100 kv transmission line in place and after the new right-of-way for an additional line was acquired by Duke; that Duke's rights-of-way were a matter of public record and that the Complainants clearly knew of the existing transmission line and knew or should have known of the existence of the right-of-way, and that Duke could or would most likely construct an additional transmission line on its right-of-way.

Duke's Answers requested the Commission to dismiss all of the complaints for failure to state a cause of action and for lack of subject matter jurisdiction by the Commission.

The oral argument on the Motions to Dismiss and the continuation of the restraining order pending hearing came on before the Commission on February 2, 1988, in the Commission Hearing Room in Raleigh. Duke, the Public Staff, and the Attorney General were present and represented by counsel. In support of the motion for a Restraining Order pendente lite, the Complainants presented the testimony of Bob Crohn, Martin Henderson, W. L. Overton, and Julia Winn. The testimony of these Complainants went into further detail about the impact of the proposed transmission line upon their respective properties. Counsel for Duke Power Company presented the affidavit of Shem K. Blackley, Jr., Vice President, Transmission, Duke Power Company. The Attorney General and the Public Staff assisted the Complainants and presented oral argument. All of the parties stipulated that the full Commission could read the record and participate in this proceeding.

By Order issued February 17, 1988, the Commission cited the need for additional time to complete its deliberations on Duke's Motion to Dismiss and the continuation of the restraining order and to issue an Order on its deliberations. Therefore, the Commission ordered that the restraining order granted in this docket by its previous Orders be continued in force and effect until further order.

I. <u>Duke's Motion to Dismiss for Lack of Jurisdiction</u>

In its Answer and Motion to Dismiss the complaints, Duke alleged as follows:

"The letter Complaint and the Commission's Order cite no statutory or regulatory provision violated by Duke's proposed construction of the transmission line. Therefore, the Commission lacks subject matter jurisdiction over the allegations raised by the Complainants."

In oral argument before the Commission on February 2, 1988, the Attorney General took issue with Duke's defense of lack of subject matter jurisdiction and argued to the Commission that the Commission does have jurisdiction to hear the complaints in this docket. In support of its argument, the Attorney General cited G.S. 62-30, G.S. Chapter 113A (the North Carolina Environmental Policy Act of 1971), and the decision of the Commission in Kirkman v. Duke, which was decided in 1974 in Docket No. E-7, Sub 142.

The Commission is of the opinion, and so concludes, that the Commission has jurisdiction over the complaints in this docket. In support of this conclusion, the Commission calls attention to the case of Kirkman v. Duke Power Company, 64 Report of the North Carolina Utilities Commission, Orders and Decisions 89 (1974) (Docket No. E-7, Sub 142) (hereinafter the "Kirkman case"). In this case, which involved the construction of a transmission line by Duke Power Company 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.

As it earlier decided in the _Kirkman_ case, the Commission is of the opinion, and so finds and concludes, that it has jurisdiction over the subject matter of the Complaints in this docket.

II. <u>G.S. 62-73: The Existence of Reasonable Grounds to Investigate the Complaint</u>

In its Answer and Motion to Dismiss filed February 2, 1988, in response to the Crohn Complaint, Duke alleged as follows:

> "1. Duke is required to expand its facilities, including transmission lines and substations to satisfy the demand for electricity in its service area. Construction of transmission lines is within Duke's normal business activity.
>
> "2. The proposed transmission line complained of is to be constructed on a right of way acquired by Duke in October 1986 from Marsh Mortgage Company. The right of way does not cross any of the Complainants' property. The Right-of-Way agreement permits Duke to clear the right of way of trees for construction of the transmission line.
>
> "3. The actions alleged by Complainants are lawful activities by Duke conducted pursuant to the Right-of-way Agreement between Duke and Marsh Mortgage Company. Further, Duke's actions are in furtherance of its public service obligation to maintain facilities to provide reliable electric service to the using and consuming public. Therefore, the Complaint should be dismissed for failure to state a cause of action. Rule R1-7 and R1-9(e)."

In its Answer and Motion to Dismiss filed February 8, 1988, in response to the Winn and Kaminsky complaints, Duke further alleged as follows:

> "2. The proposed transmission line complained of is to be constructed on a right of way acquired by Duke in February 1986, by a Right-of-Way Agreement between Duke and Gerald and Leila Morris. This Right-of-Way Agreement was filed in the Union County Register of Deeds Office on March 4, 1986, and became a matter of public record. The Right-of-Way Agreement permits Duke to clear the right of way of trees and construct a transmission line. This newly acquired right of way runs parallel to a previously existing right of way which already has a 100 kv transmission line. The maps filed on the public record with the Right-of-way Agreement reflect both rights of way.
>
> "3. Complainants bought their property and built their homes with the existing 100 kv transmission line in place and after the new right of way for an additional line was acquired by Duke. Duke's rights of way were a matter of public record, as reflected by the filing of the Right-of-way Agreement and the appearance of both Duke rights of way on plat map for Complainants' subdivision. Therefore, Complainants clearly knew of the existing transmission line and knew or should have known of the existence of the right of way, and, that Duke could and would most likely construct an additional transmission line on its right of way.
>
> "4. The actions alleged by Complainants are lawful activities by Duke conducted pursuant to Duke's properly recorded Right-of-Way Agreement. Further, Duke's actions are in furtherance of its public

service obligation to maintain facilities to provide reliable electric service to the using and consuming public. Therefore, the Complaint should be dismissed for failure to state a cause of action. Rule R1-7 and R1-9(e)."

G. S. 62-73 is the statute which governs complaints against public utilities. The last sentence of that statute provides as follows:

"Unless the Commission shall determine, upon consideration of the complaint or otherwise, and after notice to the complainant and opportunity to be heard, that no reasonable ground exists for an investigation of such complaint, the Commission shall fix a time and place for hearing, after reasonable notice to the complainant and the utility complained of, which notice shall be not less than ten days before the time set for such hearing."

Commission Rules R1-7 and R1-9(e) authorize the Commission to dismiss a complaint for failure to state a cause of action.

Upon consideration of the Complaints and the Answers and Motions to Dismiss of Duke, the Commission is of the opinion that there may be sufficient basis to enter an order in this docket, pursuant to G.S. 62-73 and Commission Rules R1-7 and R1-9(e), concluding that there are no reasonable grounds for an investigation of the complaints.

First, none of the Complaints allege an abuse of discretion by Duke in siting the proposed transmission line complained of, nor is there any allegation or showing of unreasonable or arbitrary action by Duke with respect to the line. Under the principles set forth in the Kirkman case, the Commission, upon complaint, may review the siting or construction of a transmission line to determine if the utility acted in an unreasonable or arbitrary manner with regard to the Environmental Policy Act of 1971. That Duke has acted arbitrarily or unreasonably in siting the line complained of cannot be inferred from the Complaints in this docket.

Secondly, it appears from the Crohn Complaint and the Answer thereto of Duke that the proposed transmission line is to be constructed on a right of way acquired by Duke in October 1986 from Marsh Mortgage Company. The right of way does not cross any of the Crohn Complainants' properties. (Crohn Complaint: "Duke Power is in the process of clearing a right of way for the purpose of installing 100 kv transmission lines within approximately 100 feet, or closer, of our existing residential property lines in the Chestnut Hills Road area of Mecklenburg County.")

The Winn and Kaminsky Complaints, on the other hand, allege a placing of the transmission line on their properties. In its Answer and Motion to Dismiss with respect to these Complaints, however, Duke alleged that these Complainants "bought their property and built their homes with the existing 100 kv transmission line in place and after the new right of way for an additional line was acquired by Duke. Duke's rights of way were a matter of public record, as reflected by the filing of the Right-of-way Agreement and the appearance of both Duke rights of way on plat map for Complainants' subdivision. (See Attachment 2.) Therefore, Complainants clearly knew of the existing transmission line and knew or should have known of the existence of

the right of way, and that Duke could and would most likely construct an additional transmission line on its rights of way." (emphasis added.)

Third, it appears from the pleadings that the proposed transmission line is on rights of way purchased by Duke and that the rights of way agreement give Duke the right to clear trees from the right of way and construct the proposed transmission line. Part of the proposed line will run parallel to existing transmission facilities and along the flood plain of Six Mile Creek (the Winn and Kaminsky complaints). Another portion of the route, from the flood plain to the Provol substation lot, runs along property which adjoins the Crohn Complainants' subdivision. With respect to the Crohn routing, Duke was able to leave a 66-foot buffer between the transmission line and the Complainants' property (although Duke is not required by law to maintain such a buffer). (Blackley affidavit)

The Complainants also alleged concerns about the safety of the proposed transmission line. According to Blakely's affidavit, the transmission line "will be built and maintained to meet or exceed the standards of the National Electric Safety Code." Mr. Blakely further affided that "[t]he existence of electric and magnetic fields from power lines is not a new issue and has been the subject of a number of studies and reports during the past several years. Duke has carefully followed these studies and other research and we are confident, based on the information available to us, that there are no significant health effects associated with the operation of Duke's power lines." The Complainants alleged no arbitrary or unreasonable action by Duke with respect to safety hazards from the proposed siting.

In view of the pleadings discussed above, including the lack of allegations that Duke acted arbitrarily or unreasonably in siting the transmission line complained of, and in further consideration of allegations to the effect that the proposed transmission line does not cross any properties of the Complainants (or, in the case of the Winn and Karminsky properties that there existed the public record of the Duke rights of way prior to purchase of those properties in question), and in further consideration of the allegations that Duke is acting pursuant to the rights of way purchased by it and in furtherance of lawful activities to provide electricity to its service area, the Commission is of the opinion, and so concludes, that there may be a sufficient basis to enter an Order in this docket deciding that no reasonable grounds exist for an investigation of the Complaints. Before the Commission can consider the issuance of an Order finding that no reasonable grounds exist for an investigation of the Complaints, it is required by G.S. 62-73 to give notice to the Complainants of the opinions set forth above and to provide the Complainants an opportunity to be heard thereon. Consequently, pursuant to G.S. 62-73 and Commission Rules R1-7 and 9(e), the Commission issues this Order serving the Answers and Motion to Dismiss of Duke upon the Complainants in this docket and giving the Complainants notice of the conclusions reached herein and providing the Complainants an opportunity to file a written Response to the Commission showing that reasonable grounds do exist for an investigation of their complaints.

III. Continuation of the Restraining Order

The Commission is of the opinion, and so finds and concludes, that the restraining order previously granted in this docket should be continued in

force and effect until further Order of the Commission in order to afford the Complainants an opportunity to respond herein as permitted by G.S. 62-73. In so deciding, the Commission notes that the statute affords the Complainants an opportunity to show that reasonable grounds do exist for an investigation of the complaint and that the Commission must consider the Complainants' responses and render a further decision thereon. The Commission is of the opinion that the interest of justice requires that the status quo be preserved pending the filing of further responses by the Complainants. If the Complainants are able to show in their further responses that reasonable grounds do exist to investigate their complaints, the Complainants would be likely to sustain irreparable loss if the restraining order is not continued by this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That this Order, together with the Answers and Motions to Dismiss of Duke Power Company, be served upon the Complainants by U. S. Certified Mail, return receipt requested.

2. That within 10 days after receipt of this Order, the Complainants may file a written response with the Commission showing the Commission that reasonable grounds do exist for an investigation and hearing on their Complaints. Upon receipt of such written responses, the Commission will consider said responses and issue further Order. If no response is filed within the time allowed herein, the Commission will issue an Order dismissing the complaints and closing the docket. The address of the Commission is as follows:

Chief Clerk - North Carolina Utilities Commission
Post Office Box 29510
Raleigh, North Carolina 27626-0510

3. That the Restraining Order previously granted by Orders in this docket be continued in force and effect for a period not to exceed 21 days on and after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of March 1988.

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

Commissioner Cook, dissenting in part, concurring in part.
Commissioner Hipp, concurring.

COMMISSIONER RUTH E. COOK, DISSENTING IN PART, CONCURRING IN PART.

I vigorously dissent from that portion of the Order entered by the Majority in this docket which holds that there may be a sufficient basis to dismiss the complaints filed in this case. I believe that the Complainants have in fact established reasonable grounds in support of their request for an investigation of their complaints, and that they are entitled to a fair and impartial hearing on the merits of their claims. From my perspective, the members of the North Carolina Utilities Commission have a duty and obligation to afford Complainants a fair and impartial opportunity to be heard. The

Commission has quite properly been delegated the authority by the General Assembly to hear and determine complaints against public utilities filed pursuant to G.S. 62-73.

I concur in that portion of the Majority Order which concludes that the Commission does in fact have jurisdiction over the subject matter of the complaints filed in this docket. Duke's motion to dismiss for lack of subject matter jurisdiction was quite properly denied by the Commission. Nevertheless, I believe that if the Commission desires and intends to exercise this jurisdiction in any meaningful way, complaints such as those at issue in this docket must and should be taken to hearing. The approach adopted by the Majority in this case merely pays lip service to our complaint statute. The Majority has thrown the Complainants a curve ball, before they have even had an opportunity to come to bat. In my view, it is time to call "foul."

In deciding the issue of subject matter jurisdiction in this docket, the Majority correctly based its decision on the case of Kirkman v. Duke Power Company, 64th Report of the NCUC, Orders and Decisions 89 (1974) (Docket No. E-7, Sub 152) (hereinafter the "Kirkman case"). However, having found that the Commission possesses subject matter jurisdiction over the complaints filed in this docket, the Majority then departs from the procedures followed by the Commission in the Kirkman case. In that case, the Complainant was afforded an opportunity to present evidence in support of his complaint at a hearing on the merits.

I believe that the precedent established by the Commission in the Kirkman case should be followed in this docket and that the Complainants should be allowed to participate in an evidentiary hearing on their complaints. Such a procedure is one of fundamental fairness. It will provide the Complainants with a reasonable opportunity to be heard and to present evidence. Such a procedure would not be procedurally or substantively unfair to Duke Power Company. G.S. 62-75 specifically places the burden of proof upon the complaining parties in this case and not Duke Power Company. What harm can there be in allowing the Complainants an evidentiary hearing, particularly when they must carry the burden of proof? Any such hearing can certainly be scheduled on an expedited basis. In addition, the Complainants in this case filed their complaints without benefit of the aid and advice of private legal counsel. In such a case, I believe that the Commission should bend over backwards to ensure that the Complainants receive both procedural and substantive due process. The action taken by the Majority in this docket does not accomplish that goal.

It is clear that the Majority is now trying to backtrack from the holding in the Kirkman case by making it almost impossible for a party who complains about the location of a high voltage transmission line to ever get a hearing. In my view, this is not sound public and regulatory policy. Complaining parties already bear an almost impossible burden of proof, since the Kirkman case requires them to establish by the preponderance of the evidence that the electric utility acted in an unreasonable and arbitrary manner in the siting of the electric transmission line. I believe that in most cases it will be very difficult if not impossible for a complainant to prove either an abuse of discretion by an electric utility in siting a proposed transmission line or any kind of unreasonable or arbitrary action by the utility. This being the case, I believe that a complaining party should be afforded every reasonable

opportunity to prove his case, particularly where, as here, the complaining parties are not represented by private legal counsel.

The Majority has endorsed a procedure in this case which departs from the procedure followed in the Kirkman case, as well as in the recent case of Camp Gwynn Valley v. Duke Power Company in Docket No. E-7, Sub 414, which was heard on March 10, 1987. In that case, the Commission scheduled and conducted an evidentiary hearing to consider the complaint of Camp Gwynn Valley. Why the change of procedure in this case? It is a cause for wonderment.

I believe that the far better course of action in cases such as these is to schedule the complaint for expedited hearing rather than placing needless procedural obstacles in front of complainants. If the complaint must then be denied after hearing, the complaining party should at least feel that he has been treated fairly by the Commission. The fact that these cases may be difficult to decide and that the Commission's decision may be unpopular does not justify the establishment of unattainable barriers to getting a fair and impartial hearing on the merits. It is well-settled law that a complaint should not be dismissed for failure to state a claim unless it appears to a certainty that the complaining party is entitled to no relief under any state of facts which could be proved in support of his claim. Sutton v. Duke, 277 N.C. 94, 176 S.E. 2d 161 (1970). Without a hearing, how can there be such a certainty? Commissioners, after all, are not gurus.

I also wonder just how the Majority will handle this case if the Complainants hereafter amend their complaints to reflect allegations of abuse of discretion by Duke in siting the proposed transmission line at issue in this docket. Will the Majority then find other bases upon which to deny the Complainants a hearing on the merits of their claims? How will the Commission handle future complaint cases where the complaining parties draft their complaints so as to raise the basic allegations which the Majority says are missing in this case?

My position regarding this docket is very simple. I think the Complainants should be allowed a fair and impartial opportunity to present evidence to the Commission regarding their complaints. Nothing less and nothing more. The Commission should follow the procedures which it has heretofore followed in cases involving the siting of electric power transmission lines and schedule an expedited hearing on the complaints.

Commissioner Ruth E. Cook

HIPP, COMMISSIONER, CONCURRING. I concur with the conclusion of the Commission Order, but I believe that the additional matter of the 66-foot buffer zone must be mentioned. The Complainants have expressed a fear that Duke will use the buffer zone for a second transmission line in the future. Tr.p 63. Duke Power Company (DUKE) has designated a 66-foot buffer zone between its right-of-way line and Chestnut Hills Drive Subdivision, as shown in Exhibit 2 of the Affidavit of the deponent Shem K. Blackley, Jr., Vice President for Transmission of Duke. Duke is thus committed not to seek any use of said 66-foot buffer zone for trans-mission lines in the future. The said buffer zone has further been described in open hearing by Duke counsel as a

protection shown between its 66-foot right-of-way line and the rear lot lines of the Complainants residing on Chestnut Hills Drive.

This should clearly mean that Duke will seek no further use of said 66-foot buffer zone for its own use. It is true that the designation of the land as a buffer zone is not joined in by Marsh Mortgage Company and the position of Marsh Mortgage Company regarding the land is not shown in this record, but Duke should recognize that by accepting this Order that it is binding itself by its commitment to the Chestnut Hills Drive homeowners in Blackley Exhibit 2 that Duke will not seek to change its designation of the area as a buffer zone.

The Affidavit of Duke's deponent Shem Blackley states that Duke is able to retain this buffer, as follows, at page 3:

> "Routing the transmission line parallel to rear and side boundaries of the property enables Duke to retain a 66-foot buffer between the transmission line and Complainant's property and subdivision and allows a similar buffer to remain between the line and future development on the other side of the line."

I would also consider that the description in Duke's Affidavit of its procedures for the siting of transmission lines would insure that Duke will exhaust every possibility of placing the Six Mile Creek leg of the transmission line running across the property of the Complainants Winn and Kaminsky on the west side of the existing 100 KV line, away from the house sites of said Complainants, in lieu of siting between the existing line and the houses of said Complainants. If such a change is possible, considering all other factors affecting said existing 100 KV line and the location of the right-of-way existing or available for the new 100 KV line, it would minimize the damage to the rear yards of said Complainants, and be more in harmony with Duke's policy toward residential areas. See Blackley Affidavit, p.4, Paragraph 11.

Edward B. Hipp

DOCKET NO. E-7, SUB 430

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Bob Crohn, Chairman, Residents of Chestnut Hills Drive, 10932 Chestnut Hills Drive, Matthews, North Carolina 28105; and Leon G. and Julia Winn, 714B Stirrup Court, Matthews, North Carolina, and Zachary and Tamara Kaminsky,
Complainants
v.
Duke Power Company,
Respondent

ORDER DENYING COMPLAINTS AND DISSOLVING RESTRAINING ORDERS

HEARD: July 11, 1988, Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: J. A. "Chip" Wright, Presiding, Commissioners Robert K. Koger, Sarah Lindsay Tate, Edward B. Hipp, Ruth E. Cook, and William W. Redman, Jr.

APPEARANCES:

For the Complainants:

Jerry B. Fruitt, Post Office Box 12547, Raleigh, North Carolina 27605

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:

Theodore C. Brown, Jr., Staff Attorney, Public Staff, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

Karen E. Long, Assistant Attorney General, N. C. Department of Justice, Post Office Box 629, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On January 5, 1988, Bob Crohn, Chairman of the Residents of Chestnut Hills Drive, Matthews, North Carolina, filed a complaint in this docket against Duke Power Company. The complaint alleged that Duke was in the process of clearing a right of way for the purpose of installing 100 kv transmission lines within approximately 100 feet, or closer, of the existing residential property lines in the Chestnut Hills Road area of Mecklenburg County. "The existence of the transmission lines will cause harm and danger in both personal bodily health and resale value of property." The Complainants further alleged that the "relief sought is to have Duke relocate the site path of the transmission line to a choice of areas currently available." The Complainants also requested a restraining order disallowing Duke from continuing with its current plans until a new route can be procured. (This Complaint will sometimes be referred to as "the Crohn Complaint.")

By Order issued January 15, 1988, the Commission served the Crohn Complaint on Duke Power Company and also granted relief in the nature of a temporary restraining order. Duke was ordered not to begin or continue the construction of the transmission line complained of until further Order of the Commission. Duke was afforded the opportunity to respond and show cause why the restraining order should not be continued pending the determination of this case.

By Order issued January 21, 1988, the Commission, at the request of Duke, scheduled oral argument on the continuation of the restraining order for Monday, January 25, 1988, in Raleigh.

Thereafter, by Order issued January 25, 1988, the Commission, at the request of Duke, rescheduled oral argument to February 2, 1988, in Raleigh. The restraining order was extended until the Commission could issue a further Order in this docket, such Order to be issued by the Commission no later than February 5, 1988.

On February 1, 1988, additional complaints in this docket were filed by Leon G. and Julia Winn and Zachary and Tamara Kaminsky against Duke Power Company. The complaints of these parties also related to the transmission line that is at issue in the complaint of Mr. Crohn and other Chestnut Hills residents. The Kaminsky Complaint alleged that Duke was locating its proposed transmission line nearby ("only 60 feet") their home, into which they have put their lifetime savings. The complaint expressed environmental and health concerns over the location of the transmission line. The complaint of Mr. and Mrs. Winn also addressed concerns about the effect of the proposed transmission line upon their home, including concerns about health and the environment. The Winn Complaint alleged the existence of "an additional 60 foot right of way for a 100,000 volt transmission line across our property at 7148 Stirrup Court in Matthews." The complaint further alleged that Duke has stated to the Winns that it is going to cut all trees in Duke's 60 foot right-of-way and another 39 full grown hardwood trees in the Winns' immediate backyard.

By Order issued February 1, 1988, the complaints of the Kaminskys and the Winns were served on Duke Power Company.

On February 2, 1988, Duke filed in this docket the following:

1. The Answer, Motion to Dismiss, and Motion to Dissolve Temporary Restraining Order with respect to the Crohn Complaint;

2. Memorandum in support of Motion to Dissolve Temporary Restraining Order; and

3. Affidavit of Shem K. Blackley, Jr., Duke's Vice President of Transmission.

On February 8, 1988, Duke filed its Answer and Motion to Dismiss the complaints of Leon and Julia Winn and Zachary and Tamara Kaminsky.

In its Answers to the Crohn complaint, Duke, in further answer and defense, alleged that it is required to expand its facilities, including transmission lines, to satisfy the demand for electricity; that the proposed transmission line complained of is to be constructed on a right-of-way acquired by Duke in October 1986 from Marsh Mortgage Company; that the right-of-way does not cross any of the Complainants' property; that the right-of-way agreement permits Duke to clear the right-of-way of trees for construction of the transmission line; that the actions complained of are lawful activities by Duke conducted pursuant to the right-of-way agreement and are in furtherance of its public service obligation to provide electric service to the using and consuming public; that the complaint cites no statutory or regulatory provision violated by Duke in the construction of the proposed transmission line; and that the requirements for issuance of a temporary restraining order or preliminary injunction are not satisfied by the allegations of the Complainants in that the Complainants do not allege irreparable harm or show that the

Complainants will likely succeed on the merits. The Answer further alleges that Complainants bought their property more than a year after the right of way was acquired by Duke and that the right of way was a matter of public record and therefore the Complainants knew or should have known of the existence of the right-of-way and that Duke could or would most likely construct a transmission line on such right-of-way.

With respect to the Answer in response to the complaints of the Winns and the Kaminskys, Duke further alleged that the proposed transmission line complained of by these Complainants is to be constructed on a right-of-way acquired by Duke in February 1986 by a right-of-way agreement between Duke and Gerald and Leila Morris; that the right-of-way was filed in the Union County Register of Deeds Office on March 4, 1986, and became a matter of public record; that the right-of-way agreement permits Duke to clear the right-of-way of trees and construct a transmission line; that this newly acquired right-of-way runs parallel to a previously existing right-of-way which already has a 100 kv transmission line; and that the maps filed on the public record with the right-of-way agreement reflect both rights-of-way. Duke further alleges with respect to the Winn and Kaminsky complaints that the Complainants bought their property and built their homes with the existing 100 kv transmission line in place and after the new right-of-way for an additional line was acquired by Duke; that Duke's rights-of-way were a matter of public record and that the Complainants clearly knew of the existing transmission line and knew or should have known of the existence of the right-of-way, and that Duke could or would most likely construct an additional transmission line on its right-of-way.

Duke's Answers requested the Commission to dismiss all of the complaints for failure to state a cause of action and for lack of subject matter jurisdiction by the Commission.

The oral argument on the Motions to Dismiss and the continuation of the restraining order pending hearing came on before the Commission on February 2, 1988, in the Commission Hearing Room in Raleigh.

By Order issued February 17, 1988, citing the need for additional time to complete its deliberations on Duke's Motion to Dismiss and the continuation of the restraining order, the Commission ordered that the restraining order granted in this docket by its previous Orders be continued in force and effect until further order.

The Commission, on March 10, 1988, issued "Order Providing Notice and Opportunity to be Heard Pursuant to G.S. 62-73." The Order determined that the Commission had jurisdiction over the subject matter of the complaints in this docket. The Commission further concluded, however, that upon consideration of the complaints and the responses thereto of Duke, there may be sufficient basis to enter an Order in this docket deciding that no reasonable grounds exist for an investigation of the complaint. The Commission provided, however, that pursuant to G.S. 62-73, it would give notice to the Complainants of the Commission's tentative conclusions and provide the Complainants an opportunity to be heard thereon.

On March 21, 1988, the Attorney General filed a Motion requesting a hearing pursuant to G.S. 62-73. On March 23, 1988, Bob Crohn filed a response

on behalf of himself and the other homeowners in the Chestnut Hills Subdivision in Mecklenburg County; also on March 23, 1988, Zachary and Tamara Kaminsky filed a letter renewing their opposition to the siting of the transmission line. On March 24, 1988, Julia M. Winn filed a letter in support of her original complaint. Duke Power Company, on March 28, 1988, filed its response to the Complainants' additional filings and the Motion of the Attorney General for a hearing.

On April 6, 1988, the Commission issued "Order Scheduling Hearing on Complaints and Continuing Restraining Order." By Order dated May 16, 1988, the Commission rescheduled the hearing in this matter to July 11, 1988. The hearing was held as scheduled with all of the parties (except the Kaminskys) present and represented by counsel.

The Complainants offered the testimony of Julia Winn, Bob Crohn, and Wally Overton in support of their case. Respondent offered the testimony of Shem K. Blackley, Vice President, Transmission Department, Duke Power Company.

On August 15, 1988, the parties submitted proposed orders to the Commission.

Based on the testimony and exhibits presented at the hearing on July 11, 1988, and the entire record in this docket, the Commission makes the following:

FINDINGS OF FACT

1. Complainant residents of Chestnut Hills subdivision, Matthews, North Carolina, appearing in this case through Bob Crohn, their Chairman, are homeowners residing in the Chestnut Hills subdivision in Mecklenburg County. A portion of the proposed 100 kilovolt (100 kv) transmission line at issue in this case adjoins the Chestnut Hills subdivision.

2. Complainants Julia and Leon G. Winn and Zachary and Tamara Kaminsky are homeowners residing in Providence Woods South subdivision in Union County, North Carolina. Duke proposes to site through their lots a portion of the 100 kv transmission line at issue.

3. Complainants Crohn and other Chestnut Hills residents filed their complaint on January 5, 1988, and complainants Mr. and Mrs. Winn and Mr. and Mrs. Kaminsky filed their complaints on February 1, 1988. Complainants seek an Order of the Commission directing Duke to find an alternative route for the proposed 100 kv transmission line which will not cross or adjoin their property.

4. 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. The Commission has jurisdiction to hear this complaint pursuant to G.S. 62-73.

5. Duke proposes to construct a new distribution substation near Providence Road in the southeastern part of Mecklenburg County (the Provol substation). The substation would be connected to Duke's transmission system by a new 100 kv transmission line. Duke began planning for the proposed line

prior to 1982 in order to be able to serve the anticipated demand in this rapidly growing area by 1989. In 1984 Duke purchased the Provol substation lot, which is near the center of the rapidly developing area. Duke has existing transmission facilities approximately two miles south of the substation lot and proposes to tap these existing facilities at the Unimeck tap and run the new 100 kv transmission line to the substation lot.

6. The Commission finds that these new facilities including the proposed line are needed to meet Duke's obligation to provide reliable electric service. The southeastern part of Mecklenburg County is a rapidly developing suburb of Charlotte and has experienced substantial growth in the demand for electricity. The existing distribution facilities currently serving the area are near their capacity for providing service.

7. Duke owns the rights of way on which it proposes to construct the new transmission line and was able to purchase these rights of way without resort to eminent domain. The portion of the route which runs through property adjoining the Chestnut Hills subdivision was acquired by Duke in October 1986. The right of way does not cross the property of any Chestnut Hills residents (the Crohn Complainants). The center line of the proposed transmission line will be 100 feet from the property boundaries of the Chestnut Hills subdivision.

8. A portion of the proposed line runs through a flood plain which is not suitable for development.

9. Another portion of the proposed line runs parallel to an existing 100 kv transmission line (the Wylie-Morningstar line). This portion of the route crosses the rear of the property owned by the Winns and the Kaminskys. (Mr. and Mrs. Winn have a home on their property; the Kaminskys are building a home on their property.). The right of way for this portion of the proposed line was acquired in February 1986 and became a matter of public record prior to the time these Complainants purchased their property in late 1986 and built their homes. The existing 100 kv line was in place before these Complainants purchased their property.

10. The Complainants proposed two alternative routes for the transmission line: a more direct route that would parallel Providence Road and a route that would place the line in the interior of the developing property. These two alternatives would be more costly than the proposed route, since they would require the condemnation of developable property, and would have a greater environmental impact than the proposed route.

11. The abuse of discretion standard is applicable to this proceeding. The Commission must take a "hard look" and determine whether or not Duke acted arbitrarily and unreasonably in locating and siting the proposed transmission line in question, taking into account the environmental consequences of the proposed line and any reasonable alternative routes, the costs associated therewith, and the ability of Duke to efficiently serve its load.

12. Duke used reasonable and objective criteria in selecting the substation lot and routing the transmission line, and the transmission route selected by Duke is reasonable, considering costs, impact on existing and

future land uses and the environment, and the ability of Duke to efficiently serve its load.

13. The Complainants have failed to carry the burden of proof to establish that the proposed transmission line will be harmful or unsafe to the residents who live adjacent to and near the line. At this time there is no engineering, scientific, or technical basis for finding that transmission lines have harmful effects or will be unsafe for persons living or working nearby. The line will comply with, or exceed, the standards of the National Electric Safety Code.

14. The law of North Carolina does not require a certificate of public convenience and necessity for a transmission line, and the Commission has no authority to grant such certificate.

CONCLUSIONS

I.

The Commission concludes that it has jurisdiction to hear and determine these Complaints.

The Commission in the recent case of Camp Gwynn Valley v. Duke Power Company ruled that the Commission has jurisdiction to hear and determine complaint proceedings brought by landowners against electric utilities with respect to the siting of transmission lines across the property of the landowners. (NCUC Docket No. E-7, Sub 424, Order of April 4, 1988.) In so deciding, the Commission followed an earlier decision in Kirkman v. Duke Power Company, 64 Report of the North Carolina Utilities Commission, Orders and Decision 89 (1974) (Docket No. E-7, Sub 152) (hereinafter the "Kirkman case"). In the Kirkman case, which involved the construction of a transmission line across the Complainant's property, the Commission found and concluded 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 in the Kirkman case 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.

Attention is also called to the case of Kill Devil Hills v. Vepco, 73 Orders and Decisions, 102 (1984).

The Complainants and the Attorney General have raised the issue of the environmental impact of the proposed transmission line upon the Complainants and the potential health and economic consequences to Complainants and their property. Both parties argued that the scope of the Commission's powers with respect to electric public utilities and the Environmental Policy Act makes the Commission uniquely qualified to deal with the environmental impact of the proposed line. The Commission agrees. Indeed, there appears to be no other forum available to the Complainants to adjudicate the issues raised by them in their Complaints.

The Commission concludes that the scope of its jurisdiction in this matter is defined by the following statutes: G.S. 62-2(5) provides that the policy of the State is "[t]o encourage and promote harmony between public utilities, their users and the environment." (Emphasis added). G.S. 62-30 provides that the Commission "shall have and exercise such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties." G. S. 62-73 provides that the Commission may hear complaints against public utilities with respect to rates, service, rules, or practices.

Chapter 113(A)-3 of the North Carolina Environmental Policy Act of 1971 declares that "it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all of its citizens, safe, healthful, productive, and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance."

G.S. 113A-4(1) provides that "the policies, regulations, and public laws of this State shall be interpreted in accordance with the policies set forth" in the Act.

Construed together, these statutes give this Commission jurisdiction to hear and determine complaints such as this one, as was clearly recognized by the Commission in the Kirkman and Camp Gwyn Valley cases.

The Commission is further of the opinion that the "arbitrary and capricious" standard of review enunciated in the Kirkman and Camp Gwynn Valley cases is applicable in this case. The Commission notes that the "arbitrary and capricious" standard is applicable to transmission line locations in eminent domain proceedings. See, e.g., Duke Power Co. v. Ribet, 25 N.C. App. 87 (1975). The Commission reaffirms the standard announced in the Kirkman and Camp Gwynn Valley cases.

In view of the specific delegation of authority to the Commission "to encourage and promote harmony between public utilities, their users and the environment," the Commission concludes that it must accept jurisdiction of the Complaint and make determination thereon.

II.

The Commission concludes that Duke did not act arbitrarily, capriciously, and unreasonably in locating the transmission line complained of in this proceeding.

In the Camp Gwynn case, the Commission took judicial notice of the comparable federal legislation dealing with environmental matters. The federal courts have developed a substantial body of law on an agency's standard of review under the National Environmental Policy of 1971, 42 U.S.C. § 4321, et seq. The North Carolina Environmental Policy Act of 1971 is closely modeled on the federal act. Its statements of the environmental matters to be considered in a case of this type is almost a verbatim repetition of the federal requirements. Compare G. S. 133A-4(2) with 42 U.S.C. § 4332(2)(C). There has been extensive federal environmental litigation but very little State environmental litigation. The federal courts have concluded that the federal agency, in applying the arbitrary and capricious standard in environmental matters, must a take a "hard look" at the environmental consequences of the proposed action and of any reasonable alternatives thereto. Natural Resources Defense Council v. Morton, 458 F.2d 827, 838 (1972), quoted with approval in Kleppe v. Sierra Club, 427 U.S. 390 (1976). Unless the reviewing courts are satisfied that this "hard look" has been taken, they will require the agency to make further study of the proposed action and the alternatives.

In the Camp Gwynn case, after reviewing the applicable authorities, including the Kirkman case and the Environmental Policy Act, the Commission found and concluded:

> "The abuse of discretion standard is applicable to this proceeding. The Commission must take a 'hard look' and determine whether or not Duke acted arbitrarily and unreasonably in locating and siting the proposed transmission line in question, taking into account the environmental consequences of the proposed line and any reasonable alternative routes, the costs associated therewith, and the ability of Duke to efficiently serve its load."

The Commission concludes that this abuse of discretion standard is applicable to the instant proceeding.

The Complainants and the Attorney General contend that Duke acted arbitrarily and unreasonably in siting the proposed transmission line complained of (Alternative C), and that Duke did not sufficiently consider the alternative routes (A and B) proposed by the Complainants. Duke, on the other hand, contends that the burden of proof having rested upon the Complainants, the Complainants have not shown that any action by Duke in locating the line at Alternative C was arbitrary or unreasonable nor have they presented any evidence of any violation by Duke of the Public Utilities Act or any other law or Commission rule or regulation which would entitle them to relief.

A map showing the proposed route C and alternative routes A and B is attached to this Order as an Appendix.

The Proposed Transmission Line

Duke is planning to construct a new distribution substation in southeast Charlotte which is named the Provol Retail Substation. The Provol substation will be located on McKee Road near the intersection of Providence Road (N.C. Highway 16). The new substation will be connected to Duke's existing transmission system by constructing a new 100 kv transmission line from the existing Unimeck Tap Station, located approximately two miles south on Providence Road, to the Provol substation lot. The new transmission line route was described by Duke witness Blackley as follows: Starting at the Unimeck Tap Station, the line will run in a northeasterly direction parallel to the existing Wylie-Morningstar 100 kv line for approximately 2100 feet, then turn north-northeast and follow the flood plain of Six Mile Creek for approximately 4600 feet, and then turn northwest and run parallel to an existing property line for approximately 47000 feet to the Provol substation lot. This route is referred to as Alternative C.

The portion of the proposed route from the flood plain to the Provol substation lot runs through property which adjoins the Chestnut Hills subdivision, including the property of Mr. and Mrs. Crohn and Mr. Overton. The portion of the route which runs parallel to the existing Wylie-Morningstar 100 kv line crosses the property now owned by Mr. and Mrs. Winn and Mr. and Mrs. Kaminsky.

Mr. Blackley, Duke's Vice President, Transmission Department, testified that this route was selected because it has the least environmental impact of the alternative routes and is the most economical. Mr. Blackley explained that the route was the best alternative because it runs through a flood plain, which is not suitable for development, and runs along the property boundary of undeveloped land for a substantial distance. At the time the route was selected, no residential property was crossed or touched by the right of way.

The Need for the New Transmission Facilities

The new Provol retail substation is needed to serve the growing demand for electricity in southeast Charlotte and Mecklenburg County. Mr. Blackley testified that this area is a rapidly developing residential suburb of Charlotte and has experienced substantial growth in the demand for electricity. He stated: "As a part of our service obligation, Duke must plan and construct facilities to satisfy the increasing demand for electricity in growing areas in a timely manner." A number of major projects have been announced or are under construction in this area of Charlotte, including shopping malls and offices, as well as new residential areas.

Mr. Blackley explained that the distribution circuits presently serving the area are at least 6 miles in distance from the growing concentration of load in the Providence Road area. The Provol substation lot is near the center of this rapidly developing area. The projections of Duke's System Planning Department indicate that at the present growth rates the existing substations in this area will be at their design capacity by the winter of 1989-90. To

meet this additional growth, Duke proposes to construct the Provol substation for service beginning in the fall of 1989.

The Chestnut Hills (Crohn) Complaints

Mr. Crohn testified that Duke "abused its discretion and that its action in locating the 100 kv transmission line was arbitrary and capricious." Mr. Crohn's specific concerns were that Duke was acting on information developed in 1982 which does not necessarily reflect the proper siting of a transmission line today; cost comparisons were not performed for the alternative routes; the selected route is the longest and least direct; the selected route is the only one with any potential negative health effects; and the "buffer of trees" between the transmission line and the Chestnut Hills property lines will soon be eliminated by pine bark beetle infestation. Therefore, there is no justification for the proposed route.

Mr. Blackley addressed Mr. Crohn's concerns. He testified that the fact that a substantial part of the work relating to the need for and location of these facilities occurred prior to 1982 does not diminish the fact that the facilities continue to be needed in 1989 and that the decisions concerning their location continue to be valid. Duke must monitor residential and commercial development and plan facilities to meet the growth in the demand for electricity. Duke purchased a substation lot and transmission line rights of way prior to much of the development in the area not only in anticipation of this development but also to be assured of obtaining necessary land and rights of way in a timely and economical manner. The development contemplated in 1982 has materialized. Because Duke has an obligation to have facilities in place when the demand for electricity occurs, it would be "irresponsible" for Duke to wait until 1988 to begin siting facilities needed in 1989.

Mr. Blackley also addressed Mr. Crohn's concern that the only detailed cost data provided was the cost estimate for the project as proposed. Mr. Blackley explained that Duke did not deem it necessary at the time the route was selected to prepare detailed cost studies for each possible alternative. Duke determined by inspection and based on engineering judgment that a route along Providence Road or a route which passed through the interior of land having clear potential for development would be more costly than a route through a flood plain and near the boundary of the undeveloped property. Further, the owner of the property which adjoins Chestnut Hills was willing to sell a right of way near the boundary and away from Providence Road, but was not willing to sell a right of way which would have placed the transmission line along Providence Road. Duke's current cost estimates confirmed that the least expensive alternative route would cost approximately $200,000 more than the selected route.

Mr. Crohn testified that Duke selected the longest and least direct route, which conflicts with Duke's siting criteria since it is the only alternative which would impact existing homeowners. Mr. Blackley admitted that the selected route is the longest and least direct of the three alternatives, but he testified that length and direction are only two of the factors that must be considered in locating a transmission line. The selected route is approximately 2.25 miles long. A route near Providence Road would have been approximately 1.85 miles long (Alternative A), and a route through the interior of the developable property (Alternative B) would be approximately the same

length as the selected route. Mr. Blackley testified that the proposed route is longer than the alternative routes because it was purposely located on land in a flood plain and adjacent to property boundaries so as to lessen the overall environmental impact of the line.

Mr. Crohn also contended that Duke was arbitrary in that it did not take a more direct route located further away from his property. Mr. Blackley responded that the property owners who would be affected by such a direct route could likewise argue that Duke was at fault because it did not select a more economical route which did not adversely impact their property. No existing residential property was crossed or touched by that portion of the right of way complained of by Mr. Crohn, and Duke was able in each instance to reach agreement with the affected property owner to purchase the needed property and rights of way.

Mr. Crohn also contended that Duke selected the only route with any potential negative health effects. Mr. Blackley testified that the line will be constructed and maintained to meet or exceed the standards of the National Electric Safety Code and that there is no engineering, scientific, or technical basis for the argument that the proposed line will result in adverse health effects for persons living or working nearby.

Mr. Overton's testimony was largely cumulative of Mr. Crohn's testimony.

The Winn and Kaminsky Complaints

Mrs. Winn testified that she was challenging Duke's siting of the proposed transmission line through the rear of her property, which would result in the loss of approximately 95% of the hardwood trees in her backyard. She further contended that the substations presently serving the area could be upgraded and the new substation located at the Unimeck site. Mr. Blackley explained that existing substation facilities in the area were approaching their design capacity and that new facilities near the center of the load are needed. The geographical center of the growing load was determined in 1982, and the anticipated development has materialized. (Mrs. Winn's suggestion that the substation be moved to the Unimeck Tap Station would move the substation at least two miles from the center of the growing load.) Mrs. Winn also pointed out that there was an existing transmission line already on her property (the Wylie-Morningstar line). Duke proposes to shift this existing line onto the new right of way, which is closer to Mrs. Winn's home, and to place the proposed transmission line on the route of the existing line. A 1984 internal Duke memo indicated that the proposed line was to be placed _behind_, or to the west of, the existing line and thus farther away from the house.

Mrs. Winn also raised other concerns which she contended established that Duke's route selection was arbitrary and capricious and an abuse of discretion. These concerns included the impact of the transmission line on the environment and property values; health risks associated with the line; standards used by Duke in selecting the route and purchasing rights of way; and the lack of information available to the public concerning the siting of the transmission line.

Mr. Blackley testified that when the Winns and Kaminskys purchased their property in late 1986 and built their homes, the existing 100 kv transmission

line (the Wylie-Morningstar line) was in place and the new right of way for an additional parallel line had been acquired by Duke. The Provol substation lot had been purchased in 1984, and the line right of way was acquired in 1986. The subdivision which includes the Winn and Kaminsky properties had not been developed or surveyed at the time the new right of way was acquired. The new right of way was obtained in February 1986 by a Right-of-Way Agreement between Duke and Gerald and Leila Morris, which was a matter of public record in the Union County courthouse. (See Blackley Exhibit 5) The Right-of-Way Agreement permits Duke to clear the right of way of trees and to construct a transmission line. Both Duke rights of way are shown on the plat map for the subdivision which includes the Winn and Kaminsky property. (See Blackley Exhibit 4) Mr. and Mrs. Winn and the other property owners in the area had reason to be aware of the existing transmission line and had the opportunity to know of the additional right of way before purchasing property in the subdivision in 1986.

Mr. Blackley also explained why Duke was placing the existing Wylie-Morningstar line on the new right of way acquired in 1986. He stated that this placement will permit the proposed transmission line to be built on the Wylie-Morningstar right of way and will enable Duke to avoid the crossing of the lines. He also explained the 1984 internal memo cited by Mrs. Winn, which showed the proposed line behind, or to the west of, the existing line: This memo reflected Duke's thinking in 1984 and pre-1984 that the Provol substation would be served from a tap that was somewhat to the east of the Unimeck tap. "When that was a conceptual plan there was, indeed, a sketch, a line placed on a map which would have shown the new right-of-way to be on the west side of the existing right-of-way. When load conditions required that we change and serve the load from the Unimeck Tap, when that proved to be a better engineering solution, we were able to avoid a line crossing by placing the right of way on the east side of the existing line."

The Kaminskys did not present testimony at the hearing.

The Complainants further contended that Duke did not properly consider alternatives that would have placed the line through the interior of the development (Alternative B) or parallel to Providence Road (Alternative A). Mr. Blackley addressed these contentions. He testified that routing the proposed line through the interior of the developing property would have been more costly in obtaining a right of way, since condemnation would have been required, and would have had a greater environmental impact on the future development of the property than the proposed siting. The same reasons apply to the Providence Road alternative, which would have been the most direct route; this alternative would also have impacted existing use. The proposed route had less of an environmental impact on this area since it would partly run through a flood plain unavailable for development and alongside the boundary between the development and the Chestnut Hills Subdivision. Mr. Blackley pointed out that routing this portion of the line parallel to the rear and side boundaries of the developing property enabled Duke to take advantage of an existing 66-foot "buffer of trees" between the line and the Chestnut Hills subdivision and other adjoining properties. "The option to establish this kind of buffer is not always available."

The Complainants also contended that the proposed line caused them health concerns. Mr. Blackely responded as follows:

"I have no basis to believe that location of this transmission line along the proposed route will create any unsafe condition. This line will be built and maintained to meet or exceed the standards of the National Electric Safety Code. There is no engineering, scientific, or technical basis for suggestions that transmission lines have harmful effects or will be unsafe for persons living or working nearby.

"It is my judgment that the proposed transmission line and substation will be entirely safe to the residents of the area."

In response to questioning on cross-examination, Mr. Blackely testified that it is the policy and practice of Duke to site transmission lines "an adequate and engineering justifiable distance" from existing residential property whenever possible and that the 100-foot distance from the center line of the right of way to the boundary of the Chestnut Hills Subdivision met this objective. Duke's witness acknowledged on cross-examination that there is ongoing research nationwide into the effect of transmission lines upon health--and in fact Duke has an in-house task force that is involved in this work. He further acknowledged that there is uncertainty about the health effects of human exposure to the electromagnetic fields of transmission lines. But he reiterated his opinion that, the proposed line having been routed through undeveloped country along a flood plain and at some distance from adjoining property lines, the siting of the line in this case minimizes public exposure to the magnetic fields, although it does not eliminate it.

The Complainants faulted Duke for locating the Provol substation on the eastern side of Providence Road, when there was evidence showing extensive development on the western side of Providence Road. Mr. Blackley pointed out, however, that there is also ongoing development north of, and to the east of, the Provol site and that the Provol substation would be in the geographical center of this load even with the large developments on the western side of Providence Road.

Application of the Abuse of Discretion Standard

Upon consideration of the evidence in this proceeding, the Commission finds and concludes that Duke was not arbitrary or unreasonable in siting the proposed transmission line complained of and that in siting the proposed line, Duke reasonably and fairly considered the environmental consequences of the line with respect to the selected and alternative routes, the costs associated therewith, and the ability of Duke to efficiently serve its growing load in southeastern Mecklenburg County. The Commission further concludes that the Complainants have not met the burden of proof to show that Duke acted arbitrarily, capriciously, or unreasonably in siting the line. The evidence discloses that Duke began the planning for the Provol substation prior to 1982 and made the decision in October 1982 to locate the Provol substation at its present site. Duke had projected that its existing facilities in the area would reach their capacity by 1989, so it was necessary to begin the planning of the Provol facilities prior to 1982. "Because we have an obligation to have our facilities in place when the demand occurs, it would be irresponsible for Duke to wait until 1988 to begin siting facilities needed in 1989." Mr. Blackley testified that a new substation must be located at or near the center

of the growing load, which in this case was the Provol site at Providence Road. He gave the criteria Duke employs in locating a transmission line which connects a substation to the transmission system:

> "The Transmission Department examines the available route alternatives and selects the most economical route which causes the least impact on local development and the environment. An important consideration in the route selection and design process is that we try to affect the least number of property owners, especially where residences are present. We also make every reasonable effort to purchase the needed rights of way without having to resort to condemnation."

The Commission concludes that the criteria used by Duke in locating transmission lines are reasonable and not arbitrary and that Duke followed these criteria in locating the line complained of in this proceeding.

The abuse of discretion standard first adopted in the Kirkman case and followed in the Camp Gwynn case requires that Duke consider and balance a number of factors in siting a transmission line: the environmental impact of the proposed line as compared with alternative routes, the comparative costs of the proposed route and the alternative routes, and the ability of Duke to efficiently serve its load. Mr. Blackley testified that the siting of a line requires that Duke's engineers and other professional employees "use their judgment and experience to determine the most appropriate location" for transmission facilities. He continued:

> "The location of the transmission line in this case was not complex and did not require unusual elements of investigation and analysis. After a full review by our Route Review Committee, we were able to select a route which parallels an existing right of way through a flood plain, traverses undeveloped property and has the least impact on the environment and nearby property. No existing residential property was crossed or touched by the selected right of way. In every instance we were able to reach agreement with involved owners which enabled Duke to purchase needed property and rights of way."

With respect to the Winn and Kaminsky property, which is crossed by the proposed line, the uncontroverted evidence disclosed that Duke acquired this right of way before these Complainants purchased their property and that the Duke right of way was a matter of public record to them. Furthermore, at the time Duke selected the route for the line, the subdivision including these Complainants' property had not been developed or surveyed.

In deciding that Duke did not act arbitrarily or capriciously in selecting the transmission line route at issue in this proceeding, the Commission notes the following: The evidence is uncontroverted that Duke will need the proposed Provol substation by 1989 in order to serve the rapidly developing area of southeastern Mecklenburg County. Duke had to begin the planning of its facilities prior to 1982 so that the proposed facilities could be in place and operation by 1989. (Duke was not required to seek a certificate from the Commission before planning for these facilities.) Duke's Transmission

Department "examines the available route alternatives and selects the most economical route which causes the least impact on local development and the environment." Duke also attempts to purchase the needed rights of way without resorting to condemnation and was able to do so in this case. There are no "hard and fast set of rules" which can be applied in every siting of transmission facilities, but Duke's engineers must use their judgment and experience. In this case Duke was able to select a route which paralleled an existing right of way through a flood plain, followed the boundary line of undeveloped property, and at the time of its purchase did not cross or touch any residential property; moreover, the right of way was purchased without resort to eminent domain proceedings. Duke's Route Review Committee considered the more direct route parallel to Providence Road but rejected it on the grounds that it would be more costly than the selected route since the land could not be purchased; the direct route would also have an impact on existing and future development. Routing the line through the interior of the property would also have involved more costs and would have adversely impacted the future use of this property. Routing the line alongside the rear and side boundaries of the developing property avoided the disadvantges of the Providence Road and interior alternatives and also enabled Duke to take advantage of a 66-foot "buffer of trees" between the transmission line and the Chestnut Hills subdivision. (Duke of course is not required to have a so-called "buffer zone" adjacent to a transmission line.) With respect to the property of the Complainants Winn and Kaminsky, Duke purchased the substation lot and rights of way prior to the development of the subdivision in which these Complainants live. In fact, the right of way across the Winn and Kaminsky properties was purchased by Duke before these Complainants had purchased their property. Duke's proposed right-of-way, as well as the existing 100 KV line, was a matter of public record which constituted adequate notice to the Winns and Kaminskys that these rights of way were in existence and could affect the property which they were about to purchase. If these property owners can force the relocation of a transmission line by purchasing property and building on it _after_ the transmission right of way is acquired and becomes a matter of public record, Duke would never be able to plan and locate transmission and substation facilities in anticipation of development and load growth. Finally, with respect to the health issue raised by the Complainants, the Commission concludes that the Complainants have not met the burden of proof to show that the proposed line would have a harmful effect on those persons living or working nearby. Although Duke's witness acknowledged that there was some uncertainty at the present time about the health effects of exposure to transmission lines, he pointed out that there was no engineering, scientific, or technical basis for suggesting that transmission lines have harmful effects or will be unsafe for persons living or working near them. It is Duke's policy to locate transmission lines at "an adequate and engineering justifiable distance" from other property, and Duke conformed to its policy in this case.

It is a matter of common knowledge that Charlotte and Mecklenburg County are among the fastest-growing areas of North Carolina and that the County is heavily urbanized. Duke has shown that the growing demand for electricity in the southeastern part of Mecklenburg County requires the construction of new substation and transmission line facilities by 1989. It would be extremely difficult, if not impossible, to site the transmission line in a manner that would satisfy everyone. The Commission is of the opinion, however, that Duke has reasonably and fairly considered and balanced all the important factors in siting the transmission line at issue in this case, including the overall

environmental impact of the line. Accordingly, this Order will issue dismissing the Complaints and closing this docket. This Order will also dissolve the restraining orders that have been entered by previous Orders.

IT IS, THEREFORE, ORDERED as follows:

1. That the Complaints in this docket be denied and this docket closed.

2. That the restraining orders entered in this docket be dissolved.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of October 1988.

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

Commissioners Ruth E. Cook and Edward B. Hipp Dissenting in Part and Concurring in Part.

COMMISSIONERS RUTH E. COOK AND EDWARD B. HIPP DISSENTING IN PART AND CONCURRING IN PART.

We hereby dissent from the order entered by the Majority in this docket insofar as it denies the complaints filed by Complainants Winn and Kaminsky. We would require Duke Power Company to make a further investigation of the feasibility of relocating the proposed transmission line to the west of the existing 100 kv line already located on the Complainants' properties. In addition, we would require Duke to make a written commitment to maintain for all time the 66-foot buffer zone between its right-of-way and the Chestnut Hills Subdivision.

Complainants Winn and Kaminsky are homeowners in the Providence Woods South Subdivision in Union County, North Carolina. Duke proposes to site through their lots a portion of the 100 kv transmission line which is at issue in this proceeding. The proposed line runs parallel to an existing 100 kv transmission line (the Wylie-Morningstar line) which now crosses the rear of the properties owned by the Winns and Kaminskys.

Mrs. Winn testified that she was challenging Duke's siting of the proposed transmission line through the rear of her property because it would result in the loss of approximately 95% of the hardwood trees in her backyard. Mrs. Winn also testified that there is an existing transmission line already located on her property. Duke proposes to shift this existing line onto the new right-of-way, which is closer to Mrs. Winns's home, and to place the proposed transmission line on the route of the existing line. A 1984 internal Duke memo indicated that the proposed line was initially to be placed behind, or to the west of, the existing line and thus farther away from the Winn and Kaminsky residences. The evidence indicates that the route now proposed by Duke Power Company will cost approximately $3,500 more (excluding the cost of acquiring a new right-of-way) than if the Company would keep the Wylie-Morningstar line in its present location and put the new line behind it, away from the Winn and Kaminsky residences. Enough property remains at the rear of the Winn and Kaminsky lots to swap the current easement between the Wylie-Morningstar line and the residences for an easement of equal size behind the existing line and thus farther away from the Winn and Kaminsky residences.

Based on the evidence in this case, we believe that as to the Complainants Winn and Kaminsky, Duke's choice of the proposed transmission route appears unreasonable on its face and will apparently cost more without providing any concurrent benefit to any party to this proceeding. Indeed, the proposed route results in a very deleterious effect on the Complainants. Therefore, we believe that Duke should be required to give further consideration to relocating the proposed transmission line to the west of the existing line behind the residences of the Winns and Kaminskys in order to mitigate as much as possible the impact on those Complainants and their property. Mrs. Winn specifically testified that she would prefer to give Duke an easement in the flood plain on the other side of the existing 100 kv line and away from her home if the proposed line could not be moved off her property. Duke needs to take a "hard look" at this alternative. This would be consistent with the action recently taken by the Commission in the case of Gwynn Valley, Inc., d/b/a Camp Gwynn Valley v. Duke Power Company (Order entered on April 4, 1988, in Docket No. E-7, Sub 414).

We also believe that Duke should be required to give a firm written assurance to the Complainants who reside in the Chestnut Hills Subdivision that the Company will, for all time, respect the 66-foot buffer zone between its current right-of-way and the subdivision and will not seek to construct a second transmission line at any time in the future in that buffer zone. Without such an assurance, residents in Chestnut Hills will be required to live under an unnecessary cloud should the Company, at any time in the future, decide that its need to construct another transmission line overrides its commitment to the buffer zone.

Commissioner Ruth E. Cook
Commissioner Edward B. Hipp

DOCKET NO. E-22, SUB 290

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Mr. David R. Johnson, Post Office Box 105, Kitty Hawk, North Carolina 27949, Complainant	)	
v.	)	FINAL ORDER
Virginia Electric and Power Company, Respondent	)	

ORAL ARGUMENT HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, December 14, 1987

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

APPEARANCES:

For the Complainant:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605
For: David R. Johnson

For Virginia Electric and Power Company (North Carolina Power):

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

For the North Carolina Department of Justice:

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

BY THE COMMISSION: On October 26, 1987, Commission Hearing Examiner Daniel Long entered a Recommended Order in this docket ruling on the complaint which David R. Johnson (Complainant) had filed against North Carolina Power Company (Respondent or Company) on November 26, 1986. The Recommended Order held that:

1. The Respondent shall cease and desist from the practice of representing disconnection to customers when there is no present intent to do so; and

2. The Respondent shall file a report with the Commission detailing what steps the Company is taking to ensure that such untrue representations concerning disconnection are not made by Company employees in the future.

On November 13, 1987, the Complainant filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider these exceptions.

On November 23, 1987, North Carolina Power filed its response to decretal paragraph number 2 of the Recommended Order as set forth above. The Company filed a response in opposition to the Complainant's exceptions on November 25, 1987.

The matter came on for oral argument on exceptions before the full Commission on December 14, 1987. Counsel for the Complainant, the Attorney General, and North Carolina Power were present and participated in the oral argument. The Attorney General specifically supported the Complainant's, third, fourth, and sixth exceptions.

Based upon a careful consideration of the entire record in this proceeding, including the exceptions filed by the Complainant and the oral argument offered with respect to those exceptions, the Commission concludes that, with one exception, good cause exists to deny the exceptions filed by the

Complainant and to otherwise affirm the Recommended Order. The Commission is of the opinion that finding of fact number 15 set forth in the Recommended Order should be stricken from said Order. The Commission has also discovered two typographical errors in finding of fact number 7 which should be corrected. Finding of fact number 7 incorrectly refers to "David C. Johnson" in two places. The correct reference should have been to "David R. Johnson" and finding of fact number 7 is hereby amended to reflect the Complainant's correct middle initial.

The Commission further concludes that the Recommended Order should be otherwise affirmed. In reaching this decision, the Commission has been influenced by the complexity and contradictory nature of the evidence in this case, which the Hearing Examiner described as follows:

> "As even a cursory review of the record in this case will reveal, much of the evidence presented in this case was contradictory. The Hearing Examiner therefore had to consider closely the credibility of those by whom the evidence was presented..."

The Commission concludes that, except for striking finding of fact number 15 and correcting two typographical errors in finding of fact number 7, the other findings of fact, conclusions, and decretal paragraphs set forth in the Recommended Order are reasonable and supported by the evidence and should be affirmed. The Commission is of the opinion that the credibility of the witnesses was crucial to the decision in this case and that the Hearing Examiner was in the best position to judge that credibility.

IT IS, THEREFORE, ORDERED as follows:

1. That finding of fact number 15 set forth in the Recommended Order be, and the same is hereby, stricken from said Order and that finding of fact number 7 be, and the same is hereby, amended as set forth above.

2. That, except as set forth above, the Recommended Order entered in this docket on October 26, 1987, be, and the same is hereby, otherwise affirmed in conformity with the provisions of this Order.

3. That, except to the extent granted herein, the exceptions filed by the Complainant are otherwise denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of January 1988.

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

Commissioner Ruth E. Cook dissents from this Final Order. Commissioner Cook would have granted the Complainant's third and fourth exceptions.

DOCKET NO. E-2, SUB 503
DOCKET NO. E-2, SUB 518
(On Remand)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Applications by Carolina Power & Light Company)
for Authority to Adjust Its Electric Rates) ORDER RECALCULATING
and Charges Pursuant to N.C.G.S. 62-133.2) FUEL COST ADJUSTMENTS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 25, 1988, at 10:30 a.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 the Applicant:

Richard E. Jones, Vice President and Senior Counsel, Robert S. Gillam and Robert W. Kaylor, Associate General Counsels, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, and Lemuel W. Hinton, Assistant Attorney General, 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: The present Order Recalculating Fuel Charge Adjustments in Docket No. E-2, Subs 503 and 518 is based on the following facts and proceedings:

FINDINGS OF FACT

1. Docket No. E-2, Sub 503 (hereinafter referred to as the Sub 503 proceeding) is a fuel charge adjustment proceeding pursuant to G.S. 62-133.2 initiated by Carolina Power & Light Company (CP&L) on May 21, 1985. Following a hearing, the Commission issued an Order Approving Fuel Charge Rate Increase on September 18, 1985. By its Order, the Commission concluded that G.S. 62-133.2 (as then worded) granted it authority to incorporate an expereince modification factor, based upon the variance between the forecasted level of

prudently incurred fuel costs and the level actually experienced, in determining the level of fuel costs to be reflected in future rates. Pursuant to this conclusion, the Commission, having determined that CP&L had under-recovered its reasonable and prudently incurred fuel costs during the test period, incorporated into its approved fuel factor an experience modification factor (EMF) designed to allow CP&L to collect approximately $14.1 million to make up for 90% of its test year under-recovery. The EMF increment was set at .068¢/kWh. The Public Staff and the Attorney General gave notices of appeal.

2. Docket No. E-2, Sub 518 (the Sub 518 proceeding) was initiated by CP&L on May 21, 1986, to adjust its rates in accordance with G.S. 62-133.2. The Commission held a hearing and subsequently issued its Order Approving Decrease in Rates and Charges on September 18, 1986. The Commission, having determined that CP&L had over-collected its reasonable and prudently incurred fuel costs during the test period, set an EMF decrement of .046¢/kWh designed to result in an approximately $10.1 million refund of CP&L's over-recovery on fuel costs. The Commission found that since the Public Staff's appeal of the Sub 503 proceeding was still pending, the EMF decrement should be made provisional, pending the outcome of the appeal. The Commission explained as follows:

> The Sub 503 EMF was an increment to the preliminary fuel factor whereas the EMF in this docket is a decrement, or refund, to customers as a result of an overcollection of fuel-related revenues. CP&L is concerned that if the EMF as approved in Sub 503 is held invalid by the appellate courts, it will be required to refund to customers the amounts collected. Since the appellate court decision regarding Sub 503 may occur after all or part of the EMF refund from this docket has been completed, CP&L might find itself in the position of having to refund collections associated with the Sub 503 EMF, but not having a mechanism to recover the refund from this docket which was based on the same EMF methodology. We agree that the possibility of such a chain of events would be fundamentally unfair to CP&L. Accordingly, the EMF contained in Rider 59.1 should be declared provisional, to become final at the conclusion of the appellate process in Docket No. E-2, Sub 503.

3. On March 3, 1987, the Court of Appeals issued its opinion in the appeal of the Sub 503 proceeding. The Court held that G.S. 62-133.2 did not authorize the Commission to employ an EMF in order to "true-up" an electric utility's past over-recoveries or under-recoveries of fuel costs. The Court wrote, "Accordingly, the Commission's Order is vacated and remanded for proper calculation of fuel cost adjustments in a manner not inconsistent with this opinion." CP&L petitioned for discretionary review of the Court of Appeals opinion by the Supreme Court.

4. On July 24, 1987, the General Assembly ratified Chapter 677 of the 1987 Sessions Laws. By this legislation, G.S. 62-133.2 was amended to provide in pertinent part, "The Commission shall incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period . . ." By Section 2 of this legislation, the General Assembly provided:

> The enactment of this act should 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 prudently 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.

5. On July 28, 1987, the Supreme Court refused to review the Court of Appeals opinion in the Sub 503 proceeding, and that proceeding was subsequently remanded back to the Commission.

DISCUSSION AND CONCLUSIONS

On November 23, 1987, CP&L filed its Motion to Close Dockets. By this Motion, CP&L argues that Section 2 "makes clear that it was the intent of the General Assembly to authorize true-up adjustments when G.S. 62-133.2 was originally enacted [and, thus, that] the EMFs adopted by the Commission in Docket No. E-2, Sub 503 and Docket No. E-2, Sub 518 were valid. . ." CP&L asserts that no further action is required in the Subs 503 and 518 proceedings and that the dockets should be closed.

On December 14, 1987, the Attorney General filed a Response by which he argues that the decision of the Court of Appeals must be implemented and a refund must be ordered as to the Sub 503 proceeding but that no further action is needed as to the Sub 518 proceeding and the provisional EMF decrement therein should be made final.

The Commission scheduled an oral argument for the time and place indicated above. CP&L and the Attorney General presented oral argument in support of their positions. The Public Staff argued that a recalculation and refund should be ordered in the Sub 503 proceeding but that it should be offset by the amount of the provisional EMF decrement in the Sub 518 proceeding.

The facts are not in dispute, and the Commission finds the relevant facts to be as hereinabove set forth. No party has requested an evidentiary hearing. On the basis of the facts, the Commission concludes that the fuel cost adjustment in the Sub 503 proceeding should be recalculated to delete the EMF increment in accordance with the opinion of the Court of Appeals and that the provisional EMF decrement in the Sub 518 proceeding should be deleted in accordance with this Commission's own Order of September 18, 1986, in that proceeding.

As to the Sub 503 proceeding, the Commission's Order of September 18, 1985, has been vacated by the Court of Appeals. The Court of Appeals remanded this proceeding to the Commission "for proper calculation of fuel cost adjustments in a manner not inconsistent with [the Court's] opinion." In order to be consistent with the Court's opinion, the Commission must recalculate the fuel cost adjustment in the Sub 503 proceeding and delete the EMF component of .068¢/kWh. The Court of Appeals opinion is part of the mandate of the appellate court. App. R. 32. The mandate of the appellate court is binding upon the trial court "and must be strictly followed without variation or departure. No judgment other than that directed or permitted by the appellate court may be entered." D & W, Inc. v. Charlotte, 268 N.C. 720, 722 (1966).

The Court of Appeals has written that "our system of jurisprudence requires consistency of compliance by the trial courts with the mandates of our appellate courts, without exception." Heidler vs. Heidler, 53 N.C.App. 363, 365 (1981). The Commission therefore feels that it is its duty to follow the mandate of the Court of Appeals. Citing Wharton vs. Greensboro, 149 N.C. 62 (1908), CP&L argues that the Commission may ignore the appellate mandate as to the Sub 503 proceeding because the law has been changed by the General Assembly. We are not persuaded. While it is apparent from the history cited in the Wharton opinion that the Superior Court had refused to grant an injunction mandated by an earlier Supreme Court opinion at 146 NC 356 (1907), the Supreme Court opinion in Wharton addresses the effect of curative legislation on the validity of municipal bonds. The opinion does not specifically address the propriety of the Superior Court's refusal to follow the earlier mandate and, thus, does not provide a precedent for the Commission to ignor the appellate mandate herein. It is true, as noted above, that the General Assembly recently amended G.S. 62-133.2, and CP&L argues that Section 2 of this legislation makes clear that it was the General Assembly's intent to authorize true-ups when G.S. 62-133.2 was originally enacted in 1982. With all due respect to the General Assembly, and regardless of whether Section 2 is viewed as a statement of retroactive application of the amendment or as a statement of legislative interpretation of the statute prior to amendment (See 73 Am. Jur. 2d, Statutes, §178), the Commission feels that it is bound as to the Sub 503 proceeding by the specific opinion and mandate of the Court of Appeals. The Commission therefore concludes that the fuel cost adjustment in the September 18, 1985 Order in the Sub 503 proceeding should be reaffirmed as recalculated to delete the .068¢/kWh EMF increment added to CP&L's base rates therein. Deletion of this EMF increment requires that a refund be made to CP&L customers, and the Commission finds that the refund should be made with interest.

As to the Sub 518 proceeding, it is clear from this Commission's language in our September 18, 1986 Order in that docket, as quoted above, that the EMF decrement approved therein was made provisional for the specific purpose of tracking the result in the appeal of the Sub 503 proceeding in the interest of fundamental fairness. According to our language therein, and with the EMF increment in the Sub 503 proceeding now deleted, the Commission concludes that the EMF decrement in the Sub 518 proceeding should be effectively deleted also. The Commission finds that this can be accomplished by means of offsetting the refund of the EMF increment of .068¢/kWh in the Sub 503 proceeding by the EMF decrement of .046¢/kWh in the Sub 518 proceeding.

IT IS, THEREFORE, ORDERED

1. That CP&L shall be, and hereby is, ordered to refund to its customers all revenues collected through operation of the .068¢/kWh EMF increment rider as previously approved by this Commission in Docket No. E-2, Sub 503, plus interest calculated at the rate of 10% per annum.

2. That CP&L shall be, and hereby is, authorized to collect from its customers all revenues refunded through operation of the .046¢/kWh EMF decrement rider as previously approved by this Commission in Docket No. E-2, Sub 518, plus interest calculated at the rate of 10% per annum.

3. That CP&L shall file with the Chief Clerk of the Commission on or before March 18, 1988, a statement setting forth the amount of net refund (i.e., revenues collected through operation of the .068¢/kWh EMF increment rider less revenues refunded through operation of the .046¢/kWh EMF decrement rider including related interest) due to customers pursuant to Ordering Paragraph Nos. 1 and 2 above and a proposed plan for making said refund.

4. That ten copies of all workpapers developed in this regard shall be filed with the Commission's Chief Clerk.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of February 1988.

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

DOCKET NO. E-2, SUB 537
DOCKET NO. E-2, SUB 333

DOCKET NO. E-2, SUB 537

In the Matter of
Application by Carolina Power & Light Company for Authority to Adjust and Increase Its Rates and Charges

DOCKET NO. E-2, SUB 333

In the Matter of
Investigation of Carolina Power & Light Company's Land Requirements Acquisition, and Disposal at the Shearon Harris Nuclear Power Plant

ORDER GRANTING PARTIAL INCREASE IN RATES AND CHARGES

HEARD IN: Wayne Center, Corner of George and Chestnut Streets, Goldsboro, North Carolina, on March 29, 1988.

New Hanover County Judicial Building, 4th and Princess Streets, Wilmington, North Carolina, on March 30, 1988.

Commissioner's Board Room, Room 204, Buncombe County Courthouse, and Superior Courtroom, Fifth Floor, Buncombe County Courthouse, Asheville, North Carolina, on March 30, 1988.

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 4, 14-15, 18-22, 25-29, May 5-6, 9-13, 16-20, 23-27, 31, June 1-3, 6-10, and 13-16, 1988.

BEFORE: Commissioner Robert K. Koger, Presiding; and Chairman Robert O. Wells and Commissioners Sarah Lindsay Tate, Edward B. Hipp, Ruth E. Cook, 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, Robert S. Gillam, Associate General Counsel, and Mark S. Calvert, Associate General Counsel, Post Office Box 1551, Raleigh, North Carolina 27602
and
Edgar M. Roach, Jr., William D. Johnson, and Edward S. Finley, Jr., Hunton & Williams, Attorneys at Law, Post Office Box 109, Raleigh, North Carolina 27602

For the Public Staff:

Antoinette R. Wike, Chief Counsel; Robert B. Cauthen, Jr., David T. Drooz, Paul L. Lassiter, and James D. Little, Staff Attorneys, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the North Carolina Department of Justice:

Jo Anne Sanford, Special Deputy 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
For: The Using and Consuming Public

For the United States Department of Defense:

David W. LaCroix, Assistant Counsel, and Vicki O'Keefe, Assistant Counsel, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, Virginia 22332-2300

For Carolina Utility Customers Association, Inc. (CUCA):

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

For Carolina Industrial Group for Fair Utility Rates (CIGFUR-II)

Ralph McDonald, Carson Carmichael III, and Alan J. Miles, Bailey & Dixon, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605

For North Carolina Electric Membership Corporation (NCEMC):

Thomas K. Austin, Attorney, Post Office Box 27306, Raleigh, North Carolina 27611

For North Carolina Fair Share:

Daniel F. Read and Robin Hudson, Gulley, Eakes, and Volland, Attorneys at Law, Post Office Box 3573, Durham, North Carolina 27702

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 September 10, 1987, Carolina Power & Light Company (Applicant, Company, or CP&L) filed an application with the North Carolina Utilities Commission (NCUC or Commission) seeking authority to adjust and increase its rates and charges for electric service to its North Carolina retail customers. The application sought rates that would produce additional annual revenues of approximately $205 million when applied to a test period consisting of the 12 months ended March 31, 1987, for an approximately 13.86% increase in total North Carolina retail revenues. The requested rates bore an effective date of October 10, 1987, if not suspended. In accordance with the schedule for hearing and stipulations in the Commission's July 24, 1986, Order in Docket No. E-2, Sub 511, the Company waived its right to place the new rates into effect as provided in G.S. 62-134 and G.S. 62-135 but retained the right to place the rates into effect no later than 300 days from the date the rates could have become effective if not suspended.

The principal reasons set forth in the application for the increase in rates are as follows: (1) the need to include in rates the Harris Nuclear Power Plant investment deferred pursuant to the Commission's Order in Docket No. E-2, Sub 511, and (2) the need to recover the costs associated with adding new transmission and distribution facilities, maintenance and modifications at generating facilities, the cancellation of Mayo Unit No. 2, and other increases in the overall cost of providing service.

On October 9, 1987, the Commission entered an Order declaring the application to be a general rate case; suspending the proposed rates for a period of 300 days from the effective date; establishing the test period; scheduling public hearings; requiring public notice; and consolidating the application with the investigation into CP&L's land requirements, methods of land acquisition and planned disposition of excess land, if any, at the Harris site in Docket No. E-2, Sub 333. By this Order, the Commission set testimony filing dates, the hearing dates, and the rate suspension period in accordance with its order of July 24, 1986, in Docket No. E-2, Sub 511, and its Rule R1-24(g).

On August 14, 1987, the Attorney General filed Notice of Intervention pursuant to G.S. 62-20 on behalf of the using and consuming public.

On September 9, 1987, the Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene and Protest. On September 11, 1987, the Commission issued an Order allowing CUCA's intervention.

On September 15, 1987, the Carolina Industrial Group for Fair Utility Rates (CIGFUR-II) filed a Petition to Intervene, which was allowed by Commission Order dated September 17, 1987.

On September 25, 1987, the North Carolina Electric Membership Corporation (NCEMC) filed a Petition for Leave to Intervene, which was allowed by Commission Order dated October 20, 1987.

On November 5, 1987, the Department of the Navy filed a Petition to Intervene, which was granted by Commission Order dated November 17, 1987.

On January 20, 1988, Elizabeth Anne Cullington filed a Petition to Intervene on behalf of herself, which was allowed by Commission Order dated January 27, 1988.

On February 29, 1988, North Carolina Fair Share filed a Petition to Intervene, which was allowed by Commission Order dated March 9, 1988.

An Order scheduling a prehearing conference for March 2, 1988, was entered by the Commission on February 16, 1988. The prehearing conference was held as scheduled before Sammy R. Kirby, Commission Hearing Examiner. Based upon statements, stipulations, and arguments made by the parties during the prehearing conference, the Commission, through the Hearing Examiner, entered an Order on March 15, 1988, establishing certain procedures for the hearing and deferring several items for further discussion at a second prehearing conference to be held on March 31, 1988. On April 6, 1988, the Commission, through the Hearing Examiner, entered a Second Prehearing Order establishing additional procedures for the hearing.

On March 28, 1988, the Attorney General filed a Motion to Group Issues into a Traditional Rate Case Portion of the Proceeding and a Harris Prudence Audit portion; i.e., to bifurcate the rate case hearing. On March 30, 1988, the NCEMC filed a Motion to Bifurcate Hearings, which adopted and joined in the Attorney General's Motion. At the time of the second prehearing conference on March 31, 1988, CUCA filed a Joinder in the Attorney General's Motion, and the Public Staff filed a Response to Attorney General's Motion. Based upon the filings and arguments of all parties at the second prehearing conference, the Commission entered an Order on April 6, 1988, finding that witnesses should be heard in the following order: CP&L's Harris-prudence witnesses, CP&L's non-Harris-prudence witnesses, Intervenors' non-Harris-prudence witnesses, Intervenors' Harris-prudence witnesses, and CP&L's Harris-prudence rebuttal.

Public hearings were held for the specific purpose of receiving testimony from public witnesses. The following persons appeared and testified:

Goldsboro: Austin Carter, Mike Lowe, Jim Barnwell, Ed Barrow, Clayton Everett, Frances W. Croxton, Jr., Butler Holt, Sarah Peele, Mary Williams, Ethel Green, Erma Midgette, Rachel Jefferson, La Terrie Ward, Gladys Thornton, Charles Gurganus, and Anglo Holland.

Wilmington: Neal Bender, Galen Hobbs, Charlotte Parker, Robert Davis, Walter Sterne, William Lehmann, Joseph Abbott, Bob Efford, Thomas Willis, Raleigh Knight, Grace Everett, Dick Pindell, Suzette Tunnicliff, Anny Campbell, John Terrell, Robert Gregory, Frank Kupiec, Leslie N. Boney, Jr., Frederick

Sternberger, Dan Clark, Mary Johnson, Roslie Webb, Peter Harden, and Orrie Gore.

Asheville: Ron Lambe, George S. Pozner, Lenore Arnow, James P. Erwin, Jr., Stew Fink, David Spicer, Tyrus Maynard, Zane G. Hall, Helen T. Reed, Marjorie Lockwood, Monroe Gilmour, Monte Cunningham, Taylor Barnhill, Susan Dalton, and Charles Brookshire.

Raleigh: Lavon B. Page, Rev. Maness Mitchell, Jim Whitley, Dorothy C. Kornegay, Jane R. Montgomery, Leslie Merritt, Harold Carlson, Betsy Levitas, Gordon Allen, John Linderman, Dave Fattey, David H. Martin, Mike Perry, Ed Allen, John Sinnett, Augustus S. Anderson, Jr., Joseph Overby, Michael Soehnlein, William Delamar, and Martie Malcolm.

The case in chief came on for hearing on April 14, 1988.

CP&L offered the testimony and exhibits of the following panels of witnesses concerning the prudence of the cost of the Harris Plant:

Harris Project Panel I - Sherwood H. Smith, Jr., President, Chief Executive Officer and Chairman of the Board of Directors of CP&L; Edward G. Lilly, Jr., Executive Vice President and Chief Financial Officer for CP&L; M. A. McDuffie, Senior Vice President - Nuclear Generation for CP&L; and Wilson W. Morgan, Senior Vice President - Customer and Operating Services for CP&L. Panel I presented an introduction to and overview of the Harris Project including events and circumstances that affected the cost and schedule of the Harris Plant.

Harris Project Panel II - M. A. McDuffie, R. A. Watson, Vice President - Harris Nuclear Project for CP&L; Roland M. Parsons, Project General Manager - Completion Assurance for the Harris Plant; Leonard I. Loflin, Manager of the plant engineering function at the Harris Plant; David Grender-Jones, a Principal of Cresap (formerly Cresap, McCormick and Paget), the general management consulting services division of Towers, Perrin, Forster & Crosby. Messrs. McDuffie, Watson, Parsons, and Loflin described how the Harris Plant was designed and constructed. Mr. Grender-Jones presented Cresap's assessment of the processes and methods used by CP&L to manage the Harris Project.

Harris Panel III - Patrick A. Nevins, a Management Consultant with Cresap; George E. Howell, a Principal with J. E. Manzi & Associates; and Roland M. Parsons. Mr. Nevins presented the results of an analysis of changes in the cost of the Harris Plant; Mr. Howell presented the results of an analysis of factors that extended the schedule for completion of the Harris Plant; and Mr. Parsons reviewed the analyses presented by Mr. Nevins and Mr. Howell.

Harris Panel IV - Alan B. Cutter, Vice President - Nuclear Engineering Department of CP&L; Patrick W. Howe, Vice President - Brunswick Nuclear Project for CP&L; Roland M. Parsons; Harold R. Banks, Manager - Corporate Quality Assurance Department for CP&L; Roger J. Mattson; Vice President of Scientech, Inc. Panel IV testified with respect to the impact of changing regulatory requirements on the cost and schedule of the Harris Plant.

CP&L also offered the testimony and exhibits of the following witnesses: James H. VanderWeide, Professor of Finance and Economics at the Fuqua School of

Business at Duke University, testified as to the 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 expense levels, the Company's capital structure, and a new Depreciation and Decommissioning Study; and Thomas S. LaGuardia, President of TLG Engineering, Inc., presented the results of a decommissioning study prepared by his firm for CP&L's nuclear power plants. David R. Nevil, Manager of Rate Development Administration in the Rates and Service Practices Department of CP&L, testified as 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 cost of service study, as well as the base fuel calculations; and Norris L. Edge, Vice President for the Rates and Service Practices Department of CP&L, testified with respect to the proposed rates.

The Public Staff offered the testimony and exhibits of the following witnesses: George T. Sessoms, Jr., Director of the Economic Research Division, testified as to the Company's capital structure, cost of capital, and rate of return on common equity; Thomas S. Lam, Engineer with the Electric Division, testified on cost of fuel and fossil fuel inventory as well as on cost of service methodology; Benjamin R. Turner, Engineer with the Electric Division, testified on the customer growth adjustment and plant depreciation as well as on rate design; Linda P. Haywood, Accountant with the Accounting Division, testified as to the impact on costs arising from CP&L's agreements with the North Carolina Eastern Municipal Power Agency (NCEMPA or Power Agency) on the North Carolina retail revenue requirement; Michael C. Maness, Supervisor of the Electric Section with the Accounting Division, testified as to the Company's calculation of its Allowance for Funds Used During Construction (AFUDC) rate and the amount of Harris land-related cost to be included in electric plant in service; and Lafayette K. Morgan, Jr., Accountant with the Accounting Division, testified with respect to the accounting and ratemaking adjustments to the Company's cost of service made by the Public Staff.

The Public Staff offered the testimony and exhibits of a panel of witnesses concerning the prudence of the cost of the Harris Plant. Frank John Giaccio, Austin O. Knowlton, and Leo Flaman of Canatom Inc., presented a report of the findings which resulted from their audit of the prudence of CP&L's management decisions and costs related to the construction of the Harris Plant, including a determination of the costs they determined to be unreasonable.

The Department of Defense offered the testimony and exhibits of the following witnesses: James Lim, a consulting engineer and President of Hess & Lim, Inc., testified with respect to cost allocation, rate design, depreciation rates, and allowance for nuclear decommissioning costs; John B. Legler, Professor of Banking and Finance at the University of Georgia, testified as to CP&L's cost of equity capital; and Hugh Larkin, Jr., a partner in Larkin & Associates, Certified Public Accountants, testified with respect to various revenue requirement and accounting issues.

CIGFUR-II presented Nicholas Phillips, Jr., a consulting engineer with Drazen-Brubaker & Associates, Inc., who testified concerning cost allocation, rate design, and industrial rate comparisons. Other CIGFUR-II witnesses included: Richard E. Tyler, Energy Supply Manager for Weyerhaeuser Company; Bruce K. Hollinger, Manager, Utilities, for Monsanto Company; 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 industrial rates in North Carolina and those elsewhere in the Southeast, and their own efforts to conserve energy.

The Attorney General offered the testimony and exhibits of the following witnesses: Jocelyn M. Perkerson, Public Utility Accountant in the Energy and Utility Division of the North Carolina Department of Justice, who testified with respect to the need for annual alternative cost analyses during construction of the Harris Project; and a panel consisting of David A. Schlissel, Director of Schlissel Engineering Associates, and John J. Mavretich, consultant, who testified as to the reasonableness of the cost and schedule of the Harris Plant.

Intervenor NCEMC offered the testimony and exhibits of the following witnesses: John T. Stiefel, Chairman of Stiefel Associates Incorporated, testified regarding his critique of CP&L's arguments regarding the impact of regulatory changes on the cost overrun experienced at the Harris Plant; and William R. Jacobs, Jr., Senior Project Manager at GDS Associates, Inc., testified concerning the cost of the Harris plant compared to the cost of other pressured water nuclear power plants placed in operation since 1985.

North Carolina Fair Share offered the testimony and exhibits of the following witnesses: Joseph T. Hughes, Jr., a consultant, testified as to the reasonableness of the cost of the Harris Plant; and Dr. Robert B. Williams of the Department of Economics at Guilford College presented a comparison of the projected lifetime costs of the Harris Plant with those of a scrubbed coal plant.

CP&L also presented the testimony and exhibits of the following rebuttal witnesses concerning the prudence of the cost of the Harris Plant:

Rebuttal Panel I - M. A. McDuffie, Roland M. Parsons, Leonard I. Loflin, David Grender-Jones, and Patrick A. Nevins presented an overview of CP&L's response to reports sponsored by intervenors in the case.

Rebuttal Panel II - Edward G. Lilly, Jr., M. A. McDuffie, Wilson W. Morgan, Patrick W. Howe, and Roland M. Parsons, testified as to allegations concerning the original plant design and the failure to redesign in 1975.

Rebuttal Panel III - Alan B. Cutter, Roland M. Parsons, Leonard I. Loflin, Roger J. Mattson, and George E. Howell, addressed portions of the Canatom report and the testimony of David A. Schlissel concerning the reasonableness of the construction and start-up schedule for the Harris Plant.

Harry O. Reinsch, a Senior Consultant for Bechtel Group, Inc., presented his evaluation of CP&L's management of the Harris Project and of allegations by Canatom and Mr. Schlissel concerning the original plant design and the failure to redesign in 1975, the plant construction schedule, and field change requests.

Roger S. Boyd, Vice President of KMC, Inc., addressed the licensing risk associated with redesigning the Harris Plant in 1975.

Robert M. Spann, a Senior Vice President at ICF Incorporated, addressed the allegations by Canatom and Mr. Schlissel that the Harris Plant should have been redesigned in 1975 as well as the quantification of costs associated with the alleged schedule delay.

On July 8, 1988, the Public Staff filed a copy of a private letter ruling issued by the Internal Revenue Service to CP&L on June 15, 1988. The Public Staff requested that this private letter ruling be identified and admitted as a late filed exhibit. Upon consideration of the Public Staff's request, the Commission finds good cause for admission of the private letter ruling as a late filed exhibit in this case.

Prior to and during the course of the hearings, the parties made various motions and the Commission entered various Orders, all of which are matters of record. Additionally, pursuant to Orders of the Commission or requests of the parties, also of record, certain parties were directed or permitted to submit late-filed exhibits either during or subsequent to the hearings.

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 and has its principal office and place of business in Raleigh, North Carolina.

2. CP&L is a public utility corporation organized and existing under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission. CP&L is lawfully before this Commission based upon its application for a general increase in its North Carolina retail rates and charges pursuant to the Public Utilities Act.

3. The test period for purposes of this proceeding is the 12-month period ended March 31, 1987, adjusted for certain known changes based upon events and circumstances occurring up to the time of the close of the hearing.

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 seeks an increase in rates and charges to its North Carolina retail customers of approximately $205,099,966, which would produce jurisdictional revenues of $1,685,413,157 based upon a test year ended March 31, 1987. Annualized revenues under present rates, according to the Company, were $1,480,313,191 thereby necessitating this increase.

6. The procedures and controls in place relating to the accounting process for Harris Unit 1 were adequate on an overall basis to provide for

valid and accurate recording of the project's costs, and were generally adhered to adequately.

7. CP&L has met the prudence standard in its financing of the Shearon Harris plant. CP&L's financial management practices relating to Shearon Harris were generally reasonable and efficient.

8. Except as hereinafter found and discussed, the costs of the Shearon Harris nuclear plant are reasonable and were prudently incurred.

9. CP&L's failure to redesign the Harris plant's cable tray riser supports until May 1982, combined with its slow compliance with the Appendix R fire protection requirements, caused five months of avoidable delay. This delay is a direct result of imprudent actions, or lack of actions, by CP&L. The cost of this delay is $131,030,000 ($71,365,000 on a North Carolina retail jurisdictional basis), which should be disallowed from the cost of the plant to be put into CP&L's rate base.

10. Management imprudence resulted in an unreasonable number of design and construction errors on the Harris project. Quantification of the Field Change Requests relating to CP&L's design deficiencies and construction misfabrication is an appropriate measure of the cost of design and construction errors that exceeded a reasonable level. This quantification indicates that $11,244,000 ($6,124,000 on a North Carolina retail jurisdictional basis) should be disallowed from the cost of the plant to be put into CP&L's rate base.

11. CP&L should be allowed to recover as an expense its abandonment loss sustained as a result of the Company's having cancelled and abandoned its Mayo Unit No. 2 in March 1987. Recovery of the investment in that unit should be accomplished over a ten-year amortization period. CP&L should be allowed to continue to recover the cancellation costs of Harris Units 2, 3, and 4. Costs of $180,558,000 ($98,340,000 on a North Carolina retail jurisdictional basis) proposed for inclusion in rate base as part of Harris Unit 1 should be reallocated and assigned as cancellation costs of Harris Units 2, 3, and 4; these costs should be excluded from rate base and should be treated in a manner consistent with the other CP&L cancellation costs discussed herein.

12. The exclusion by the Company of income tax savings associated with the debt-related portion of the accumulated Job Development Investment Tax Credits (JDITC) from its Allowance for Funds Used During Construction (AFUDC) rate is inconsistent with the Commission's ratemaking treatment of JDITC and should be changed.

13. The reasonable application of the terms of CP&L's contracts to sell portions of its Mayo, Harris, Roxboro, and Brunswick generating facilities to the North Carolina Eastern Municipal Power Agency (NCEMPA) to a determination of the North Carolina retail revenue requirement in this proceeding requires the utilization of current costs and buyback percentages; utilization of the cost of common equity approved in this Order in the calculation of purchased capacity costs; recognition of the change in the state income tax rate; utilization of actual cost rates for Harris non-fuel energy costs; adjustments to reflect removal of Harris land-related costs; and levelization of the purchased capacity costs and purchased demand related expenses over the

respective lives of the Mayo and Harris buybacks in order to prevent the overcollection of these costs by the Company.

14. The Summer/Winter Peak and Average method, including the minimum system technique, is the most appropriate method for allocating costs between jurisdictions and between customer classes within the North Carolina retail jurisdiction in this proceeding. Consequently, each finding 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 methodology as described herein, including the minimum system technique. Certain adjustments to the cost inputs in the cost allocation study are appropriate in order to reflect adjustments to the Power Agency buyback percentages; Power Agency Reserve Capacity; the impact of generation mix normalization on Power Agency supplemental sales; customer growth; weather normalization; standby service for retail customers; Southeastern Power Administration (SEPA); and Stone Container adjustments.

15. A base fuel component of 1.276¢/kWh, excluding gross receipts tax and including nuclear fuel disposal cost, is reasonable and appropriate in this proceeding, resulting in a total fuel cost of $293,533,000 for North Carolina retail service. The test period system nuclear capacity factor of 76.6% was unusually high and should be normalized. The latest 10-year industry average capacity factors for boiling water reactors (BWRs) and pressurized water reactors (PWRs), published in the North American Electric Reliability Council's (NERC's) Equipment Availability Report 1977-86, are a reasonable basis on which to normalize test year performance of Brunswick Units 1 and 2 and Robinson Unit 2, respectively. The reasonable capacity factor at which to normalize performance of the Harris Unit is 70%. These normalized unit capacity factors result in a normalized system capacity factor of 61.93%, which is reasonable for purposes of this proceeding.

16. The reasonable allowance for total working capital for CP&L's North Carolina retail operations is $114,033,000, which includes an allowance for coal inventory of $52,837,000.

17. CP&L's reasonable original cost rate base used and useful in providing service to its North Carolina retail customers is $3,677,225,000, consisting of electric plant in service of $4,869,311,000, net nuclear fuel investment of $133,271,000, and an allowance for working capital of $114,033,000, reduced by accumulated depreciation of $949,412,000 and accumulated deferred income taxes of $489,978,000.

18. The appropriate level of gross revenues for CP&L for the test year, under present rates and after accounting and pro forma adjustments, is $1,482,299,000.

19. The reasonable level of test year operating revenue deductions for CP&L, after normalization and pro forma adjustments, is $1,178,231,000.

20. The appropriate depreciation rates for CP&L's plant accounts are those proposed by the Company, including a 3.1949% depreciation rate for nuclear plants.

21. CP&L's proposed method for accumulating a fund to cover the costs of decommissioning its nuclear plants at retirement is acceptable for purposes of this case, subject to full review and modification in a later proceeding.

22. The capital structure for the Company which is reasonable and proper for use in this proceeding is as follows:

Item	Percent
Long-term debt	48.57%
Preferred stock	7.43%
Common Equity	44.00%
Total	100.00%

23. 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 $134,819,000, based on the Company's adjusted level of operations for the test year. A 10.45% rate of return on total net investment yields a fair rate of return on common equity of 12.75%. The Commission's development of said return on common equity, for purposes of this proceeding, incorporates use of the annual version of the DCF model and includes no allowance for flotation costs; i.e, neither issuance costs nor the effect of market pressure. A 12.75% rate of return on common equity 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 8.62% and 8.75%, respectively.

24. CP&L should be authorized to increase its annual level of gross revenues under present rates by $134,819,000. After giving effect to the approved increase, the annual revenue requirement for CP&L is $1,617,118,000, which will allow the Company a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable.

25. The rates for all customer classes should be increased by the same percentage, except the Sports Field Lighting class should be increased by one-half the percentage of the other customer classes.

26. The rate design, rate schedules, and service rules proposed by the Company are appropriate and should be adopted, except as modified herein.

27. During the approximately seven-month period extending from January 1, 1988, through the date of this Order, CP&L has overcollected its federal income tax expense. Such overcollection is the result of the Company's current rates including a provisional component for federal income taxes calculated at a 40% federal income tax rate although the rate became 34% on January 1, 1988. Such overcollection should be refunded to the Company's North Carolina retail customers over a 12-month period.

28. CP&L should be required to implement the rate increase approved herein through use of a rate moderation plan. The plan as described herein will

moderate the initial impact of the rate increase on consumers by segmenting its impact into three distinct uniform phases.

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 public witnesses who appeared at the hearings in Asheville, Wilmington, Goldsboro, and Raleigh. The Commission notes that the record contains substantial testimony that CP&L is providing adequate service and little testimony suggesting 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 October 9, 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 contained in the testimony and exhibits of Public Staff witness Maness. On December 21, 1987, Mr. Maness filed with the Commission the Public Staff's Report on the Examination of Carolina Power & Light Company's Accounting for the Cost of Shearon Harris Nuclear Power Plant Unit 1. (Tr. Vol. 29, pp. 138-209; amended at Tr. Vol. 29, p. 137). This report, prepared by Mr. Maness and under his supervision, is based upon an examination and evaluation of the accounting procedures and controls in place for the Harris project, and the Company's adherence thereto. The audit was primarily an assessment of procedures and controls; it was not an audit of specific costs and was not intended to preclude consideration of any evidence that particular costs assigned to the Harris project are invalid, unreasonable, or inaccurate. (Tr. Vol. 29, pp. 123-124).

Mr. Maness testified that the results of the audit indicated that the procedures and controls in place relating to the accounting process for Harris Unit 1 were adequate on an overall basis to provide for valid and accurate recording of the project's costs, and that the procedures and controls were generally adhered to adequately. However, Mr. Maness noted that a two-year delay occurred in conducting internal audit reviews of the accounting distribution of constructor labor costs, from 1981/1982 until 1983/1984.

Performance of such reviews during that time period would have beneficially enhanced the internal control environment. (Tr. Vol. 29, pp. 124-125).

Mr. Maness made two recommendations in accordance with the Public Staff report. First, he recommended that the Public Staff and the Commission monitor the finalization of transfers of equipment from Harris Units 2, 3, and 4. Second, he recommended monitoring of the pending cancellation claim settlement of the Westinghouse Nuclear Steam Supply System (NSSS) contract for the three abandoned units. He testified that if a portion of the $104,000,000 already paid by CP&L to Westinghouse under this contract is refunded to CP&L, then a reduction in the amount paid by the ratepayers in amortization of abandonment costs would be appropriate, either through a reduction in the future amortization or as a refund of amounts already collected. (Tr. Vol. 29, pp. 125-126; 219-221).

The Commission concludes that the accounting procedures and controls in place for Harris Unit 1 were adequate on an overall basis to provide for valid and accurate recording of the project's costs, and were generally adhered to adequately. The Commission also concludes that the Company should be required to keep the Commission and Public Staff apprised of the status and value of its transfers from the abandoned Harris and Mayo units, and of the status of the settlement of the Westinghouse NSSS cancellation claim. Any reduction in the heretofore approved abandonment costs arising from these items will be passed on to the ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding of fact is found in the testimony and exhibits of Dr. Ben Johnson, President of Ben Johnson Associates, Inc., which was presented by the Public Staff. All parties waived cross examination of Dr. Johnson. Dr. Johnson's testimony examined four areas of CP&L's financial commitment to Shearon Harris.

First, he testified that he examined the Company's financial performance during construction of the Shearon Harris plant. This examination was used as a tool to evaluate the Company's financial decisions as they concerned Shearon Harris. For example, it showed that early in the project, CP&L experienced rather severe financial constraints caused, in part, by the construction of plants other than Shearon Harris. Management was thus aware of the financial strain that can be brought on by a large construction program. It was his opinion that CP&L's above-average financial performance was due to both favorable regulatory treatment and management decisions such as the foresight to sell an interest in Harris and other generating units. (Ben Johnson Report, pp. 6-26).

Second, he examined the capital funding of the Shearon Harris plant finding both strengths and weaknesses. While CP&L's performance was average or above average in evaluating certain specific security issuances, use of alternative financing techniques, and practices concerning short-term debt, cash and liquidity, it was his opinion that lack of formal guidelines and policies concerning decisions to issue common stock, preferred stock, and debt most likely contributed to a capital structure which he termed as inefficient or suboptimal. (Ben Johnson Report, pp. 39-71).

Third, Dr. Johnson examined CP&L's relationship with the financial community focusing upon its policies, strategies, accuracy and timeliness of communications which impacted its ability to raise capital on reasonable terms. In 1982, CP&L had a negative reaction and took strong issue with an Order of this Commission allowing CP&L only 5 percent of a requested increase. CP&L essentially publicly blamed the North Carolina Utilities Commission for delays in the Harris Project and various financial difficulties. Dr. Johnson opined that such negative publicity can serve to worsen, not strengthen, the Company's reputation with the financial community. With the exception of this single incident, the Company's relationship with the financial community was adequate in his opinion. (Ben Johnson Report, pp. 72-76).

Fourth, CP&L's financial management practices related to the Shearon Harris plant were examined. This investigation found CP&L's management practices to be reasonable, with one exception: namely, management did not adequately address the financial risks and uncertainties of its commitment to the four Shearon Harris units. According to his testimony, the Company should have made a much greater effort to examine the financial consequences and risks associated with continuing the construction of Shearon Harris, given the substantial risks associated with investment in the plant. However, he did not find imprudence on the part of the Company, and he recommended no disallowance. (Ben Johnson Report, pp. 27-38). We will consider this testimony further in connection with Finding of Fact No. 11.

Based upon the evidence in the record, the Commission finds that CP&L has met the prudence standard in its financing of the Shearon Harris plant.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

CP&L has requested the inclusion in rate base of the remainder of its investment in the Shearon Harris Unit 1 nuclear plant. Inclusion of 50 percent of the plant investment in rate base in the prior proceeding in Docket No. E-2, Sub 526, was premised on the fact that the prudence of the entire investment would be considered in this proceeding.

In September 1985, when the Harris plant was nearing completion, the Public Staff asked the Commission to undertake an audit of the construction cost of the plant. Mindful of its obligations as the ultimate arbiter of a challenge to the prudence of the plant investment, the Commission declined to undertake such an audit itself. However, by Order of December 9, 1985, in Docket No. E-2, Sub 511, the Commission suggested that the Public Staff undertake an audit.

The Public Staff and CP&L agreed that the audit would be postponed until the plant was almost completed so that CP&L's efforts in completing the plant would not be diverted. These parties also agreed that the standard for determining the prudence of the Company's actions should be whether management decisions were made in a reasonable manner and at an appropriate time on the basis of what was reasonably known or reasonably should have been known at that time. The Commission agrees that this is the appropriate standard to be used in judging the various claims of imprudence that have been put forth in this proceeding, see State ex. rel. Utilities Commission v. General Telephone Co., 281 N.C. 318, 345, 189 S.E.2d 705, 722 (1972), and adopts it as the standard to be applied herein. The Commission notes that this standard is one of

reasonableness that must be based on a contemporaneous view of the action or decision under question. Perfection is not required. Hindsight analysis --the judging of events based on subsequent developments -- is not permitted.

As reflected in the Company's and Public Staff's filings in Docket No. E-2, Sub 511, the parties generally agreed on how the auditor should apply this standard during the investigation. The parties agreed that the auditor was required to identify specific and discreet incidents of imprudence, if any existed. The auditor would then demonstrate the existence of available prudent alternatives that the Company should have followed to avoid the imprudence. Finally, the auditor would quantify the effects of the specific acts of imprudence by calculating the cost of the prudent alternative and comparing it with the costs incurred by the imprudent act.

The Commission agrees that this type of approach is required if the prudence standard is to have any meaningful application. Obviously, a decision cannot be imprudent if it represents the only feasible way to accomplish a necessary goal. Thus, identification of prudent available alternatives is necessary. The Commission also notes that only imprudent expenditures are to be disallowed. There can be imprudent actions without any economic impact. An imprudent decision or action can actually benefit the ratepayer economically. Thus, the identification of imprudence is not in itself sufficient. There must also be a demonstration of the economic impact of the imprudent act on the ratepayer. The proper amount chargeable to the ratepayer is the amount the plant would have cost but for the imprudent acts or decisions.

In March 1986, the Public Staff sent requests for proposals to a number of firms that engage in audits of nuclear plant construction. The Public Staff eventually selected Canatom, Inc., a Canadian architect/engineering firm with prior experience in audits of this type. The Public Staff also retained Ben Johnson and Associates to conduct an audit of the Company's financing of the Harris project, and the Public Staff itself conducted an audit of the accounting procedures and practices used by CP&L on the project. Neither the financing audit nor the accounting audit produced any challenges to the prudence of the Company expenditures.

The Canatom audit began in late October 1986 and continued until December 1987, when Canatom issued its audit report that has been filed in this proceeding. This report covers all major areas of the project. In the course of performing its audit, Canatom engaged in a massive discovery effort, including the issuance of almost 650 data requests, a number of interviews of key project and corporate personnel, and review of hundreds of thousands of pages of documentation. Canatom commended CP&L for its cooperative and professional approach to the audit.

Harris Unit 1 was originally projected to cost approximately $315 million and to come into service in 1977. It actually began commercial operation in 1987 at a cost of approximately $3.9 billion.

The Company has the burden of proving the prudence of its expenditures. It filed its direct case on September 10, 1987. CP&L presented testimony of its chief executive and other officers who were directly responsible for managing the construction, engineering, licensing, financing, and operation of the plant as well as the officer responsible for managing the Company's generation

planning and load forecasting functions. The Company also presented testimony by the CP&L employees who had the day-to-day responsibility for managing construction, engineering, quality assurance, licensing, and other functions. Many of the Company personnel appearing as witnesses had been involved with the Harris plant since its inception and all of them had had a long relationship with the plant. The Company's direct case presented a detailed account of the corporate decision making concerning the plant and the external and internal events that impacted the plant. To summarize, the four-unit Harris plant was started in 1971 at a time when CP&L was experiencing one of the highest growth rates of any utility in the United States. Harris was part of a massive construction effort undertaken by the Company to meet the projected growth in demand. Very high annual growth in peak demand continued through 1973, when the OPEC oil embargo occurred. The effects of this embargo were several, but the major impacts were on the Company's financial condition and on customer demand. CP&L began to experience serious financial difficulties in 1974 as a result of the embargo and growth in demand declined drastically. To counter these events, CP&L deferred a number of its plants, including the Harris plant, and indefinitely postponed others.

CP&L's financial condition continued to be poor in 1975, and the Company again moved to defer the Harris units and other units. Harris Unit 1 was deferred from 1981 to 1984 and the other units were deferred. These actions were taken to improve the Company's financial condition and to put it in a position to finance the heavy construction costs anticipated in the future. The deferrals were also possible because projections of demand growth were declining. However, no one knew at that time what long-term effects the oil embargo would have on the consumption of energy.

CP&L began construction of the Harris plant in January 1978, immediately after receipt of the construction permits from the NRC. Company witnesses testified that the cost of constructing the plant increased for a number of reasons, including record high inflation and interest rates and an increase in the regulation of nuclear plants by the NRC. At the same time, CP&L's projections of demand growth continued to decline and eventually stabilized at a level much lower than was projected at the time the plant was initiated. CP&L cancelled Harris Units 3 and 4 in 1981 and Unit 2 in 1983.

The Harris plant was not the only plant CP&L had under construction during the 1970s and 1980s. During this time, CP&L completed approximately two-thirds of the generating system it now has available to meet the demands of its customers. Decisions concerning the Harris plant had to be made in the context of this large overall construction program.

CP&L also presented testimony concerning how it organized the Harris Project, chose the major contractors and the plant design, and implemented the project concept. CP&L decided to assume the roles of construction manager and project manager on the Harris Project. It hired Ebasco Services, Inc. (Ebasco) as the architect/engineer and Daniel Construction Company as the constructor. Westinghouse Electric Corporation was awarded the Nuclear Steam Supply System (NSSS) and turbine contracts. CP&L witnesses described how CP&L managed all aspects of the project, ranging from engineering to quality assurance to project controls. CP&L also presented the expert testimony of Mr. David Grender-Jones of the management consulting firm Cresap who concluded that the management functions for the project had been prudent.

The Company also presented analyses of the increases in the cost and schedule of the Harris plant. Mr. Patrick A. Nevins of Cresap presented a study that demonstrated how the costs of the plant had grown in each of the Harris plant accounts between the definitive project estimate done in 1978 and the final plant cost. Mr. George E. Howell of Manzi and Associates presented a schedule analysis that demonstrated how and why the construction schedule for the Harris plant had increased from 73 months (construction permit to commercial operation) to 111 months.

Finally, CP&L presented extensive testimony concerning how regulation of nuclear plants had changed during the duration of the Harris Project. This testimony was given jointly by CP&L personnel who had worked on the project and Dr. Roger Mattson, who spent 17 years with the AEC and NRC. When the Harris plant was initiated, the AEC had only a limited number of written regulatory requirements. By the time Harris was completed, over 2800 additional regulatory documents had been issued by the AEC and the NRC. The witnesses also testified that, in addition to an increase in the number of regulations, the NRC's manner of regulation changed following the Three Mile Island (TMI) accident in 1979 and also as a result of quality assurance problems identified at other plants shortly after TMI. The witnesses testified that the NRC vastly increased its scrutiny of nuclear plant design and construction and instituted a practice of requiring verbatim compliance with regulatory requirements and standards. The NRC also required detailed documentation to verify that everything had been done and inspected as it was supposed to be and that the construction matched the design drawings in every detail.

Canatom filed its audit report in December 1987. Canatom concluded that overall CP&L had done a good job of managing the Harris Project, but Canatom did identify three specific items of imprudence, which the Commission will discuss below. Canatom proposed to disallow approximately $254 million or $290 million, depending upon which quantification methodology is accepted.

Other parties also filed testimony concerning the prudence of the Harris plant. The Attorney General sponsored testimony by Mr. David A. Schlissel of Schlissel Engineering Associates, who was accompanied on the witness stand by Mr. John Mavretich. Witness Schlissel proposed a disallowance of either $467 million or $856 million, depending on which of his adjustments are accepted. NCEMC presented the testimony of Dr. William R. Jacobs, who testified on plant comparisons, and Mr. John Stiefel, who recommended a disallowance of $880 million based on three allegations of imprudence. North Carolina Fair Share presented testimony by Dr. Robert B. Williams, a professor of economics at Guilford College, who presented a comparison of the costs of the Harris plant with the costs of a hypothetical coal plant. North Carolina Fair Share also presented the testimony of Mr. Joseph T. Hughes, Jr. on the public policy aspects of the Harris plant. Mr. Hughes did not recommend a specific disallowance.

In response to the allegations of these witnesses, CP&L filed a substantial rebuttal case consisting of three witness panels and three individual witnesses. The individual witnesses were Mr. Roger Boyd, an ex-NRC official, Dr. Robert Spann, an economist with ICF, Inc., and Mr. Harry Reinsch, the ex-Vice Chairman of Bechtel Corporation.

The Commission has carefully weighed and considered all of the evidence presented with respect to the reasonableness and prudence of the Shearon Harris plant construction costs. The Commission has found two areas of imprudence. The Commission has found that with prudent management decisions and actions, the plant could have been completed five months sooner. This five-month period of avoidable delay is discussed and quantified in connection with Finding of Fact No. 9 below. The Commission has also found that certain design and construction errors occurred during the construction of the plant which prudent management could have avoided. This imprudence is addressed in connection with Finding of Fact No. 10. Finally, the Commission has found that although the "cluster" arrangement of the plant was reasonable and prudent, the cancellation of three of the original four units has left certain common facilities that were originally planned to serve two or more units now serving only the one unit that has been completed. The Commission has concluded that some of the costs of these common facilities should be assigned to those units that have been cancelled and should be treated for ratemaking purposes as cancellation costs. This matter is discussed in connection with Finding of Fact No. 11. Except as noted above, the Commission finds that the costs of the Shearon Harris nuclear plant are reasonable and prudent and should be included in the Company's rate base.

The following sections discuss the Commission's findings on several specific allegations of imprudence that have been rejected by the Commission. Due to the extensive record in this proceeding, the Commission by necessity must summarize what it believes to be the salient evidentiary points on these issues. The findings and supporting evidence on each specific issue are included in the section that describes that issue.

PLANT GENERAL ARRANGEMENT

The evidence supporting these findings concerning the selection of the plant general arrangement is contained in the testimony of CP&L Direct Panels I, II, and IV, CP&L Rebuttal Panel II, CP&L rebuttal witness Reinsch, Public Staff Canatom witnesses, and Attorney General witness Schlissel.

The Harris plant as originally conceived was designed to take advantage of the economic and operational benefits of sharing common facilities among four units. The original design was four 900-megawatt pressurized water reactors in four containment buildings set 90 degrees apart in a square arrangement. These four units would share a common fuel handling building, which would bisect the squared containment arrangement, and a common waste processing building. Other plant structures and facilities were designed to serve either two or four units. Because the four units were grouped together in a square, this general arrangement came to be known as the "cluster" arrangement. (Tr. Vol. 9 at 81-84).

With the cancellation of Units 2, 3 and 4, some of the common facilities originally designed to serve four units now exist to serve only Harris Unit 1. This has caused the cost of the Harris plant to be more than it would have been had it initially been designed as a single unit. (Tr. Vol. 50 at 320).

Attorney General witness Schlissel has challenged the selection of the original general arrangement design selected for the Harris plant. He proposes

a disallowance of approximately $560 million for this decision by the Company. Both CP&L witnesses and Canatom testified that the original design selection was prudent. Based on the evidence summarized below, the Commission finds that the original selection of the plant general arrangement was prudent.

CP&L Panel II testified that one of the first major conceptual design decisions in constructing a power plant is establishing the general arrangement. This involves orienting the plant, locating the buildings with respect to one another, laying out the roads and railroads, establishing plant entrance controls, and locating the support buildings such as the administrative buildings, warehouses, and shops. With multiple unit sites, the process of laying out the plant general arrangement also includes establishing the relationship between the different units and the degree of system or facility sharing. (Tr. Vol. 9 at 75-77).

The Panel testified that although CP&L did not have a specific general arrangement in mind when it announced the project, several considerations influenced the ultimate choice. When the Harris Project was initiated, CP&L faced a pressing need to add a substantial amount of capacity to its system in a very short period. CP&L needed to add a large base load unit to its system every year in order to meet projected demand. The most economical way to do this was to build a number of units at one site to take advantage of the economies of design, procurement, construction, and operations attendant to multiple units at a single site. (Tr. Vol. 9 at 77).

The witnesses testified that CP&L historically had constructed multiple units at a single site to centralize operations, to reduce environmental and land acquisition concerns, and to achieve economies of scale and utilize common facilities. Since the 1920s, the Company's generating units have been multi-unit sites. In addition, the witnesses testified that the siting of multiple nuclear units on a single site was common in the nuclear industry (both CP&L's Robinson and Brunswick nuclear units are on multiple unit sites) and the NRC and others were encouraging this practice in the early 1970s. (Tr. Vol. 9 at 76-77).

The Panel testified that multi-unit siting allowed the Company to take advantage of the sharing of common facilities, and that this sharing was a major factor in the selection of the plant general arrangement for the Harris plant. CP&L's policy was and is to build plants that minimize construction quantities and that consolidate operating and maintenance personnel. In following this policy, CP&L has long emphasized in its generating plant designs the use, where possible, of shared or common facilities because their use reduces the total life cycle costs of its plants. Both the Brunswick plant and the Robinson plant utilize common facilities, as do most of CP&L's fossil plants. (Tr. Vol. 9 at 77-78).

The CP&L witnesses also testified that in the early 1970s, industry practice was to design common support facilities at multiple unit stations. The witnesses cited Duke Power Company, Virginia Electric and Power Company, Baltimore Gas & Electric Company, Georgia Power Company, Tennessee Valley Authority and Florida Power & Light Company as companies that had employed or planned to employ common facilities in their nuclear plant designs. In addition, the majority of multi-unit plants in operation or planned at the time the Harris plant was planned used common facilities or shared equipment to some

extent. (Tr. Vol. 9 at 78; Vol. 50 at 164-65). Attorney General witness Schlissel acknowledged that many companies built plants in which two units shared facilities, including fuel handling buildings and waste processing buildings. (Tr. Vol. 40 at 142-44).

CP&L Panel II testified that starting in early 1971, CP&L and Ebasco discussed and reviewed a number of plant general arrangements for siting four nuclear units at the Harris site. (Tr. Vol. 9 at 79). Ebasco sent its first proposals to CP&L in early June 1971. (Tr. Vol. 9 at 209-11; Ex. DAS-4). Ebasco had evaluated both four slide-along (or in-line) units and two twin units for the Harris plant. (Tr. Vol. 9 at 213-14).

The CP&L witnesses testified that the Company reviewed the Ebasco proposals with Ebasco (Tr. Vol. 9 at 216) and, in an internal Company meeting in June 1971, also discussed a sketch of a preliminary cluster design. (Ex. DAS-5; Tr. Vol. 10 at 10-11). This is the first mention of a cluster design in the documentation of the Company. (Tr. Vol. 40 at 119).

Later that month, Ebasco and CP&L met to discuss the plant general arrangement. (Tr. Vol. 10 at 15). As a result of that meeting, Ebasco was directed to study four plant layouts, including in-line, twin and cluster units. (Tr. Vol. 40 at 127). The CP&L witnesses testified that CP&L and Ebasco jointly developed a list of 15 design criteria to be used in evaluating the possible general arrangements for the plant. These design criteria reflected CP&L's desire to take advantage of the construction cost and schedule efficiencies possible with maximum use of common facilities. This was important because, at that time, there was an urgent need for new plants. (Tr. Vol. 9 at 79-80).

CP&L Direct Panel II testified that Ebasco prepared a detailed comparison of 10 possible general arrangements, five utilizing an in-line layout and five utilizing variations on a "cluster" concept, including twin-unit designs and an order of magnitude cost estimate for each alternative. Of the 10 proposals, the three that represented the most economic approaches were reviewed in detail by CP&L and Ebasco. (Tr. Vol. 9 at 80). These were discussed in an Ebasco letter dated July 13, 1971 (Ex. DAS-6), and included a four single-unit arrangement, a two twin-unit arrangement and a four-unit cluster arrangement. Based on its evaluation of these alternative designs against the chosen criteria, and taking into account projected costs and other factors, CP&L selected the cluster general arrangement for the Harris Project, notwithstanding Ebasco's initial recommendation to adopt the four single-unit, or slide-along, arrangement. (Tr. Vol. 9 at 81).

CP&L witnesses testified that there were a number of reasons for selecting the cluster design. The cluster arrangement satisfied the objectives of timeliness, cost and operating efficiency better than any of the other potential general arrangements. CP&L evaluated the cluster to be the least costly alternative both for construction and operations. It also lent itself to getting AEC construction permits in a single proceeding, which would be very valuable so far as assuring an ability to complete the units by 1977, 1978, 1979 and 1980. (Tr. Vol. 9 at 84-87).

CP&L witness McDuffie testified that Ebasco had also evaluated the cluster design to have the lowest capital cost. However, Ebasco also identified five

"intangible" risks that it believed might adversely affect the construction and operation of the cluster design. Ebasco believed that these intangible risks had the potential of more than offsetting the $2.7 million advantage that the cluster held over the in-line approach. Ebasco therefore recommended the in-line general arrangement over both the cluster and two twin-unit concepts. Witness McDuffie testified that CP&L evaluated these intangible risks and did not believe them to be significant. He also testified that after CP&L explained to Ebasco how it would deal with the intangible risks if they in fact arose, Ebasco accepted and supported the cluster design. (Tr. Vol. 9 at 23-25; Vol. 50 at 173-77).

CP&L witnesses testified that the Company believed that the cluster arrangement could be built more quickly and more economically than the other general arrangements, thus helping to ensure an adequate supply of power when needed. The cluster arrangement was compact and the original design utilized a number of common facilities. Thus, commodity quantities would be less than that required to build a plant utilizing any of the alternative arrangements and craft work hours would likewise be comparatively less. Craft workers could move more easily from one work place to another without losing valuable work time, and materials staging could be more centralized and efficient than with four separate units. (Tr. Vol. 9 at 84-85).

The Company witnesses also testified that the Company believed that the cluster arrangement would produce a safer, more efficient and more maintainable operating plant than the other arrangements. With four units, fuel handling would be an almost continuous process, which would allow for the use of a dedicated, highly trained force of fuel handling specialists in a single fuel handling facility. Individual lifts of new and irradiated fuel could be minimized. Additionally, safeguarding the plutonium inventory and cask handling areas, including decontamination facilities, could be optimized for more efficient and safer operation. The single four-unit fuel handling facility also would permit fuel sharing between the reactors, so that the first core load in Units 1 and 3 could be shared with Units 2 and 4, respectively. This fuel sharing concept projected substantial economic benefits and could be accomplished without having to move the fuel outside of the plant, thus improving both safety and security. (Tr. Vol. 9 at 85-86).

CP&L witnesses also testified that maintenance of the four units in a cluster arrangement would be easier than for separate, single-unit plants. The four-unit cluster facility was smaller than four single-unit plants, and less equipment and fewer structures were involved, so there would be less plant to maintain. A highly trained and dedicated maintenance crew could maintain the four units more efficiently than four crews could maintain four separate units. (Tr. Vol. 9 at 86).

As noted above, Company witnesses further stated that significant licensing benefits could be achieved by adopting the cluster arrangement. Because the cluster arrangement was essentially one large building complex, CP&L sought to receive all four construction permits simultaneously from the Atomic Energy Commission (AEC) after a single review of the entire plant. CP&L could thus undergo one construction license proceeding instead of two or four, thereby expediting the licensing process and reducing potential construction and licensing delays. In addition, CP&L hoped to standardize the design of the four units. Standardization could reduce design, construction, startup and

operating costs as well as minimize backfits of new regulatory requirements for each successive unit. (Tr. Vol. 9 at 86-87).

Finally, CP&L witnesses testified that the original plant general arrangement was described to the Utilities Commission in testimony by Company personnel in the proceeding for a certificate of public convenience and necessity in our Docket No. E-2, Sub 203 (62 NCUC Report 67, 83 (1972)). In addition, the Harris Preliminary Safety Analysis Report and Environmental Report were placed in evidence in that proceeding by the Commission staff. These reports contained sketches of the plant general arrangement and descriptions of the plant design. (Tr. Vol. 50 at 184-86). The Commission granted CP&L a certificate of public convenience and necessity. The cluster design was also approved by the NRC in the federal licensing process. (Tr. Vol. 9 at 86-87).

Canatom reviewed the selection of the original general arrangement. (Tr. Vol. 34,Part 2 at 61-77; Vol. 34, Part 3 at 294-303). Canatom concluded that the selection of any of the three final options considered, including the cluster design, would have been a reasonable choice. (Tr. Vol. 34, Part 3 at 302).

In addition, CP&L witness Reinsch concluded that the selection of the cluster design was prudent. Witness Reinsch is the ex-Vice Chairman of Bechtel Corporation which has built more nuclear plants than any other architect/ engineer in the world. Witness Reinsch testified that as the nuclear industry began to build multiple unit plants, the industry realized that sharing common facilities would save both time and money. He testified that a logical extension of the industry practice was to maximize the use of common facilities for any number of units on a common site. This was especially true in CP&L's case, since it needed the capacity and needed it in a relatively short period of time. (Tr. Vol. 56 at 133-34).

Witness Reinsch also testified that the use of common facilities allows the operation and maintenance of multi-unit plants to be optimized. Common systems can be run more evenly and operating personnel can specialize their functions to ensure increased availability and thus capacity. He noted that these benefits would be realized for the entire life of the plant. (Tr. Vol. 56 at 135).

In addition, Mr. Reinsch testified that the cluster concept was not significantly different from the concept of a twin-unit design. The cluster design was essentially two twin-unit plants sharing a common fuel handling building and waste processing building. (Tr. Vol. 56 at 135).

Attorney General witness Schlissel testified that, given the risks that had been identified with the cluster, the Company should have been able to produce more documentation of its decision-making process. He stated:

> Given these facts, which can be established without the benefit of hindsight, CP&L should clearly be expected to produce a reasonable quantum of evidence from the pertinent time frame which provide some basis for its "opinions" and "beliefs" that the problems inherent in the cluster design could be avoided. Rather, the company's presentation thus far in this proceeding is largely anecdotal and

based on hindsight. Indeed, it is difficult to imagine that CP&L had an opportunity to subject the cluster design to rigorous analysis since it appears the entire evaluation process for the general plant arrangement took place in approximately six weeks.

As I will discuss below, the cost of the single Harris Plant unit which was actually constructed was significantly affected by the original selection of the cluster design. Unless the company is able to further support its original choice of its design selection, I do not believe it has established the reasonableness of these incremental costs. (Tr. Vol. 40 at 147).

Witness Schlissel testified that Ebasco had twice recommended an in-line approach for the Harris Project. Ebasco had noted that the cluster and twin-unit designs were more economical than in-line units on the basis of tangible, quantifiable dollars, but Ebasco had perceived risks in the designs using common facilities. These risks involved added design requirements, the potential for increased construction interferences, potentially longer construction durations, potential licensing delay, and an operational concern over the possibility of an incident in a common building that could impact all four operating units. (Tr. Vol. 40 at 128-29). Witness Schlissel testified that the cluster design placed increased engineering requirements on the architect/engineer, placed a premium on effective coordination of construction forces, and increased the Company's cost exposure in the event schedule delays or project cancellations took place. (Tr. Vol. 40 at 124). He complains that the Company has not provided documentation explaining how it would have dealt with these risks or the basis on which it discounted them. (Tr. Vol. 40 at 147).

Witness Schlissel also testified that CP&L had not considered what cost impact cancellation of any units would have on the cluster design, and testified further that the AEC also had concerns over the cluster design. These concerns required CP&L to commit to upgrade Units 3 and 4 to then existing standards regardless of the impact on schedule. Witness Schlissel testified that, because of the close proximity of Units 1 and 2 to Units 3 and 4, modifications of Units 3 and 4 could have had serious impacts on the cost and schedule of Units 3 and 4. (Tr. Vol. 40 at 146).

Finally, Witness Schlissel testified that the Harris plant general arrangement was unique. He stated that other utilities who subsequently planned to build plants consisting of 3, 4 or 5 units did not use common facilities for four units. Several utilities planned to build two twin-unit plants while others opted for slide-along single units with little or no sharing of facilities. (Tr. Vol. 40 at 141-42, 146).

In response, CP&L Witness McDuffie observed that what witness Schlissel found to be a lack of documentation was not surprising. He testified that in the early days of the project no one knew that a prudence audit would occur and that detailed documentation would need to be saved for 17 years for that audit. (Tr. Vol. 53 at 25-26; Vol. 7 at 66). He also testified that the selection of the plant general arrangement is done very early in a project when little documentation is available. The selection of the general arrangement is what starts the engineering process for the project. Witness McDuffie testified that at this early stage of the project, the plant general arrangements are simply

8-1/2 x 11-inch sketches that contain no information about quantities, building size or other things. (Tr. Vol. 8 at 108-09; Vol. 9 at 18-19). The evaluation of these sketches is based principally on the judgment and experience of the various reviewers and is an informal process. (Tr. Vol. 51 at 11).

Witnesses McDuffie and Howe testified that they personally had evaluated the intangibles cited by Ebasco. They testified that CP&L had been discussing with Ebasco for some time both the benefits and disadvantages of stand-alone units versus some form of units with shared facilities, and that CP&L had been aware of Ebasco's preference for stand-alone single units for some time. CP&L disagreed, however, with the magnitude of the intangibles identified by Ebasco, and believed that Ebasco had missed several intangibles associated with stand-alone units. They testified that CP&L also knew that in terms of plant operability, which is equally if not more important than the cost of the plant, the cluster configuration presented the best option. Ebasco's job was finished when the plant was done; CP&L would have to live with and operate the plant for decades after the engineering and construction were finished. Operability was a major consideration in selecting the design. (Tr. Vol. 50 at 170-71).

Mr. McDuffie testified that the intangibles identified by Ebasco concerned mainly construction interferences, but that the evaluation was based on the judgment of Ebasco engineering personnel. Ebasco had been notified early in the process that they would be responsible for engineering the plant, but would not be responsible for constructing it. The evaluation that Ebasco did was performed by their engineering personnel, who were not as well versed in construction practices or possibilities as CP&L. The intangibles identified by Ebasco were not the result of a rigorous and formal analysis by Ebasco, but rather were based on the judgment and experience of Ebasco engineering personnel. That is why they were called intangibles and were not quantified. (Tr. Vol. 50 at 171-72).

In addition, Mr. McDuffie testified that CP&L's judgment about the risks and benefits of the various plant general arrangements was equally as valid as Ebasco's. Witness McDuffie testified that he personally had as much, if not more, construction experience than the Ebasco personnel. Prior to coming to CP&L in 1970, witness McDuffie had spent almost twenty years with Ebasco's construction organization. He had held a number of positions with Ebasco starting in 1948, and had been construction superintendent and project superintendent on a number of plants Ebasco had built for CP&L. McDuffie was project superintendent on the Robinson nuclear plant during 1966-1968, and in 1968-1970 he was Ebasco's construction manager with responsibility for supervising construction on various fossil and nuclear electric stations and switchyards. (Tr. Vol. 50 at 172).

Mr. McDuffie stated that his 20 years of experience with Ebasco and in the construction industry convinced him that the intangibles identified by Ebasco could be avoided through proper planning. His judgment was -- and still is -- that the cluster arrangement was the best option at the time and provided the most tangible and intangible benefits. (Tr. Vol. 50 at 172-73).

CP&L witness Howe testified that his judgment on the "intangible" licensing risks identified by Ebasco was also as good or better than Ebasco's. He had been involved with the nuclear industry since 1951. He had become a member of the AEC's Atomic Safety & Licensing Board in 1962 while he was

department head of the Lawrence Radiation Laboratory at the University of California at Berkeley. From 1967-1971, he was Chief of the Site Environmental and Radiation Group in the AEC's Division of Reactor Licensing. (Tr. Vol. 50 at 173).

Witness McDuffie testified that one intangible cited by Ebasco was related to what Ebasco perceived to be reduced efficiency because of limited access for cranes to be able to reach all the areas of construction. He testified that this concern over construction access could be avoided through the proper placement and use of a mixture of various types of cranes. The early 1970s was a period when the use of cranes was undergoing some innovative changes. Tower cranes with large capacities and reach were becoming available and concrete pumps were coming into general use. Witness McDuffie was confident that CP&L could avoid this potential problem. He testified that CP&L could also avoid the perceived limited maintenance access through proper design and installation of gantry cranes, the installation of "block outs" through which equipment could be removed, and the construction of wide aisles and high ceilings for good maintenance access. CP&L's operations personnel were of the opinion that the cluster had the best maintenance features. (Tr. Vol. 50 at 173-74).

Mr. McDuffie testified further that the second intangible related to possible construction delay. He stated that this intangible cited by Ebasco failed to take into consideration the advantages gained by a "learning curve" from construction of Unit 1. It assumed that schedule losses on each unit would be repeated, plus a similar delay potential for each subsequent unit. Mr. McDuffie testified that experience and industry records support the fact that similar units can be constructed more quickly and more economically. He observed that most assembly line or repetitive operations refute this intangible cited by Ebasco. (Tr. Vol. 50 at 174).

The third intangible related to the possibility of an incident in the fuel handling building during operations that could disrupt the refueling operations of all four units. Witness McDuffie testified that this concern was simply a basic philosophical difference between Ebasco and CP&L concerning the use of common facilities in nuclear plants. Witness McDuffie stated that use of common facilities does raise the possibility that an incident in a common structure could affect all of the units. However, the use of common facilities had also proven to be economical and efficient. He testified that CP&L and many others believed that with the appropriate design and equipment, the use of common facilities was sound. CP&L also believed that there were safety advantages from using the common fuel handling building concept. The Company would have dedicated, specialized crews working full time on fuel handling. It could minimize the number of lifts of new and spent fuel and it could minimize the outdoor movement of fuel casks. In witness McDuffie's opinion, the use of the common fuel handling building provided a number of safety and economic benefits. (Tr. Vol. 50 at 174-75).

The fourth intangible expressed Ebasco's belief that the use of the common reactor auxiliary building and associated interfaces were detrimental to efficient construction, start-up, and operation with the common fuel handling building and the second reactor building under construction. Witness McDuffie testified that he disagreed with this intangible concern. For one thing, the common fuel handling building would be completed along with Unit 1; thus, there would not be any construction in or on the common fuel building during the

operation of Unit 1. Second, CP&L's plan was to install any shared systems through the wall of the second unit during the construction of the first unit. These systems could then be finished independently for the second unit without impacting Unit 1. Witness McDuffie testified that he was confident this would not be a significant problem. (Tr. Vol. 50 at 175-76).

Witness Howe testified that the fifth intangible cited by Ebasco indicated that the licensing process could be extended because of the novel fuel handling arrangement. Witness Howe testified that Ebasco's analysis of this issue actually stated that, "Fuel handling meets Safety Guide but will require slight additional licensing effort." He testified that Ebasco and CP&L agreed that any licensing problems arising from the fuel handling arrangement would be slight and that it did not present serious licensing questions that could not be resolved. (Tr. Vol. 50 at 175-76).

Mr. Howe also testified that in 1971 the cluster design presented CP&L with licensing benefits. Specifically, CP&L could obtain construction permits for the four Harris Units in one licensing proceeding with the cluster arrangement. Witness Howe did not believe this was likely to happen with the other arrangements, where CP&L would probably have had two (or possibly even four) licensing proceedings. (Tr. Vol. 50 at 176).

In witness McDuffie's opinion, Ebasco also had omitted some intangible risks that would have affected the slide-along units. First, the choice of either slide-along or twin units would have increased the indirect costs of the project. These designs would require greater security efforts for the separate construction sites. They would have required an increased number of project management and supervisory personnel to manage the spread out construction site and work force. They would have required additional tools, warehouses, gang boxes, construction equipment, and other items because of the physical separation of the work force and construction sites. They would have required additional railroad construction and access road construction to cover the large site. Construction workers would have spent more time going to and from the various workplaces. (Tr. Vol. 50 at 177).

Mr. McDuffie also stated that he believed Ebasco had understated the cost advantage of the cluster design over the in-line units. He testified that Ebasco's evaluation was done at a conceptual stage of design and that information about construction quantities and other things was not available. It was apparent to Mr. McDuffie that the cluster design would take a significantly smaller amount of material to build than the other options. It also would require fewer indirect and overhead costs. (Tr. Vol. 50 at 177-78).

Mr. McDuffie testified that witness Schlissel had also overstated Ebasco's preference for the in-line approach over the cluster. Mr. McDuffie stated that CP&L had discussions with Ebasco and it specifically assured CP&L that it could plan and perform the engineering tasks in a manner that would help circumvent any potential construction interferences. After CP&L discussed with Ebasco how it would deal with the intangibles they had raised, Ebasco supported the cluster. (Tr. Vol. 50 at 178). The Commission notes that the Canatom report supports this statement. Through its interview of Ebasco's Project Manager, Canatom determined that Ebasco did support the cluster concept. Canatom's report states:

During an audit interview on May 6, 1987, Ebasco advised that once its concerns regarding licensing and construction sequencing had been addressed by CP&L, it endorsed the cluster arrangement. (Tr. Vol. 34,Part 2, at 76).

Mr. Howe also testified that Attorney General witness Schlissel had not correctly stated the AEC's reaction to the cluster design. He testified that the AEC was never concerned about the design itself. The AEC initially had some reservations about granting a single review for four units spread out over three years. The AEC had never had a request for four-unit licensing before, and it had had the same reservations when it was first requested to conduct a single proceeding for two units. (Tr. Vol. 50 at 180). CP&L witness Roger Boyd, who was with AEC at the time in question, confirmed Mr. Howe's testimony. Mr. Boyd testified that the initial novelty of making licensing decisions on multi-unit applications in a single review proceeding, and not the configuration of the units, was what concerned the AEC. He also testified that this was quickly resolved in CP&L's favor. (Tr. Vol. 60 at 145).

Witness Howe testified that CP&L first appeared before the AEC staff on the Harris plant in January 1972. Less than two months later, the Advisory Committee on Reactor Safeguards (ACRS) considered CP&L's proposal for a single review for the four-unit plant. The AEC staff was by then enthusiastic about the single review process for four plants. On May 8, 1972, the ACRS informed the Chairman of the AEC that it had "no objection to coordinating a single review of the application to construct the four units of the Shearon Harris Nuclear Power Plant." (Tr. Vol. 50 at 180-81).

Mr. Howe also stated that the ACRS granted approval for the single review process for four units based on CP&L's commitment that it would incorporate AEC required safety changes and would evaluate the feasibility of incorporating other significant improvements for Units 3 and 4. CP&L informed the ACRS that Units 3 and 4 would represent the same quality of safety incorporated in other units which would become operational during that time period. (Tr. Vol. 50 at 181).

Mr. Howe also testified, however, that this commitment did not have the implications in 1972 that witness Schlissel attributes to it. CP&L's judgment was that this commitment was not a major issue and that it would not delay the units. (Tr. Vol. 50 at 181). In addition, the AEC staff itself recognized in 1972 that it had this authority; an AEC member stated to the ACRS that the AEC staff favored the single review process for the four-unit cluster design and that "special problems and backfitting can be handled adequately on each unit at the O.L. stage, with aid from the provisions of 10 C.F.R. 50.109, if necessary...." (CP&L Canatom Cross-Examination Exhibit No. 16 at 2; Tr. Vol. 18 at 172). Witness Howe also stated that the commitment to the ACRS was in fact an acknowledgement by CP&L of the power that the AEC already possessed. (Tr. Vol. 18 at 172-73, 179). This was confirmed by CP&L witness Roger J. Mattson. Witness Mattson testified that the concern of the ACRS was that CP&L might use the single review process as an argument for trying to avoid subsequent backfits on Units 3 and 4 required by the rightful exercise of the AEC's power. (Tr. Vol. 18 at 173-75; 179-80). CP&L witness Howe also testified that CP&L would have had to make this same type of commitment regardless of which plant arrangement and which licensing strategy it had adopted. The later units would have had to represent the quality of safety

incorporated in other units which became operational at the same time. (Tr. Vol. 50 at 182).

CP&L witness McDuffie testified that neither CP&L nor anyone else, including Ebasco, had considered the impact of subsequent cancellations on the cluster design. He testified that there was such a compelling need for capacity that no reasonable person could conceive of the possibility of a cancellation. He stated that CP&L's concern was with getting the plants it needed to serve its customers built quickly enough, not whether they would be cancelled. (Tr. Vol. 9 at 38; Vol. 51 at 39-40).

Mr. McDuffie also addressed Attorney General witness Schlissel's statement that CP&L could not have fully evaluated the cluster design because the entire evaluation process took only six weeks. Witness McDuffie stated that six weeks is sufficient time for experienced personnel to make a decision about the conceptual general arrangement of a plant. He noted that CP&L did not have the luxury in 1971 of making a year-long study nor were such analyses common practice at the conceptual design stage. CP&L had to make decisions based on applying its judgment and experience and with the best available information. In 1971, CP&L had a very serious need to add a significant amount of capacity to its system, and it could not wait around for several years before making decisions. (Tr. Vol. 50 at 183-84).

The Commission concludes that, based on the evidence presented, CP&L's choice of the cluster design was a prudent decision. CP&L considered a number of different alternative plant layouts and eventually selected the cluster design. The Company's decision to use the cluster design was based on specific and identified design criteria. The cluster design did meet the specific design criteria better than the alternatives. These design criteria were consistent with the Company's long held philosophy of using common facilities at its plants in order to reduce material quantities, construction duration, capital costs, and total life cycle costs of its plants. The evidence demonstrates that CP&L had experienced success for many years in building plants with common facilities and no witness has suggested otherwise. The evidence also shows that many utilities were building or planning common facilities at both two- and four-unit plants in the same time frame.

The Company has fully explained the reasons it selected the cluster design. Based on its load forecasts, CP&L needed to add a significant amount of capacity in a short amount of time. CP&L managers believed that the cluster design was the best option to meet their need, because it could be built more quickly and more economically than the other designs. The Company also believed that the cluster had the best features for maintenance and operations of the various options. The Commission notes that no one has challenged the maintenance and operational benefits of the cluster design, which would have been realized over a 30- or 40-year period. In addition, the cluster design had significant benefits in the licensing arena, because the potential existed to achieve the construction permits for all four units in one licensing proceeding. CP&L believed that the other designs would require two or even four license proceedings. Licensing time was critical because the units were needed in service in a relatively short period of time and licensing delays could prevent timely completion of the plant.

CP&L did select a design that no one had ever used before. As CP&L pointed out, however, any design they selected would have been unique because no one had ever built four nuclear units together on one site before. The record demonstrates that the cluster was not radically different from the design of twin-unit plants that were being built by many utilities. The cluster was essentially two identical twin-unit plants placed back-to-back sharing one common fuel handling building and one waste processing building, rather than having one of each of these buildings for each of the twin units. The Commission cannot find imprudence simply from the fact that the design was new. Many technological innovations were at one time new and unique concepts; progress is made through new developments.

CP&L also selected a design that was not the first choice of its architect/engineer, Ebasco. The Commission does not believe that the fact CP&L disagreed with the first choice of its contractor is in itself evidence of imprudence. The Commission does not agree with the proposition that a utility should uncritically accept the judgments of a contractor, especially if utility personnel have sufficient background and experience in the area under review. In addition, the evidence presented indicates to the Commission that any of the three final options presented by Ebasco would have been a reasonable choice.

The Company has adequately explained the reasons it opted for the cluster design over the design initially preferred by Ebasco. Ebasco had identified certain intangible risks of the cluster design in the areas of construction, operations, and licensing. CP&L witness McDuffie testified that he had evaluated the intangible construction risks identified by Ebasco and did not believe them to be significant. Witness McDuffie was certainly qualified to make such a judgment; he had worked for Ebasco for 20 years on both fossil and nuclear plants prior to joining CP&L and, had he remained at Ebasco, he would have been the person responsible for making similar judgments there. Witness Howe testified that he had evaluated the intangible licensing risks and did not agree with Ebasco's concern. Again, Mr. Howe was qualified to make such a judgment; he had been a member of AEC's Atomic Safety and Licensing Board (the body that adjudicates licensing proceedings) for five years and had held a senior management position at the AEC for four years prior to joining CP&L. Witness McDuffie also testified that CP&L disagreed with Ebasco's operational concerns, and CP&L had more plant operating experience than Ebasco. Both Canatom and the CP&L witnesses testified that Ebasco accepted and supported the cluster design after CP&L explained how it would deal with the intangible risks Ebasco had identified.

The Commission also does not accept witness Schlissel's contention that the AEC had concerns about the cluster design. There is no evidence to support the theory that the AEC had any concern about the design itself; rather, the evidence shows that the concern of the AEC was over the novel request to have a single licensing proceeding to cover four construction permits. Witness Howe and witness Boyd, who both had firsthand knowledge of and involvement in the licensing proceedings for the Harris plant, confirmed that this was the case. Indeed, Attorney General witness Mavretich testified that this concern had to be "inferred" from AEC documents. (Tr. Vol. 41 at 231).

Further, the Commission rejects witnesses Schlissel's and Mavretich's assertions that the AEC's and Ebasco's warnings about the cluster became prophecies. This is simply not true; none of the concerns expressed by the AEC

or Ebasco resulted in construction or security problems or in construction delay. Since only Harris Unit 1 was completed, no operating problems have resulted from the cluster design.

The Commission also notes that the Attorney General's proposed disallowance of $560 million on this issue is premised on the assumption that the only prudent choice in 1971 was the slide-along arrangement. On cross-examination, however, Attorney General witness Mavretich refused to take a position on the prudence of selecting a twin-unit design in 1971. (Tr. Vol. 42 at 39-41). Evidence in this case indicates that CP&L would have selected the twin unit as its second choice, and the twin unit also would have caused the construction of common facilities for one unit.

Nor is the Commission persuaded by witnesses Schlissel's and Mavretich's complaint that CP&L has not adequately documented its decision process. As witness McDuffie pointed out, no one suspected in 1971 that prudence audits of this nature would be held. CP&L has presented three witnesses (McDuffie, Watson, and Howe) who had firsthand participation in the selection of the cluster design. The testimony of Canatom and CP&L Direct Panels, I, II, IV, CP&L Rebuttal Panel II, and CP&L Rebuttal witnesses Reinsch and Boyd are more than ample to support the finding that the choice of the cluster design was prudent.

HARRIS PLANT REDESIGN

The evidence for the findings concerning a Harris plant redesign in 1975 is contained in the testimony of CP&L Panel I, CP&L Rebuttal Panel II, CP&L Rebuttal witness Boyd, CP&L Rebuttal witness Spann, Canatom, and witness Schlissel.

Both Canatom and Attorney General witness Schlissel contend that CP&L was imprudent in not redesigning the Harris plant in 1975 from a four-unit cluster to two twin units. Their theories of why the redesign should have occurred are substantially similar, so the Commission will use Canatom's issues as the basis of this discussion. There was extensive prefiled testimony and cross-examination on this issue and the Commission has focused on the evidence it deems most relevant to the issue.

In its report, Canatom contends that the implementation of the Harris Project was in serious trouble in 1975. (Tr. Vol. 34, Part 2, at 86). The financial difficulties of the Company, increasing plant costs, increasing regulation, and declining load forecasts made the risk in 1975 of cancellation of Harris Units 3 and 4 substantial. (Tr. Vol. 34, Part 2, at 102). In addition, Canatom contends that the cluster design required a substantial upfront commitment of expenditures because the common facilities for all four units had to be completed and Units 2, 3 and 4 had to be built up to grade before Unit 1 could operate.

When Canatom took the witness stand, Canatom testified that the "first and foremost" reason the Company should have redesigned the plant was because it was in a financial crisis in 1974-75 and had cash flow problems. The Harris plant was capital intensive, and 60% of the concrete for four units had to be poured prior to the operation of Unit 1. A redesign to two twin units would have reduced the financial risk posed by the cluster and would have reduced the

amount of common facilities currently associated with Unit 1. Because the Company failed to redesign the Harris Plant into two twin units in 1975, Canatom proposes to disallow approximately $181 million. (Tr. Vol. 34, Part 4, at 5 and 54). Witness Schlissel proposes to disallow $146 million. (Ex. DAS-32.) These disallowances represent the cost of common facilities now associated with Unit 1 that could have been eliminated by a redesign.

The Company's response, in summary, is that in 1975 all four Harris units were clearly needed. Redesigning the plant would not have reduced cash flow in the short term significantly and it would have significantly increased the cost of Units 3 and 4. The increase in the cost of Units 3 and 4 would more than offset any savings on Units 1 and 2. In addition, the redesign would have significantly increased licensing risks on Units 1 and 2 and induced licensing delays that could have jeopardized the completion of Unit 1 when needed. In short, the Company's position is that there was no reason to redesign in 1975 and many reasons not to.

The Commission finds, based on all of the evidence, that CP&L was not imprudent in continuing with the cluster design in 1975. The need for the plant was clearly established and the risk of future cancellation was very low. The savings on Units 1 and 2 could have been accomplished only if Units 3 and 4 were never built, but in 1975 this was not an acceptable assumption. The evidence also indicates that the redesign had the potential to increase the costs of Units 3 and 4 beyond any savings to be gained on Units 1 and 2. The evidence also shows that the redesign had the potential for significant licensing risks. The proposed redesign had benefits that are clear only through the events that occurred many years after 1975, but the benefits were not clear in 1975.

A discussion of the redesign issue requires a review of the circumstances facing CP&L in the mid-1970s. In the late 1960s and early 1970s, CP&L had experienced a number of years of very high load growth; for example, in 1973, actual peak load growth was 14.2% over 1972 levels. In late 1973, the OPEC oil embargo occurred, which led to a national recession with interest rates and inflation rising rapidly. In addition, customer demand growth slowed. (Tr. Vol. 50 at 195). In response to this situation, CP&L began revising its load forecasts downward, from 11.2% in May 1973 to 9.3% percent in mid-1974.

CP&L's financial situation was grave during this period. CP&L's fixed charge coverage dropped, and its stock financing options were limited. Due to the financial situation, CP&L made substantial reductions in its construction budgets: the 1974 budget was reduced $86 million and the 1974 through 1976 construction program was reduced by $410 million. In March 1974, CP&L began extensive internal cost control measures, including a hiring freeze, a freeze on raises and other steps to improve its financial condition. (Tr. Vol. 50 at 196).

To accommodate these changes, CP&L deferred a number of its planned generating units and lowered its planning reserve margin from 18% to 12% This was a serious move taken in response to the reality of CP&L's precarious financial circumstances. CP&L's Board of Directors, in June 1974, deferred Harris Units 1, 2 and 4 each by 17 months to March 1981, March 1982, March 1983 and Harris Unit 3 by two years to March 1984. The Board also deferred the

three South River units for two years each and postponed Darlington County Unit 2 indefinitely. (Tr. Vol. 50 at 197).

CP&L Rebuttal Panel II testified that financial problems were driving plant deferrals much more than was the change in load growth rates. They stated that there was no indication that the load growth decline CP&L had experienced in early 1974 was a permanent trend. The industry had experienced fluctuations in growth in previous years, especially when there had been economic fluctuations, and even CP&L's year-to-year growth in demand had varied significantly. Also, the oil embargo was an unprecedented event, and no one knew what its long-term ramifications would be. (Tr. Vol. 50 at 197).

Given existing conditions, CP&L's planning was very cautious and tended toward erring on the side of not having enough capacity in the 1980s and 1990s. The reserve margins CP&L was projecting after the mid-1974 deferral were never greater than 12.9% after 1976. Because of the low reserve margins, coupled with plant deferrals and conservative demand growth projections, there was virtually no chance in 1974 that Harris Units 3 and 4 would be cancelled. Even using its 12% percent reserve margin criterion, CP&L was faced with adding one base load unit to its system every year between 1975 and 1987. (Tr. Vol. 50 at 198).

By the end of 1974, CP&L's financial condition worsened and its bonds had been downgraded in August and again in December. By December 1974, CP&L stock was selling at $10 7/8, down from $21 1/8 the previous December. This represented a market-to-book ratio of only 46.5%. Energy sales growth continued to decline; energy sales for the 12 months ending in November 1974 were only 4.2% higher than the previous 12 months. CP&L's 1974 load forecast projected a growth rate of 8.1% for the years 1975-1984, down .5% from the previous forecast for the same time period. (Tr. Vol. 50 at 198).

CP&L Rebuttal Panel II testified that, in response to the deteriorating financial situation and the continuing decline in load growth projections, the Company made other deferrals by year-end 1974. The three South River units were postponed indefinitely, as were Mayo Units 1 and 2. Roxboro Unit 4 was delayed several times in 1974 and was eventually rescheduled for 1978. (Tr. Vol. 50 at 200).

CP&L's financial condition continued to be difficult in early 1975, and its bonds were downrated again, after two downratings in 1974. CP&L instituted an even more stringent internal cost control improvement program in early 1975. (Tr. Vol. 50 at 203).

CP&L Rebuttal Panel II testified that the combination of financial and load growth circumstances prompted the Company in March 1975 again to examine alternative generation plans to see if it could achieve short-term cash flow savings while still meeting its obligations to serve customer demand. The witnesses testified that CP&L's focus was on seeking to reduce short-term cash flow; CP&L believed that all of the planned units would be needed, but it wanted to achieve rate relief and better economic conditions before the heavy expenditures on these future units began. (Tr. Vol. 50 at 203-04).

CP&L witnesses testified that in March 1975, CP&L started reviewing its generation additions plans with four objectives in mind:

- o Minimize capital expenditures in the next few years;
- o Meet load forecast requirements with some reserves;
- o Provide flexibility to shift in-service dates of some units; and
- o Avoid cancellation charges in the immediate future.

Using these guidelines, CP&L developed seven different preliminary scenarios involving the units in its existing generation additions plan. During March CP&L studied allowable load growth projections and the cash flow associated with each scenario. Its March 1975 forecast was 7.7% (down 0.4 percentage points from October 1974). It analyzed cancellation costs for Harris and other units, licensing impacts, construction schedules, and other items. (Tr. Vol. 50 at 204).

The CP&L witnesses testified that CP&L eventually developed a plan reflecting generation additions through 1990 and including all four Harris units going into service in 1984, 1986, 1988 and 1990, respectively. These represented three- to six-year deferrals for those units. The Mayo units were returned from indefinite postponement for in-service in 1983 and 1985. Two of the South River units were returned from indefinite postponement for in-service in 1987 and 1989. (Tr. Vol. 50 at 205).

The witnesses testified that this plan, which was based on the March 1975 load forecast of 7.7% for 1975 to 1984 and a projected 6.1 percent average annual load growth for 1984 to 1994, was adopted in late April 1975 by CP&L's Board of Directors. They testified that this deferral plan met three of the Company's four objectives for choosing a generation additions plan well. It provided better short-term cash flow relief by reducing capital expenditures by $732 million over the next five years and by $427 million over the next 10 years. It avoided cancellation charges in the immediate future by returning the indefinitely postponed units to the generation plan. The plan also provided good flexibility to shift in-service dates of some units forward. (Tr. Vol. 50 at 205).

Rebuttal Panel II testified that this plan did not provide a satisfactory level of reserve margins. Under the plan, the reserves in the 1980s ranged from 11.1% to negative 2.9%. The Company was aware of this situation, but was also aware that its ability to finance major construction in the near term was not good. (Tr. Vol. 50 at 207).

Canatom's position is that by the time this deferral plan was approved in late April 1975, CP&L should have redesigned the Harris plant into two twin units. Canatom asserts that this would have reduced the Company's financial exposure with the cluster design.

CP&L witnesses testified that the Company never considered such a redesign in April 1975 or later. (Tr. Vol. 50 at 194). They testified that under the plan CP&L adopted in April 1975, which was based on very conservative assumptions, the need for all four of the Harris units was clearly shown. Even including the Harris and the South River units, the reserve margins for 1984 and 1990 ranged from a high of 11.2% to a low of negative 1.5% Without Harris Units 3 and 4 the reserves from 1984 and 1990 ranged from a high of 7.8% to a low of negative 1.6%. Without either Harris Units 3 and 4 or the South River units, the reserves from 1984 to 1994 ranged from a high of 4.1% to a low of

negative 17.9%. They testified that the need for Harris Units 3 and 4 in May 1975 could not seriously be disputed. (Tr. Vol. 50 at 207-08).

The CP&L witnesses also testified that by focusing entirely on Harris Units 3 and 4, Canatom had missed a very important point. They point out that Harris Units 3 and 4 were not the only units CP&L was building. Rather, it also had Mayo Unit 1 and 2 and South River Units 1 and 2 scheduled for service in the 1980s, and CP&L had much less invested in these units than in the Harris plant. The Harris plant was much farther along in planning, design, licensing, and procurement than those units. If future units had to be cancelled for financial or other reasons, other units, and especially the South River units, would certainly have been viewed as more likely candidates than the Harris units in 1975. (Tr. Vol. 50 at 208).

CP&L Rebuttal Panel II testified that CP&L studied cancellation of Harris Units 3 and 4 primarily for financial reasons in March 1975 and again in a study that culminated in October 1975. The Company found after the March study that it was absolutely impossible to cancel them, have minimally adequate reserves, and significantly reduce near-term cash flow, which was its primary objective. The plan adopted by the CP&L Board of Directors in April 1975 had been a drastic step, but CP&L wanted to review again whether it could reduce the cost of the construction plan further by cancelling Harris Units 3 and 4 and/or South River 1 and 2. It also wanted to re-estimate the cost of the Harris plant, to review and analyze the planned construction schedule duration for the plant, and evaluate the NRC's potential reaction to the deferral of the units. (Tr. Vol. 50 at 210).

CP&L Rebuttal Panel II testified that the Company's study of the possibility of cancelling Harris Units 3 and 4 and/or South River 1 and 2 was concluded in October 1975. This study used a revised load forecast of 7.4% for 1975-1985, a projected 6% average annual load growth for 1986-1994, and the new estimate of the Harris plant cost. This study demonstrated that:

- Cancellation of the Harris 3 and 4 or South River 1 and 2 units would not significantly decrease short-term cash requirements because of cancellation charges;
- The capacity represented by Harris Units 3 and 4 and South River Units 1 and 2 was needed during 1984-1990;
- Harris Units 3 and 4 could not be cancelled and replaced with other nuclear units in the necessary time frame except at significantly increased costs; and
- Replacement fossil capacity was more expensive than Harris Units 3 and 4 when compared on a total cost basis. (Tr. Vol. 50 at 210-11).

CP&L Rebuttal Panel II testified that based on this October 1975 study, CP&L continued on the course adopted by its Board of Directors in April 1975. Even under the revised October 1975 load forecast, the generation additions plan hedged against continuing decreases in load growth by providing very small, and in some years, negative reserve margins. The Harris units were clearly needed and there was no basis for consideration of cancellation, especially since the South River and Mayo units, on which far less had been spent, were still in the construction program and could be cancelled if estimates of load growth and construction costs proved to be inaccurate. The October study showed that the growth rates would have to drop on average to

about 3.5% over the 1980 and 1990 time frame to maintain even a 12% reserve margin without the South River Units and Harris Units 3 and 4. In 1975, there was no likelihood of this happening. (Tr. Vol. 50 at 213).

Canatom's position, as noted above, is that the circumstances facing the Company at the time it made the deferral of the Harris Units in April 1975 should have prompted CP&L to redesign the plant into two twin units. Canatom asserts that the redesign would have reduced the cost of Units 1 and 2, would have reduced CP&L's financial commitment, would have had no impact on licensing and would not have interfered with the in-service date of Unit 1 or of Units 2, 3, and 4. The Commission believes that, although there was a tremendous amount of testimony on this issue, it can be best resolved by focusing on several basic questions: (a) Was there a need in 1975 for the Harris Units, and how clear was that need?; (b) What impact the redesign would have had on the cost of the plant?; (c) What impact the redesign would have had on the licensing process and the construction schedule for the plant?; (d) What impact would the 1975 plant deferrals to 1984, 1986, 1988 and 1990 have had on the construction of the cluster design?; and (e) What impact would the redesign have had on the Company's financial condition? These questions are addressed below.

REDESIGN - Need for the Harris Plant

Canatom asserted in its report that there was a "clear," (Tr. Vol. 34, Part 1, at 78) "high," (Tr. Vol. 34, Part 3, at 328) and "substantial" (Tr. Vol. 34, Part 2, at 102) risk in 1975 that Harris Units 3 and 4 subsequently would be cancelled. The Commission cannot accept the proposition that in 1975 there was a high risk of cancellation of these units. The evidence of record shows that in 1975 the risk of subsequent cancellation of Units 3 and 4 was minimal.

CP&L Direct Panel I and Rebuttal Panel II testified about the studies CP&L conducted in 1975 on the need for the four Harris Units. These studies demonstrated that there was a very strong need for all four Harris Units in the mid- to late-1980s. Even with the Harris Units, the South River Units, and a number of other units in the generation additions plan, CP&L's projected reserve margins were unacceptably low -- and in some years even negative--throughout the 1980s and early 1990s. This data does not indicate a clear or substantial risk that Harris Units 3 and 4 would be cancelled; in fact, it indicates just the opposite.

CP&L rebuttal witness Dr. Spann also testified concerning the Company's projections on the need for the Harris Units. He concluded that the risk in 1975 of a subsequent cancellation of Harris Units 3 and 4 was very low. (Tr. Vol. 63 at 36). He, as well as the Company and Canatom witnesses, noted that if cancellations did subsequently occur, the South River and Mayo plants would be cancelled before the Harris Units because of the relatively minor investments in those plants. The CP&L studies in 1975, however, showed a strong need for all these units. (Tr. Vol. 63 at 24).

In its Proposed Order in this proceeding, the Public Staff asserted, "Canatom accepted CP&L's load forecast and Canatom's redesign assumes all four Harris units would be built."

Evidence was presented as to the Commission's load forecast hearings pursuant to G.S. 62-110(c). These proceedings were not held until after 1975, and we have not considered them in weighing the prudence of CP&L's decisions in April 1975. However, we note that in these proceedings both the Public Staff and this Commission always included the four Harris Units and other units in CP&L's proposed generation additions plans through 1981. When CP&L cancelled the Harris Units in 1981, this Commission was concerned that the cancellation may have been premature and would leave CP&L with inadequate reserves. (Tr. Vol. 50 at 216-225).

The Commission concludes that the risk in 1975 of a subsequent cancellation of Units 3 and 4 was very small if any existed at all. The evidence demonstrates that CP&L should have been trying to get these units into service sooner than it planned. Canatom's redesign theory is not supported by a risk in 1975 that the units would be cancelled.

REDESIGN - Cost of the Redesign

Canatom's proposed redesign involves splitting the Harris plant into two twin units. Units 1 and 2 would exist as a twin-unit plant with reduced common facilities. The fuel handling building would have been reduced in size, and Canatom would have eliminated one of the spent fuel pools and rearranged the equipment in the fuel handling building. The waste processing building would have been reduced in size by about 40%. Other common facilities would have been similarly reduced, some by as much as 50%. Canatom testified that much of the existing engineering could have been utilized, but some additional engineering and excavation costs would have been incurred as a part of the redesign. Canatom's proposed redesign would have reduced the final cost of Harris Unit 1 by $181 million in 1987 dollars. (Tr. Vol. 34, Part 3, at 331-45).

CP&L Rebuttal Panel II disagreed with Canatom's proposed redesign of the fuel handling building. They testified that Canatom's proposal to redesign the fuel handling building to eliminate the second spent fuel pool was simply not feasible. They testified that such a change would have been very difficult to achieve because of the design of the fuel transfer tube and other facilities in the fuel handling building. (Tr. Vol. 50 at 266-68). In the witnesses' opinion, this also would have created a very significant licensing problem. (Tr. Vol. 50 at 266-68). They also testified that there was a need for the second spent fuel pool because of uncertainties concerning spent fuel storage and disposal. (Tr. Vol. 50 at 265). CP&L witnesses testified that any redesign of the plant should have left the central portion of the fuel handling building intact. With that modification, CP&L's proposed redesign would have reduced the cost of Unit 1 by $157 million in 1987 dollars. (Tr. Vol. 34, Part 3, at 337). Rebuttal Panel II also testified that, even if the Canatom redesign proposal was accepted, Canatom has overstated the savings by approximately $13 million. (Tr. Vol. 50 at 268).

Rebuttal Panel II testified that Canatom's calculation of 1987 savings of $181 million on Unit 1 would have totalled about $70.5 million based on the construction budget estimate prepared in 1975. CP&L's projected $157 million in 1987 savings on Unit 1 would have totalled approximately $62 million based on the estimate prepared in 1975. (Tr. Vol. 50 at 257-58, 261-64).

CP&L testified that these potential savings had to be measured against the cost impact of the redesign on Units 3 and 4. Because redesigned Units 3 and 4 would be separated physically from Units 1 and 2, Units 3 and 4 would require their own fuel handling building, waste processing building, and other facilities that were originally intended to be shared among all four units. Because the redesign was never actually done, the CP&L witnesses assumed several alternative scenarios about how Units 3 and 4 would be designed, and they used these scenarios to determine the cost impact that redesign would have had on the total four-unit project. First, they assumed that Harris Units 3 and 4 would duplicate the redesigned Units 1 and 2 as proposed by Canatom. Such a redesign would have increased the cost of Units 3 and 4, based on the estimate done in 1975, by approximately $196.5 million. Second, they assumed that Units 3 and 4 would duplicate the redesigned Units 1 and 2 as proposed by CP&L. This redesign would have increased the cost of Units 3 and 4, based on the estimate done in 1975, by approximately $205 million. Third, they assumed that Units 3 and 4 would be totally redesigned as two stand-alone single units. Based on industry estimates available in 1975 and 1976, the CP&L witnesses estimated that building Units 3 and 4 as single units would have increased the costs of those units by approximately $606 million. (Tr. Vol. 50 at 259-64).

Canatom did not attempt in its report to quantify the projected redesign savings on Units 1 and 2 from the 1975 perspective. Canatom testified on cross-examination that if it had attempted to do so, it would have used the estimates existing in 1975. (Tr. Vol. 38 at 37). Canatom also testified that although they had some questions about CP&L's estimate of the savings on Units 1 and 2 from the 1975 perspective, these were "minor" and that Canatom did not have a "big argument" with it. (Tr. Vol. 38 at 37, 40). In its proposed order, the Public Staff argued that CP&L's estimate of $70.5 million savings on Units 1 & 2 and $205 million additional costs on Unit 3 and 4 are both overstated because CP&L used 1976 budget figures, which were not adopted until late 1975 and which were not known to the Board in April 1975. The Public Staff argues that this budget increased projected costs by about one third over the budget known to the Board in April 1975. Therefore, the Public Staff argued that the $70.5 million projected savings on Units 1 and 2 "would become $63 million" in terms of what the Board knew at the time Canatom would have had the Board redesign the plant. Similarly, the Public Staff argues that the $205 million projected increased costs for Units 3 and 4 "becomes $134 million." Thus, "the difference between the benefits of redesign compared to the increased cost of completing Units 3 and 4 would be $134 million minus $64 million, or $70 million. . . " The Public Staff argues that it would have been worth this "to buy three to four years of time in which to make a decision about Units 3 and 4." However, the Public Staff argues that even this figure is overstated since it is based on the assumption that CP&L would have built a fuel handling building for Units 3 and 4 as a duplicate of the one for Units 1 and 2. The Public Staff argues that this is a highly unlikely scenario.

With respect to the redesign of Units 3 and 4, Canatom first testified on cross-examination that it would make those units as similar as possible to redesigned Units 1 and 2. (Tr. Vol. 38 at 36). It suggested that it had "some skepticism" that the cost of the redesign of Units 3 and 4 would be as high as $200 million (Tr. Vol. 38 at 107), but was willing to "go with" this number because they believed $200 million was worth four years of decision-making time. (Tr. Vol. 38 at 108). Later, however, Canatom changed its position and said it would radically redesign the fuel building. Canatom also testified

that CP&L would have several years to work on the design of Units 3 and 4. Canatom admitted that it had not attempted to do a long range forecast of the cost of redesigned Units 3 and 4 (Tr. Vol. 38 at 33).

The Commission agrees that the cost of the redesign must be considered as it relates to the entire plant. Canatom agreed in its oral testimony that CP&L had to plan as if Units 3 and 4 were, in fact, going to be built. Based on the evidence presented, the Commission concludes that the redesign of the Harris plant would have increased the total cost of the four-unit plant significantly. Redesigned Units 1 and 2 could have been reduced in cost in 1975 by approximately $63 million, but these savings were only obtainable if Units 3 and 4 were subsequently cancelled. In addition, these savings were projected on the fact that the redesign would not cause a delay in the licensing and subsequent operation of Unit 1. An increase in the total cost of the plant was assured if all four units were going to be built, and as the Commission found above, the chances in 1975 of a subsequent cancellation of Units 3 and 4 were very small. Thus a redesign would have substantially increased the cost of the planned four-unit plant at a time when financial problems militated against any unnecessary increase in the construction budget.

REDESIGN - Licensing Process and Construction Duration

Canatom testified that the proposed redesign would not have affected CP&L's ability to license the Harris plant and have the units in service when required. It suggested that at the time of the April 1975 deferral, CP&L's schedule showed a construction permit date of June 1978 and a commercial operation date of March 1984. Canatom further testified that "these dates and only these dates" would have been the basis of CP&L's deliberations concerning a redesign. (Tr. Vol. 34, Part 2, at 96).

Canatom also testified that CP&L studies in 1975 showed that the licensing time required to obtain a construction permit for a two-unit facility would have been 28 to 33 months. Canatom opined that the licensing for a redesigned plant with two twin units could be accomplished within the same time period and thus would meet the June 1978 construction permit date. (Tr. Vol. 34, Part 2, at 97).

Canatom also testified that CP&L's studies showed that the Company believed that the deferral of the units in 1975 probably would have required a completely new licensing process for the Harris plant. It stated that, given this, the proposed redesign could not have had any greater perceived licensing risk than the deferral. Canatom also testified that the redesign would have avoided the NRC's concern about the use of shared systems and would have avoided the additional licensing effort required by the cluster design. (Tr. Vol. 34, Part 3, at 328-29).

CP&L Rebuttal Panel II testified that Canatom's assertion that in April 1975 CP&L would have considered only two dates (a June 1978 construction permit (CP) date and a March 1984 commercial operation date) in determining whether there was time to redesign the plant was not tenable. They testified that neither the anticipated June 1978 CP date nor the March 1984 in-service date was rigid in April 1975. The April deferral of the Harris plant had moved Unit 1 to March 1984, but there was discussion in the Company that it should be

accelerated to 1983. March 1984 was the outside limit, and CP&L believed it might be needed in 1983. (Tr. Vol. 50 at 226-27). Rebuttal Panel II also testified CP&L believed in 1975 that it could not finish Harris Unit 1 by March 1984 if it had to wait until June 1978 to get a construction permit. (Tr. Vol. 50 at 227). Prior to the deferral of the Harris Units in 1975, CP&L was contemplating the receipt of the construction permits by the beginning of 1976. The witnesses testified that when CP&L deferred the units, it did not know exactly when it would need to begin construction. This was one item the Company needed to analyze in more detail, as was the impact the deferral would have on licensing. The witnesses testified that CP&L did know that it wanted to reduce immediate expenditures, including engineering and procurement costs, and it also intended to renegotiate its contracts with its vendors. Accommodating these objectives in the near term prompted CP&L to push the CP date out while it studied the appropriate construction schedule for the plant. (Tr. Vol. 50 at 227-28). The Company never announced publicly a June 1978 CP date nor did it notify the NRC at the time of the deferral that CP&L would not need a construction permit before June 1978. CP&L opted to wait and see exactly how the NRC was going to react before finalizing its future plans. (Tr. Vol. 50 at 228).

CP&L Witness McDuffie testified that he personally recollected that the Company intended at the time of the deferral to review the construction schedule and construction permit durations in greater detail after the deferral. He also testified that Mr. J. A. Jones made a presentation to the Board of Directors in April 1975 stating that a 66-month construction duration was optimistic and that no one had met such a schedule. Mr. McDuffie testified that with a June 1978 construction permit, the Harris plant construction duration would have been approximately 60 months. Given this, Mr. McDuffie testified, no one could sincerely believe in April 1975 that the June 1978 CP date was a rigid date. Mr. McDuffie testified that this was a date established without any real foundation or basis while CP&L conducted more in-depth analysis. (Tr. Vol. 50 at 229-230).

CP&L Rebuttal Panel II also testified that Canatom's theory that CP&L should have proceeded on a redesign that would have given the Company 60 months to construct the plant was inconsistent with other Canatom statements at Tr. Vol. 34, Part 3, at 92. Canatom testified that in 1978 CP&L's construction schedule of 64 months was unrealistic and that the evidence in the nuclear industry as early as 1975 showed that a 64-month schedule was unrealistic. Canatom's theory thus put CP&L in a "Catch 22" position: according to Canatom, CP&L should have known by <u>1975</u> that <u>64</u>-month schedule was <u>unrealistic</u>; but CP&L also should have redesigned the Harris plant in 1975 even though it would have had to adopt a <u>60</u>-month schedule. The CP&L witnesses testified that the Company obviously couldn't do both of these things. (Tr. Vol. 50 at 232).

The CP&L witnesses testified that the June 1978 CP date was not a firm date in the spring of 1975, that CP&L knew at the time of the deferral that the CP date would likely have to be accelerated, and that acceleration of the CP date would have received careful scrutiny before CP&L could have made the sort of redesign decision Canatom would have had it make. (Tr. Vol. 50, pp. 232-237). In fact, subsequent studies and events bearing on the time required to complete construction led to acceleration of the CP date to December 1976 while the date that Unit 1 needed to be in service did not change. (Id.). We question whether these facts reasonably could have been known to CP&L at the

time of April 1975. We have not considered these subsequent studies and events in passing upon the prudence of CP&L's decisions in April 1975.

Rebuttal Panel II also disputed Canatom's claim that the redesign could have been achieved with no perceived increased risk of licensing delay. CP&L did study the impact on licensing of (1) deferring the Harris units, (2) not deferring the Harris units, and (3) cancelling Harris Units 3 and 4; however, Canatom's logic that a redesign of the plant would have no more perceived impact than a deferral or cancellation is not correct. (Tr. Vol. 50, p. 237). Prior to the April 1975 deferrals, the licensing process was almost over. The public evidentiary hearings on CP&L's application had started in 1974; they were adjourned on October 10, 1974, with only a few contested issues remaining to be heard. CP&L was not certain what the impact of deferral would be. CP&L made a number of studies in 1975 on the impact of deferral or cancellation on licensing, and the Company believed that any step it took would entail some licensing risk. CP&L witness Howe testified that the Company clearly knew that the less change it made in licensing, the less risk CP&L took of losing its place in the licensing pipeline, which at that time was clogged with too many applications for the NRC staff to handle. (Tr. Vol. 50 at 238).

Mr. Howe testified that it was apparent to CP&L that cancellation of Harris Units 3 and 4 for financial reasons could possibly inject tremendous licensing risk for Units 1 and 2. He testified that Canatom's proposed redesign would have been much more significant in terms of engineering and licensing impacts and would have injected additional risk. Witness Howe testified that if all four units were needed, unless there were compelling near-term economic benefits from cancellation, the risk inherent in redesigning as Canatom proposes would simply not have been a risk worth taking and at the time would have been unreasonable given the available load forecast data. (Tr. Vol. 50 at 238-40).

CP&L witness Howe also contested Canatom's statement that CP&L's own studies showed that the cluster design could be licensed in 28 to 33 months. He stated that these studies referenced by Canatom showed two proposed schedules for PSAR review and construction permit issuance. He stated that these analyses show the amount of time that would <u>be available</u> for these activities if the plant were to be built by a certain date. The studies do <u>not</u> show that this was the amount of time these activities would actually take. Witness Howe had been responsible for these studies. (Tr. Vol. 50 at 240-41).

In addition, Mr. Howe testified that these durations were based on scenarios that deferred the plant <u>but did not change the design</u>. Even if the analysis had estimated CP&L's opinion of how long these activities would take for a <u>deferred</u> plant, witness Howe testified that this would <u>not</u> be applicable to a <u>redesigned</u> plant. Witness Howe testified that the potential impacts from each of these two scenarios are much different. (Tr. Vol. 50 at 242).

Mr. Howe also testified that Canatom's position that a redesign would not have a greater impact on licensing than the deferral because the deferral might cause licensing to start over was erroneous. Witness Howe testified that a delay with no design change is quite different from a delay with massive design changes. He stated that CP&L had already been in the licensing process for almost four years and at the time of the deferral, the licensing process was 90% over. He testified that it is one thing to "start over" with a plant that

has already been through 90% of the licensing process, as the Harris plant had. It is quite another to come to the NRC with a new design. Witness Howe testified that in the first case, the pre-reviewed design may (or may not) be subjected to new regulatory requirements that were not a part of the original review. With the new design, everything might have to be reviewed again. Having already had an almost completed review with the NRC, the applicant with the pre-reviewed plant would have much better leverage and negotiating position than the applicant with the new design. (Tr. Vol. 50 at 243, 371).

Mr. Howe stated that it was simply illogical to assume that the licensing impact of a redesign is the same as that caused by no redesign. He noted that this position defies the experience and the reality of the domestic licensing process and defies common sense. He testified that there were risks that could occur because of the deferral; with a redesign, these risks and more would certainly occur. (Tr. Vol. 50 at 243-44).

In addition, Mr. Howe testified that the deferrals of nuclear plants experienced during 1974 and 1975 presented the NRC with a situation it had never encountered before. The NRC itself did not know how it was going to treat these plants or what effect delay would have on the licensing process. This was also a busy time at the NRC, which had just taken over the regulatory responsibilities of the old Atomic Energy Commission and was faced with a large backlog of license applications. (Tr. Vol. 50 at 244).

Mr. Howe also contested Canatom's statement that several 1975 CP&L documents stated that six to nine months was sufficient time to revise a Preliminary Safety Analysis Report (PSAR) to reflect a two-unit plant and Canatom's opinion that a change in the configuration design could be done in a similar length of time. Mr. Howe stated these CP&L documents were based on preparing a "revised" PSAR, not a "reformatted" PSAR. He testified this is a very significant difference. After the Harris plant PSAR was filed, the NRC revised the format and content requirements for a PSAR. Witness Howe stated that a redesign of the scope proposed by Canatom would have required a "reformatted" PSAR meeting all the requirements of the NRC's Revision 2 to the Standard Format and Content rules for a PSAR. Revision 2 required a much greater level of engineering detail and information and an entirely new format for the information than had been used in the original Harris PSAR. A greater degree of engineering would have been done before the reformatted PSAR could be filed. Mr. Howe testified that the reformatted PSAR could not be done as quickly as the revised PSAR effort estimated at six to nine months. In his opinion, it would have taken at least twice this long. (Tr. Vol. 50 at 248).

Mr. Howe also contested Canatom's statement that redesigning the Harris plant would have avoided the NRC's concern over shared systems. He testified that the trend Canatom referenced was against sharing safety systems. This was never a problem for the Harris plant because it did not share safety systems. The Harris plant shared only structures and non-safety systems. He stated that the NRC was never concerned about shared systems at the Harris plant. (Tr. Vol. 50 at 250).

CP&L also presented the testimony of Roger S. Boyd on the impact of the redesign on the licensing process. Witness Boyd was uniquely qualified to evaluate this issue; he was a long time AEC/NRC official who in 1975 was responsible for managing the NRC's review of construction permit and operating

license applications. Witness Boyd was directly involved in the review of the Harris plant at the time of the deferral in 1975, and he personally issued the construction permits for the plant in 1978. (Tr. Vol. 60 at 125).

Witness Boyd testified that if CP&L had undertaken the proposed redesign in 1975, this would have injected significant risk in the licensing process. Witness Boyd stated that Canatom's position that CP&L could redesign the Harris plant and go through the licensing process without delaying receipt of the construction permits was without justification and was technically incorrect. (Tr. Vol. 60 at 134-35). He testified that his conclusion was based on his knowledge of what was occurring in the NRC in 1975 and on his experience in dealing with these events. Witness Boyd testified that the reorganization of the AEC into the NRC in 1975 was a hectic time at the agency. (Tr. Vol. 60 at 126-27).

Witness Boyd stated that if CP&L had opted to redesign the plant, the NRC clearly would have undertaken a new licensing review. He stated that all review of the pending Harris plant application by the NRC would have stopped and that he would have informed CP&L that it would need to amend its application in its entirety. Witness Boyd testified that the new application would have had to meet the content and format requirements of Revision 2, which required much more engineering detail than had been required in previous applications. Witness Boyd testified that in 1975 he would have doubted that this PSAR preparation could have been completed in a year's time. He also testified that Canatom's opinion that the PSAR preparation would have taken only nine months was "very questionable" and "not realistic" and was based on CP&L documents that contemplated only a revised PSAR and did not consider the impact of a redesign. (Tr. Vol. 60 at 135-36).

Witness Boyd went on to testify as to how long it would have taken to act on an application based on redesign and to opine that review would not have been completed before the Three Mile Island accident in 1979 and that perhaps no construction permit would have ever been issued. The Commission doubts that these opinions could have been known to CP&L's Board in April 1975, and we have not considered these opinions.

Witness Boyd also testified that the Canatom reference to the NRC's concern over the use of shared systems did not relate to the cluster design. He stated that the concern was over the use of shared safety systems, which was not an issue at the Harris plant. Witness Boyd testified that the NRC staff review of the Harris plant showed no problems with the Harris plant general arrangement. (Tr. Vol. 60 at 146).

Based on the evidence presented, the Commission concludes that the redesign proposed by Canatom presented a substantial risk that the construction permits would not be acquired when needed to construct the Harris plant in a timely manner. The Commission notes that Canatom has never actually attempted to obtain a license or permit from the NRC. On the other hand, Witness Boyd was the NRC administrator who would have managed the agency's review of CP&L's application for a redesigned plant. Witness Boyd's testimony was that the risk of licensing delays with the proposed redesign was substantial in 1975, and the Commission agrees. The Public Staff and others have challenged witness Boyd's testimony as based on hindsight. The Commission notes that witness Boyd distinguished between giving his opinion from the perspective of 1975 and

giving his opinion based on facts and data from after 1975. The Commission has also made such a distinction in considering witness Boyd's testimony.

The Commission also finds that Canatom has attached great significance to the date of the deferral decision by the Company. Canatom testified that CP&L should only have considered whether it could redesign the plant and meet a June 1978 CP date and a March 1984 commercial operation date. CP&L's witnesses with firsthand knowledge of this issue testified that neither of these dates was firmly set at the time of the deferral and that the Company intended to study these matters more fully. In summary, the Company was realizing that it might need more time to construct the plant, and the proposed redesign would have operated to give them less time. Canatom, in fixing the circumstances that existed at the time of the plant deferrals in 1975 as the only ones that could be considered by the Company in discussing a redesign, has ignored how fluid a situation the Company faced at that time.

The Commission also notes that Canatom has made a recommendation that conflicts with other statements it has made. Canatom's proposed redesign, with no licensing delays, would in 1975 have given the Company a projection of 60 months to build the plant. In another section of its report, Canatom stated that the 64-month Harris plant schedule adopted in 1978 was unrealistic, and Canatom opined that CP&L should have realized from industry data in 1975 that 64 months was too short. Thus, according to Canatom, CP&L either did not have time to redesign the plant or else did not have time to build the plant.

In summary, the Commission concludes that the proposed redesign had significant potential for causing licensing delays and thus construction delays. These delays, of course, would have increased the cost of the plant and thus would have eroded whatever savings could have been achieved on Canatom's redesigned Harris Units 1 and 2.

<u>REDESIGN - Impact of Deferral on Construction of the Cluster</u>

Canatom testified that the deferral of the Harris Units in 1975 to two years apart should have made CP&L reconsider the cluster design. Canatom asserted that the cluster arrangement required an inflexible construction schedule necessitating building the units one year apart. (Tr. Vol. 34, Part 2, at 102). It testified that CP&L was aware of this schedule concern because Mr. McDuffie of CP&L had stated in 1971 during the general arrangement review that the units could be constructed in the cluster as long as CP&L stayed on its existing schedule of one unit per year. Mr. McDuffie had stated that he would not have wanted Units 1 and 2 to be completed prior to substantial completion of Units 3 and 4. CP&L documents in 1971 stated that selection of the cluster design would dictate that Units 3 and 4 be constructed in conjunction with Units 1 and 2 to avoid the necessity of construction cranes being forced to work over a spent fuel pool. (Tr. Vol. 34, Part 3, at 328). Canatom testified that by spreading the Harris Units to two years apart, CP&L could no longer meet the inflexible schedule required by the cluster.

Canatom also testified that CP&L had told the AEC in 1972 that major portions of all four units had to be constructed up to grade before receipt of fuel for Unit 1. CP&L's Mr. J. A. Jones also stated to the AEC that the construction schedule it presented to the agency in 1972 with the cluster units one year apart was the only feasible plan for constructing the units in order

to place them into commercial operation when needed. Canatom testified that CP&L should have redesigned the plant because these statements showed that the cluster design was no longer feasible once the Company shifted in-service dates so that the units would not come into service at one-year intervals. (Tr. Vol. 34, Part 2, at 329.)

Finally, Canatom testified that the deferral of the Harris Units should have caused CP&L to re-evaluate the intangibles Ebasco had associated with the cluster design in 1971. Canatom noted that the May 1975 Harris Project meeting notes reflected that CP&L had recognized two intangibles related to the deferral. These included the financial risks involved if Unit 1 was not permitted to operate due to construction activities on Units 2, 3 and 4 and if construction workers were not permitted to continue work due to an accident at an operating unit. Canatom testified that these intangibles should have prompted CP&L to redesign the plant. (Tr. Vol. 34, Part 3, at 330).

CP&L witness McDuffie testified that the statements to the AEC did not demonstrate that the cluster design had an inflexible schedule. He testified that a number of things happened after these statements were made that eliminated any schedule inflexibility. He stated that he was confident in 1971 that CP&L could bring these four units into service in four consecutive years, and he was equally confident in 1975 that slipping the units two years apart would not present a problem. In fact, slipping the units to two years apart made construction easier, not harder. (Tr. Vol. 50 at 250-51).

Witness McDuffie testified that he had made the referenced statement in 1971 about constructing significant parts of Units 3 and 4 before Units 1 and 2 were operational for two reasons. First, Mr. McDuffie was concerned about the use of cranes to carry heavy loads over an operating spent fuel pool. He testified that this could be avoided by completing the heavy work on all the units before Unit 1 began operation, and this was the original plan. He stated that it could also be avoided through the appropriate placement and use of cranes in case there was a delay. Witness McDuffie testified that CP&L discussed this with Ebasco in 1971, and they concurred that this potential could be avoided. (Tr. Vol. 50 at 251). Second, witness McDuffie testified that the foundation for the fuel handling building, which was at a very preliminary stage in 1971, made it necessary to build all four units in close sequence in order to assure the stability of the fuel handling building. The fuel handling building was to be set on a pedestal of earth above the foundation of the adjourning units; and if Units 3 and 4 were not largely completed, the fuel handling building might not have been seismically sound. He testified that this concern was corrected early in the schedule by designing a foundation for the fuel handling building that was on the same level as the foundation for the four units. At that point, "no longer did you need the concrete on the 3 and 4 side to make the building stable against a seismic event." (Tr. Vol. 50 at 252; Tr. Vol. 52 at 34-35).

Mr. McDuffie also testified that the statement by Mr. Jones to the AEC in 1972 concerning the need to construct major portions of all four units in the first year and to complete all structures up to grade before loading fuel in Unit 1 was also not accurate in 1975. He stated that this statement from early 1972 was accurate when made, because it was CP&L's intention at the time to build the units with consolidated foundations and common walls. He testified, however, that several things had happened between 1971 and 1975 so that, at the

time of the deferral in April 1975, CP&L knew it would not have to bring all the major structures up to grade before loading fuel in Unit 1. (Tr. Vol. 50 at 252-53). The statements cited by Canatom were made early in the design phase when CP&L was still working only with concepts.

In the spring of 1972, CP&L changed its design basis from consolidated foundations and common walls to a design where the plant used nine separate foundation mats and separate walls. This change of design in 1972 eliminated the need to bring all four units up out of the ground at once and eliminated the design need to bring all of the structures up to grade before operating Unit 1 (Tr. Vol. 50 at 253). Ebasco had evaluated four different foundation schemes in early 1972 and had evaluated Scheme No. 4, the one ultimately chosen by CP&L, as the most flexible. Under this scheme, construction of Units 2, 3 and 4 did not have to be completed (except for foundation mats) prior to the operation of Unit 1. CP&L chose this foundation design because it presented the greatest design and construction flexibility and permitted backfitting of regulatory requirements with a minimum of construction revisions. (Tr. Vol. 50 at 326-29; CP&L Canatom Cross Exhibit No. 20.) Witness McDuffie testified that after the selection of this foundation scheme, whether to build the later units up to grade or not prior to the operation of Unit 1 was a matter of preference, not a design requirement. (Tr. Vol. 50 at 253, 327-28). On cross-examination, Canatom was shown the documentation in which CP&L selected Scheme No. 4, CP&L Canatom Cross Exhibit No. 20. Canatom agreed upon review of the documentation that Scheme 4 gave broad flexibility in the amount of construction of Units 2, 3 and 4 that would be built prior to the operation of Unit 1. (Tr. Vol. 39 at 71). Canatom testified that Scheme 4 provided much more flexibility than Canatom had previously indicated was available with the cluster design. (Tr. Vol. 39 at 72). Canatom stated that CP&L would have known in 1972 after selecting Scheme 4 that it had much greater flexibility than it had had in 1971. (Tr. Vol. 39 at 83).

Witness McDuffie also testified that the design of the fuel handling building had changed in another way by 1975. It had originally been designed as a metal structure. New NRC requirements concerning tornadoes made CP&L redesign the building into a heavy, stable concrete structure. Once this change occurred, CP&L had the additional responsibility of using cranes located on the roof of the fuel handling building to pick up heavy loads without swinging them over the spent fuel pools. Witness McDuffie testified that CP&L had used cranes on the roofs of other plants and even attached cranes to walls at the Harris plant. He stated that given this change, CP&L had even better opportunity and access to work on Units 2, 3 and 4 while Unit 1 was operating. (Tr. Vol. 50 at 253-54). However, Witness McDuffie indicated on cross examination (Tr. Vol. 52, pp. 39-41) that the fuel handling building was not redesigned to meet the tornado requirements until 1976. The Commission has therefore not considered this change in determining the prudence of CP&L's decisions in 1975.

Witness McDuffie also testified about Mr. J. A. Jones' statement to the AEC in 1972 that the construction schedule described to the AEC with the units one year apart was the only feasible schedule for getting the units into service when needed. Mr. McDuffie stated that the statement did not mean that the four units could not be brought into service within a six-year period, rather a three-year period as originally planned. He stated that this statement was made in early 1972 at a time when the units were to come on line in four

years. Witness McDuffie testified that Mr. Jones had described a construction sequence in the letter prior to the quote referenced by Canatom, and the quote simply states that this sequence is the only way to finish the four units of the cluster design in three years. The statement was accurate when made. (Tr. Vol. 50 at 256.)

Witness McDuffie also testified that the design changes and spreading the units apart made the cluster easier to build, not harder, and that there was sufficient flexibility in the construction of the cluster design. (Tr. Vol. 50 at 256). CP&L witness Reinsch also testified that spreading the units two years apart made the cluster design easier to build. (Tr. Vol. 56 at 139).

Witness McDuffie also testified that CP&L recognized the intangibles referenced by Ebasco concerning whether Unit 1 could operate with subsequent units under construction and whether workers could work beside a unit that had suffered an accident. He testified that CP&L was working under these very conditions at the time on its two-unit Brunswick plant so far as construction was concerned. At the time, Brunswick Unit 2 was about to go into service while construction continued on Unit 1. He noted that CP&L had construction workers at Brunswick Unit 1 working "within feet of an operating reactor." Witness McDuffie stated that CP&L was certain that Brunswick Unit 2 would be permitted to operate while construction continued on Unit 1. He testified further that a number of other twin and triple units had previously gone through the process without any difficulty. In short, witness McDuffie testified that these were not significant enough risks to change the design of the plant. As to the issue of an accident, these risks were known and accepted when the decision to build the four units in the cluster configuration was made, and they were present when every decision was made to build more than one unit at a site. (Tr. Vol. 50 at 275-76).

Based on the evidence presented, the Commission concludes that there was not a sufficient reason to redesign the plant based on the impact of the 1975 deferrals on construction. The evidence indicates that spreading the units to two years apart made construction easier, not more difficult. CP&L's statements concerning the construction schedule for the cluster design had been invalidated in 1972 by design changes. The Commission cannot accept Canatom's argument that the 1975 deferrals should have prompted a redesign due to lack of flexibility in the construction schedule for the cluster.

REDESIGN - Impact on Financial Condition

Canatom testified that the "first and foremost" reason CP&L should have redesigned the Harris plant was because the Company was in a financial crisis in 1974-75. A high percentage of AFUDC in its earnings combined with the demands of a massive construction program created tremendous cash flow problems. Canatom testified that CP&L had to depend heavily on outside financing at the very time financial rating agencies had downgraded CP&L's bonds to Baa. Canatom stated that the result, as Company officials repeatedly warned, was that CP&L could not raise sufficient capital on reasonable terms to finance its construction program. (Tr. Vol. 34, Part 4, at 5).

Canatom asserted that the Harris Project was capital intensive and that CP&L's inability to raise capital on reasonable terms forced changes in the

plans to build Harris. By April of 1975 Harris Unit 1 had been postponed seven years from its original in-service date. Other planned generating units were also deferred. Canatom stated that deferrals were so severe that CP&L projected it would have negative reserve margins in the early 1980s. Company actions and statements in 1974-75 emphasized the need to conserve costs as much as possible. (Tr. Vol. 34, Part 4, at 5-6).

Canatom testified that the cluster design required abnormally large expenditures in the early stages of construction. It stated that 60% of the concrete for four units had to be poured before the first unit could load fuel and that common facilities for all four units had to be built before the first unit could operate. This demanded a huge investment at a time when CP&L was cash poor. It also meant that CP&L was committed to financing capital investments that were to serve four units for many years before all four units would operate. (Tr. Vol. 34, Part 4, at 6).

Canatom testified that at the same time, construction costs were rising rapidly and regulations were increasing. All of those factors increased the financial risk of committing to a large and irrevocable investment in the mid-70s to four units that would not all be operational until five years later, if at all. (Tr. Vol. 34, Part 4, at 6-7).

Canatom stated that a redesign would have reduced the financial risk posed by the cluster. The redesign would have permitted CP&L to build two twin Harris units on a schedule similar to the cluster schedule. Canatom testified that major savings on common facilities for the first two units would be realized with the redesign. Then, when CP&L's financial capabilities and load forecast warranted it, the third and fourth units could be built. According to Canatom, the advantage of this plan would have been that CP&L would have avoided paying for Units 3 and 4 common facility costs and the AFUDC to be accrued on Units 3 and 4 foundations until they were needed. (Tr. Vol. 34, Part 4, at 7.) Canatom testified that CP&L had committed in 1975 to a 10-year expenditure on Units 3 and 4 of $1 billion. With the redesign, Canatom asserts, CP&L could have waited until about 1979 before making commitments for Harris Units 3 and 4. Canatom concluded that the redesign was worthwhile when one considers the lowered financial risk, the lower up-front investment at a time when CP&L had severe trouble raising capital and the AFUDC savings on common facilities. (Tr. Vol. 34, Part 4, at 8).

CP&L Rebuttal Panel II testified that CP&L's financial difficulty in 1975 was one of attracting capital on reasonable terms because of the financial condition of the Company. CP&L witness Lilly testified that, in order to improve the financial condition of the Company, CP&L had to reduce its capital expenditures to the greatest extent possible over the near term. This near-term reduction in capital expenditures was accomplished by the deferral of the Harris units and other units in April 1975. (Tr. Vol. 50 at 367). Mr. Lilly testified that CP&L's Board of Directors in April 1975 approved a revised four-year construction budget of $1.033 billion. The prior budget had been for $1.772 billion over four years. Budgeted expenditures were reduced by $739 million, or 42%, over the next four years. (Tr. Vol. 50 at 367). Witness Lilly stated that it took this type of dramatic move to demonstrate to the financial community and ratings agencies that the Company was seriously attempting to reduce its capital expenditures and improve its financial condition. He testified that CP&L's challenge was to regain financial

stability before the large expenditures for construction of the Harris plant were required. (Tr. Vol. 50 at 367-68).

CP&L witness Parsons presented an exhibit purporting to show the annual impact of the proposed Canatom redesign. (Tr. Vol. 50 at 354-56 and 360-64; CP&L Rebuttal Panel II, Ex. No. 11). This exhibit indicated that from 1975 through 1980, the proposed redesign would have reduced capital expenditures by only approximately $7 million, or a little over one million dollars per year. It appears that this exhibit was based in part on a concrete pour schedule as revised in 1977. We do not know that this information could reasonably have been known to CP&L in April 1975. What could have been known in 1975, however, was an estimated saving on Units 1 & 2 from redesign. The Public Staff's estimate, discussed above, is that CP&L could have saved $63 million on Units 1 and 2 in early 1975 budget terms. However, CP&L would have known that this could not all be saved in the near term since the cost of redesigning the plant and the licensing cost for Units 3 and 4 would have had to be incurred at once, as discussed below. Thus, CP&L could have known that the near-term savings from redesign would have been far less substantial than the savings gained by the April 1975 deferrals.

Witness Lilly testified that any savings from a redesign of the Harris Units in the mid-1970s would have been relatively insignificant from a financial point of view. He stated that continuing with the cluster in 1975 did not cause any additional burden from a financial viewpoint, and that by deferring the Harris Units and reducing the near-term expenditures, CP&L was able to regain its financial stability. (Tr. Vol. 50 at 368-69).

CP&L witness McDuffie also testified that 60% of the concrete for the entire plant did not need to be poured prior to the operation of Unit 1. Witness McDuffie stated that although at the end of 1975 CP&L was still planning to bring all four Harris Units up to grade prior to the operation of Unit 1, this was a construction preference and was not required by the design of the plant. He noted that CP&L knew from 1972 on that it had flexibility in how much of Units 2, 3 and 4 had to be built prior to the operation of Unit 1. Witness McDuffie testified that it was not necessary to conduct a minimum concrete study prior to the deferral because the Company knew that the construction flexibility existed. Witness McDuffie also testified that the concrete minimization study could have been done in 1975 had there been a need for it, but in 1975 the Company was trying to reduce expenditures, so that the minimum concrete study was deferred until 1976. (Tr. Vol. 50 at 327-32).

Witness Parsons testified that had the Company redesigned the Harris plant in 1975, it could not have avoided making commitments on Units 3 and 4 until 1979 as suggested by Canatom. CP&L would have had to start their design immediately, and the money would have to have been expended at a time when the Company's objective was to decrease near-term cash outlay. Canatom said at one time that it would have continued to license all four units in one proceeding and at another that it would have licensed Units 3 and 4 separately from Units 1 and 2. Witness Parsons testified that under a single license, licensing for Units 3 and 4 would have continued in the same licensing process as for Units 1 and 2 for as long as possible but that would have required up front expenditures and CP&L would have lost flexibility to complete Units 3 and 4 on time if it had encountered licensing problems. Under the separate licensing

alternative, design would also have to have begun immediately in order to file a new NRC construction permit application. (Tr. Vol. 50 at 332-33).

Witness Parsons also testified that CP&L could have deferred pouring concrete into the 1980s without redesigning the cluster by deferring Units 3 and 4. He testified that Canatom's plan would have added very little additional flexibility but significantly more licensing risk. (Tr. Vol. 50 at 333-34).

CP&L witness Morgan testified that in 1975 there was no basis to believe that Harris Units 3 and 4 would not be built. He stated that CP&L reviewed its generation plan throughout 1975 and completed two major studies, one in the spring before the April 1975 Board meeting and one in the fall. He testified that even with Mayo Units 1 and 2, South River Units 1 and 2, and Harris Units 3 and 4, CP&L reserves in the 1980s did not exceed 12%. He testified that CP&L had evaluated cancelling Harris Units 3 and 4 in 1975 for financial reasons, but could not cancel the units because these units were clearly needed and because it would not provide any financial relief. Because cancellation charges would occur, the cash flow in the several years following 1975 was practically the same with Harris Units 3 and 4 in the construction budget or cancelled. He stated that from a planning and system reliability standpoint, Harris Units 3 and 4 were needed sooner than then scheduled and that in 1975 there was no indication that Harris Units 3 and 4 would not be built. (Tr. Vol. 50 at 342-44).

Witness Morgan also testified about the billion dollar commitment CP&L had made to Harris Units 3 and 4 in 1975. He stated that this commitment was made by the Company after reviewing the options available for meeting projected demand. The Company had evaluated cancelling Harris Units 3 and 4 and found that it could not. It also considered substituting fossil capacity for Harris Units 3 and 4. This would have decreased initial capital costs, but over the life of the plant would have increased revenue requirements by $238 million per year over those required for Harris Units 3 and 4. Witness Morgan testified that the Harris Units were economically superior to replacement fossil capacity but that to achieve these economic benefits from Units 3 and 4 the Company had to commit in 1975 to the expenditure of a billion dollars over the next 10 years on those units in order to get them into service when required. The fossil alternative would have required a commitment of approximately half that amount over the same time period, but would have caused greater costs over the life of the plant. He stated that the Company chose to continue with Harris Units 3 and 4 rather than cancel those units and replace them with fossil units. (Tr. Vol. 50 at 346-49.)

Witness Morgan further stated that this $1 billion was part of a total $6.3 billion 10-year construction program adopted by the Board of Directors. He testified that the Company did not irrevocably commit to spend $1 billion over the next 10 years on Harris Units 3 and 4. Witness Morgan testified that the Board of Directors fully understood when it committed to the $1 billion for Harris Units 3 and 4 in 1975 that the load forecast, the construction schedule, and the construction program would be reviewed each year. He testified that the program could be modified if necessary based on changing conditions and that it was modified a number of times. He concluded that the Company committed in 1975 to going forward with Harris Units 3 and 4 in lieu of more expensive replacement coal units. (Tr. Vol. 50 at 346-49).

Based on the evidence presented, the Commission concludes that the redesign proposed by Canatom would not have had any significant beneficial impact in 1975 on CP&L's financial condition. When compared to the five-year reduction in expenditures of almost $740 million gained by the April 1975 deferrals, the incremental impact of the savings from redesign would have been insignificant.

Further, the evidence shows that the cluster design had significant flexibility for deferring front-end expenditures on Units 2, 3, and 4. As noted in the previous section, the flexibility existed as of 1972. Further, the near-term extra cost of the cluster's Units 1 and 2 common facilities was not significant enough to justify the risks of redesign.

Finally, CP&L's commitment to the $1 billion in 1975 for Harris Units 3 and 4 was simply the consequence of pursuing these nuclear units instead of fossil units. It was not the irrevocable commitment Canatom implied. The Commission cannot fault this decision; the Company showed a clear need for the capacity and Harris Units 3 and 4 were deemed to be more economical than replacement fossil capacity.

On cross-examination, Canatom was unable to state with any precision what impact the redesign would have had on the Company's financial condition in 1975 or later or how the proposed redesign of Units 3 and 4 would take shape. The primary focus of the Canatom audit report appears to be on the risk of cancellation of Units 3 and 4. Canatom testified on cross-examination:

> Q. When you get right down to the bottom line on all of this, a lot of it turns on how you assess the relative risks of not needing all of the Harris Units or of needing not only the Harris Units but maybe more capacity and the relative risks of redesign versus the relative risks of proceeding with a design that you're already committed to?
>
> A. Yeah, I think that's about where we come in the door. (Tr. Vol. 39 at 88).

Canatom testified on redirect that while the major reason CP&L should have redesigned was the financial crisis CP&L was encountering in 1975 (Tr. Vol. 40 at 5), Canatom really did not care whether the redesign had any impact on CP&L's short-term financial condition:

> Q. Does it make any difference in your analysis whether CP&L actually saved substantial up-front money in the first 3 or 4 years after your proposed redesign?
>
> A. We don't think so. What we're looking at is the 14 year project when they are into and committed to major construction that, in 4 or 5 or 6 years down the line from when they make the commitment they just are into something they can't change. (Tr. Vol. 40 at 8-9).

Canatom also testified on redirect that the flexibility in building Units 2, 3 and 4 was not significant to them:

> Q. Does whether or not CP&L followed [Foundation] Scheme 1, Scheme 2, Scheme 3, Scheme 4, or some other scheme with the cluster design have any effect or impact on your recommended redesign?
>
> A. No, it would not. . . . Because you would still be left with all the common buildings. (Tr. Vol. 40 at 9-10).

These statements by Canatom put the focus squarely on a single question: was CP&L justified in 1975 in proceeding with the cluster design, or was the risk of cancellation such that CP&L should have redesigned the plant to avoid the potential for having common facilities serving less than all four units? The evidence in this case demonstrates that the redesigned plant would have cost more than the cluster; there is debate about the magnitude of the increase in cost, but not the fact of it. The Commission has concluded that the proposed redesign did have significant licensing risks and that no significant construction problems were caused by the deferral. Proceeding with either the cluster or with a redesign in 1975 entailed risks. The baseline question is whether CP&L unreasonably judged the risks of proceeding with the cluster.

The Commission concludes that CP&L was not imprudent in proceeding with the cluster in 1975. The March 1975 study showed a clear and compelling need for the four Harris Units. CP&L had several other fossil and nuclear plants in its generation additions plan that would have been cancelled prior to the Harris Units, and the Commission concludes that the risk of cancellation of Harris Units 3 and 4 in 1975 was very low.

The Commission cannot conclude that the redesign proposed by Canatom was less risky in 1975 than the cluster. In fact, had all four units been built, the redesign would have required the expenditure of unnecessary funds and injected greater licensing risks than proceeding with the cluster. If licensing delays had occurred, Unit 1 could well be more expensive than it is today. In 1988 we have the benefit of knowing that all four units were not built and that common facilities for four units now serve only one unit. In 1975, however, all of the evidence demonstrated that the units were needed and would be built. Considering what CP&L knew or reasonably could have known in 1975, the Commission concludes that CP&L acted reasonably and prudently in continuing with the cluster design in 1975.

Canatom argued on cross-examination that redesign was the only prudent course CP&L could have chosen, although one of Canatom's witnesses seemed to say at one point that redesign was the "more reasonable" or prudent course, (Tr. Vol. 37 at 132). From a management decision-making standpoint, it is clear to the Commission that CP&L management carefully explored its options in 1975 and made a reasonable decision. We cannot agree with Canatom that no reasonable utility management would have pursued the course CP&L chose. Indeed, under the circumstances and with the clear need for all of Harris units, spending money and taking risks on redesign in 1975 would have appeared imprudent.

NORTH CAROLINA FAIR SHARE

North Carolina Fair Share presented the testimony of two witnesses. First, Dr. Robert B. Williams, a professor of economics at Guilford College, presented a report that compared the projected total life cycle costs of the Harris plant with those of a hypothetical scrubbed coal unit. The approach used in this report was similar to that used in the professor's prior report, "Does Shearon Harris Make Sense? An Evaluation of the Costs of Shearon Harris and Its Alternatives," which was presented in Docket No. E-2, Sub 526. (Tr. Vol. 44 at 75).

Unlike the prior study submitted in Docket No. E-2, Sub 526, Professor Williams does not advocate in this proceeding that the Harris plant be closed. (Tr. Vol. 44 at 110). Dr. Williams also does not advocate that any disallowance be computed from the comparative valuations of the Harris plant and the hypothetical coal plant. (Tr. Vol. 44 at 170). Dr. Williams explained that his purpose was simply to give the Commission additional perspective on the cost of the Harris plant compared to a hypothetical alternative.

Using a model he developed, Professor Williams made a number of assumptions about the future revenue requirements of the Harris plant and a hypothetical scrubbed coal unit. Using these assumptions, he calculated the present value of the future revenue requirements for the Harris plant to be $4.7 billion and the hypothetical scrubbed coal plant to be $2.9 billion. Dr. Williams then calculated the discounted cost per kilowatt-hour to be 2.82¢/kWh for the Harris plant and 1.88¢/kWh for the scrubbed coal plant. He then determined that the "allowable" costs that equalized the discounted costs per kWh were $2.24 billion. From this Dr. Williams concluded that only $2.24 billion of the Harris plant costs are "economical." (Tr. Vol. 44 at 80-81). Professor Williams testified that the $2.4 billion represented the "allowable" cost if CP&L was to be held to a standard of perfect foresight. (Tr. Vol. 44 at 89).

On cross-examination, Professor Williams was challenged on a number of the assumptions and variables used in the study. The Company challenged the assumptions concerning the amount and cost of the purchased power to be purchased while the coal plant was under construction, the lead time for construction of a coal plant, escalation factors, the lack of inclusion of tax effects in the model, depreciation effects, and other items.

The Company also challenged the model as biased in favor of any future alternative. CP&L produced a cross-examination exhibit described as Dr. Williams' model with one significant change in the variables--instead of calculating the cost of a scrubbed coal unit, CP&L inserted the variables that would make the alternative hypothetical plant a duplicate of the existing Harris plant. CP&L substituted twelve years of construction lead time for the nuclear alternative (compared to seven for the scrubbed coal alternative) and inserted the actual Harris plant capital costs to replace the projected coal plant costs. The exhibit showed that Dr. Williams' model preferred the hypothetical nuclear alternative over the cost of the existing Harris plant. (CP&L Williams Cross-Examination Ex. No. 3; Tr. Vol. 44 at 161-62).

Dr. Williams testified that the Company's exhibit appeared to be similar to his and he would assume that it was correct, but he would like to run it himself to see if it was the same as his model. The Commission offered Dr. Williams the opportunity to submit a late-filed exhibit if he determined CP&L's exhibit did not accurately duplicate his model. (Tr. Vol. 44 at 163). No such exhibit was ever filed.

CP&L rebuttal witness Dr. Spann testified that the study of Dr. Williams was a pure 20-20 hindsight analysis. He testified that the analysis was structured in such a manner that it will almost always show that some or all of a utility investment should be disallowed regardless of whether the decision-making process was prudent or imprudent. Dr. Spann concluded it was a virtual mathematical impossibility for Dr. Williams' analysis not to result in some disallowance.

The evidence indicates that there may be flaws in the model developed by Dr. Williams. The cross-examination exhibit presented by CP&L indicates that the model may in fact prefer future expenditures over current or historical expenditures, and thus bias any comparison of total life cycle costs in favor of hypothetical future generating alternatives. The Commission also questions other calculations and assumptions Dr. Williams has made in the areas of depreciation, purchase power, and others. Although Dr. Williams, through his model, has calculated the cost of a hypothetical coal plant, the variables used in the model do not convince the Commission that a real coal plant could be built and operated for that cost.

The use of such a methodology for valuing rate base additions leads to a "Catch 22" situation. Under this methodology, the Company could only recover its total investment in a plant if no one could hypothesize a more economical current or future generation alternative; if that alternative was then pursued, the Company's recovery on the completion of that unit would again be subject to the existence of a more economical hypothetical alternative. In addition, the Commission would have to base current rate base treatment of an asset on future projections of a number of variables, any of which could change and undermine the basis for the prior rate making treatment.

The Commission notes that the South Carolina Public Service Commission was presented with a similar hypothetical alternative analysis for valuing rate base additions in their Docket No. 86-188-E. That Commission rejected the use of such a methodology, as do we. See Re Duke Power Co., 79 PUR 4th 145 (Order No. 86-1116, November 5, 1986). The Commission also notes that the acceptance of such a methodology would raise a question regarding its constitutionality. The Kansas Corporation Commission valued the Wolf Creek nuclear plant for rate base purposes at the cost of a hypothetical coal plant. Re Wolf Creek Nuclear Generating Facility, 70 PUR 4th 475 1985. Kansas Gas and Electric appealed this valuation methodology, and the United States Supreme Court agreed to hear the appeal. Kansas Gas and Electric Co. v. State Corporation Commission of Kansas, ____ U.S. ____, 107 S. Ct. 1281 (1987). The appeal was subsequently rendered moot, Kansas Gas and Electric Co. v. State Corporation Commission of Kansas, ____ U.S. ____, 107 S. Ct. 2171 (1987), when in a subsequent rate case the Kansas Commission revalued the plant for rate base purposes at the actual prudent cost of the nuclear plant. Kansas Gas and Electric Co., 82 PUR 4th 539 (1987). Thus the constitutionality question was not answered.

For the reasons stated above, the Commission concludes that the prudent investment standard, and not the hypothetical alternative standard, is the correct test for valuing the cost of the Harris plant.

North Carolina Fair Share also presented the testimony of Joseph T. Hughes, Jr. Witness Hughes offered testimony on a range of subjects, criticizing CP&L's progress reports to this Commission, its construction management, its project management, and other areas. Witness Hughes also criticized the Canatom report in a number of areas. Witness Hughes did not propose any specific disallowance of Harris plant costs, and the Commission finds that his testimony does not provide sufficient basis on which to impose an imprudence disallowance.

NCEMC

NCEMC sponsored the testimony of two witnesses. First, Dr. William R. Jacobs of GDS, Inc., a consulting firm in Atlanta, Georgia, testified on plant comparisons. Witness Jacobs stated that the best way to measure the performance of management is through comparative cost analysis (Tr. Vol. 43 at 50-1), and he presented testimony comparing the costs of the Harris plant to other PWRs completed in the last three or four years. He testified that the cost of the Harris plant was higher than the average cost of the plants in his comparison group. He also presented a list of prudence disallowances that had been imposed around the country by various commissions. Witness Jacobs testified that the mean disallowance from his group of plants was 13% of the total plant cost. Since Canatom had only proposed a disallowance of seven percent of the total Harris plant cost, witness Jacobs concluded that Canatom probably had not uncovered all of the imprudence that existed on the plant. He did not propose a disallowance. (Tr. Vol. 43 at 49-50).

The Commission does not find Dr. Jacobs' conclusions persuasive. The Commission does not believe that in this proceeding prudence can be judged based on cost comparisons. Such comparisons do not take into consideration differences between different utilities, different plants, different regulations or regulatory impacts, etc. Such comparisons are difficult, if not impossible, to construct so that they measure items that are truly comparable. The comparisons are influenced by a number of variables, such as what types of plants to include and what time frame to select. For example, Witness Jacobs selected only PWR plants and included plants that entered commercial operation years before the Harris plant. By contrast, CP&L presented a comparison of all plants loading fuel within one and one-half years, plus or minus, of the Harris plant. In that comparison, the Harris plant ranked third in a group of 12. The Commission concludes that the appropriate inquiry is into the prudence of the decisions and actions of the Company, not how the plant ranks in a comparison. Furthermore, the Commission cannot conclude that the Canatom report did not describe the full range of imprudence on the Harris plant simply because it found less than the mean disallowance imposed on other plants.

NCEMC also sponsored the testimony of John T. Stiefel of Stiefel and Associates, Inc. a consulting firm. Witness Stiefel testified that there were three major acts of imprudence by CP&L on the Harris Project. (Tr. Vol. 43 at 115). First, CP&L failed to establish an appropriate Harris Project organization in 1970; CP&L assumed the role of project and construction manager as a form of ego gratification (Tr. Vol. 43 at 148) but did not have sufficient

capability or experience for these roles. Second, CP&L failed to establish an appropriate quality assurance organizational structure until 1981. Finally, CP&L failed to establish a Company officer as project director until 1983. Witness Stiefel also testified that CP&L had overreacted to regulation by the NRC. Witness Stiefel proposed to disallow $880 million, based primarily on plant comparisons. He did not attempt to quantify any specific imprudent acts.

Witness Stiefel identified 18 plants he considered imprudent. On cross-examination, he admitted he had reviewed only eight of those plants to varying degrees, but could still determine that all 18 were imprudent. (Tr. Vol. 44 at 35-36). Similarly, he testified that CP&L had overreacted to regulation by developing overly detailed procedures; on cross-examination he admitted he had never reviewed any of the Harris plant procedures. (Tr. Vol. 44 at 22-3). Witness Stiefel testified that the quality assurance organizational structure at the Harris plant was imprudent; on cross-examination he admitted that the NRC had reviewed and approved the quality assurance organization several times, that the quality assurance organizational structure never caused a problem, and that quality assurance itself was never a problem at the Harris plant. (Tr. Vol. 43 at 206-09, 226, 143)

Company Rebuttal Panels I and III addressed these allegations. CP&L witnesses testified that a number of auditors, including two auditors hired by this Commission, had previously reviewed CP&L's decision to act as project manager and construction manager; these auditors had uniformly agreed that this was a positive step and was beneficial to the Company. (Tr. Vol. 45 at 107-08). Canatom also testified that this was prudent. (Tr. Vol. 34, part 1, at 191, 196, 210). Company witnesses also testified that the Harris Project's quality assurance organization was always acceptable to the NRC and that the quality assurance function at the Harris plant was strong. (Tr. Vol. 45 at 105-06, 105-06). Again, Canatom generally agreed with this. (Tr. Vol. 34, part 2, at 376-459). CP&L witnesses also explained why the position of Harris Project Vice President was established in 1983. (Tr. Vol. 45 at 110-11).

The Commission finds that the Company has rebutted the allegations of Mr. Stiefel, and the Commission concludes that his testimony is not persuasive.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Evidence for this finding of fact is found in the testimony of CP&L Direct Panels I, II, III, and IV, CP&L Rebuttal Panels I and III, CP&L Rebuttal witness Reinsch, Public Staff Canatom witnesses, and Attorney General witnesses Schlissel and Mavretich.

CP&L originally planned for Harris Unit 1 to be in service by March 1977. (Tr. Vol. 17, pp. 41-42). The actual commercial operation date was May 1987 -- a 10-year and two-month "variance" or delay from the original schedule. (Tr. Vol. 17, pp. 42). CP&L contends that none of the 10 years and two months of delay was caused by imprudent actions on its part. A consultant from the firm of J.E. Manzi and Associates, hired by CP&L, analyzed the 38-month schedule slippage that occurred from 1979 to 1987 and concluded that the delays on the "critical path" were not CP&L's fault. (Tr. Vol. 17, pp. 53-54).

In contrast, Canatom concluded that a "conservative approach to this issue would indicate at least a three month delay...." (Canatom Report, p. 10-74). Witness Schlissel, recommended a disallowance for seven months of avoidable delay. (See Schlissel Prefiled Testimony, p. 227). The Commission concludes that most of the 10-year and two-month delay at Harris was caused by financial, regulatory, and load growth factors outside of CP&L's control. However, the Commission concludes that at least five months of delay were the result of CP&L's imprudence. In reaching this conclusion, the Commission has carefully considered and weighed all the evidence, all the contradictions, and all the conflicting inferences. The volume of evidence makes it difficult to set forth all of it in this Order. The most pertinent aspects of the delay issue are discussed below.

CP&L testified that the delay issue should be viewed in the context of Harris' overall schedule performance. (Tr. Vol. 55, p. 133). The overall schedule was 106 months, as measured from receipt of construction permit from the NRC to the date of loading fuel. CP&L took the position that this was a better schedule than most plants contemporary to Harris. (CP&L Rebuttal Panel III Prefiled Testimony, pp. 7, 48; Tr. Vol. 59, p. 78). Mr. Schlissel, testifying for the Attorney General, concluded that if appropriate adjustments are made to place Harris on a comparable basis to other contemporaneous plants, the 106-month schedule for Harris is not "far better than average" as CP&L claimed. (Schlissel Prefiled Testimony, pp. 44-45). Canatom found that the construction duration for Harris was "relatively good," but maintained that CP&L should have done better. (Canatom Report, p. 10-66).

The arbitrariness of plant comparisons is demonstrated by the different results obtained simply by changing either the comparative groups or the events used to measure schedule. (See Schlissel Prefiled Testimony, p. 32). For example, the Budwani report entitled "Five Vital Statistics for Comparative Analysis" measures project duration from the award of the contract for nuclear steam supply system to commercial operation. (Public Staff Audit Exhibit, Volume 1, p. 197, 203). By Budwani's measure, CP&L's schedule was longer than average. (Tr. Vol. 49, pp. 89-92). The Budwani report is revealing on the subject of whether CP&L really did better than other contemporaneous plants because CP&L relied on this report -- for other comparisons -- in support of both its direct and rebuttal testimony. (Tr. Vol. 49, p. 50). Witness Schlissel used a different comparative group than Canatom and CP&L for measuring construction duration; his comparison was limited only to pressurized water reactors (PWRs), whereas Canatom and CP&L included PWRs and boiling water reactors (BWRs). He also included plants that loaded fuel as many as 29 months before the Harris plant, whereas Canatom and CP&L used plants that loaded fuel within ±18 months of the Harris plant fuel load. Witness Schlissel also used as his comparison basis the duration from first concrete to fuel load. (Tr. Vol. 40 at 107).

Canatom also testified about the usefulness of CP&L's comparison of its 106-month schedule to an industry average. While Canatom agreed that the Harris schedule was "commendable" (Tr. Vol. 36, p. 39), it also noted that CP&L's schedule was really closer to 113 months than 106 because construction started on Harris well before the construction permits were received. (Tr. Vol. 35, pp. 34-36). Canatom also noted that the industry average of 132 months contained some "extremely sick or unfortunate" plants. (Tr. Vol. 36, p. 39). In this regard, the Commission believes that comparing Harris to an

industry average that includes many imprudently managed plants does not help prove Harris was prudently built.

The Commission concludes that evidence of comparisons of the Harris schedule to those of other plants is relevant, but of little value in determining specific acts of imprudence. One CP&L witness testified, "I don't believe that using plant comparisons gives any indication of the prudence of the management of a project." (Tr. Vol. 49, p. 67). The flaw in industry comparisons, according to CP&L, is that there are unique conditions on every nuclear project so that no projects are exactly comparable. (Tr. Vol. 49, p. 46). In accord with CP&L, Canatom testified that comparing one plant's schedule to another, or one plant's schedule to an industry average, does not provide any information about specific causes of imprudence. (Tr. Vol. 40, p. 21). This Commission agrees with CP&L that industry comparisons are by themselves "not evidence of prudence or imprudence" (Tr. Vol. 59, p. 79; see also p. 81), and that is why the evidence of CP&L's 106-month schedule does not demonstrate that the Company prudently managed the Harris schedule.

Canatom studied each specific delay and schedule change to determine if it was avoidable or reasonable. (Tr. Vol. 36, p. 44; Tr. Vol. 40, pp. 21-22). Canatom found two specific activities on the construction schedule to be imprudent delays "regardless of the 106 months." (Tr. Vol. 36, p. 48). The Commission concludes that this is an appropriate mode of analysis for a prudence audit. The overall Harris schedule is not dispositive of the prudence issue; an analysis of specific delays is required.

One other matter must be discussed before we turn to consideration of specific areas of delay. CP&L maintained that even if unreasonable delays did exist, it should be given "offsetting credit" for successfully accelerating other parts of the work. (CP&L Rebuttal Panel III Prefiled Testimony, p. 6). The Commission rejects this argument. Public utilities in North Carolina have a legal duty to provide efficient service, G.S. 62-131(b), and construction of new generating facilities is part of providing service. Furthermore, only reasonable construction costs may be recovered through the rate-making process. G.S. 62-133. The legal duty of efficient operation does not mean that instances of construction efficiency cancel out instances of construction inefficiency. The requirement that public utilities operate efficiently means that this Commission cannot excuse imprudent actions leading to avoidable delays. The legal requirement that only reasonable costs may be recovered bars recovery of imprudent expenditures, even if other expenditures were especially beneficial to the plant's construction.

One other note on the question of "offsetting credit," the Commission takes judicial notice of its 1982 Order Assessing Rate of Return Penalty and Granting Partial Increase in Rates in Docket No. E-2, Sub 444. (See Public Staff Audit Exhibit, Volume 1, p. 273-290). In that proceeding the Commission found a 78-day avoidable delay resulting from CP&L's imprudent management; there is no mention of offsetting credits in the order.

Even if the Commission were inclined to adopt a theory of offsetting credits, the Company has not, in the Commission's opinion, presented persuasive evidence that such a theory should apply to the present case. Specifically, the quality and extent of CP&L's time-saving innovations are unclear. CP&L cites Canatom as conceding that 14 months <u>may</u> have been saved by the Company's

management of modifications required in the wake of the Three Mile Island accident. (Tr. Vol. 55, pp. 69-70). But, as Canatom observed, this did not mean that 14 months were saved on the critical path. (Tr. Vol. 36, p. 74). CP&L also cited the fact that it completed the start-up testing and power ascension phase one month faster than contemplated in the schedule adopted shortly after construction began in 1978. (Tr. Vol. 55, p. 70). Yet the consultant working with CP&L on schedule analysis predicted in 1986 that the Company would accelerate its start-up schedule by six months. (CP&L Direct Panel III Exhibit Vol. 1, Exhibit 4, pp. 17-18). Thus, CP&L fell five months short of what CP&L's witness projected in 1986. This five-month shortfall is not a schedule "savings" and should not be an "offsetting credit" to CP&L's avoidable delays. In a similar vein, a CP&L document with September 30, 1981, data projected Harris Unit 1 completion about a year before completion of Duke's Catawba 2. (Public Staff Audit Exhibit, Volume 1, p. 185). Of course, Catawba 2 went commercial in August 1986 (Docket No. E-7, Sub 408), almost nine months before Harris, indicating that on a relative basis CP&L is not in any position to claim offsetting credit for schedule accelerations.

The Commission concludes that the prudence of delays at Harris should be determined by analyzing whether specific delays were reasonably avoidable by CP&L. Canatom focused on delays that were "a) reasonably avoidable and b) responsible for a delay in the Commercial Operation date." (Canatom Report, p. 10-66). Canatom identified two groups of activities that delayed the "critical path," i.e., delayed commercial operation. (Canatom Report, p. 10-66 to 10-76). One was redesign and installation of cable riser supports; the other was compliance with the criteria of a regulatory requirement known as Appendix R. (Id.)

Canatom testified that CP&L neglected to design cable riser supports until seven months late. Canatom also testified that CP&L took too long to do some of the analytical work required under Appendix R, although Appendix R would have delayed the project to some extent in any event. These activities were occurring concurrently, and Canatom's position is that the net effect of these two activities was to delay the plant imprudently by a total of three months. Witness Schlissel testified that he adopted Canatom's position on the delay in the design of the riser supports. Witness Schlissel also testified, however, that CP&L improperly delayed starting work on the Appendix R Safe Shutdown Analysis and thus delayed compliance with Appendix R by at least seven months concurrent with the seven-month delay caused by the riser support design. Witness Schlissel thus proposes to disallow seven months of schedule. We turn now to a discussion of each of these two areas.

DELAY IN DESIGNING CABLE RISER SUPPORTS

The first of these two critical path delays is discussed on pages 6-81 to 6-85 and 10-66 to 10-70 of the Canatom audit report, and is illustrated in the diagram on pages 6-82(a) and 10-67(a). CP&L primarily addressed the cable riser supports delay by its Direct Panels III and IV and their exhibits and its Rebuttal Panel III.

The importance of cable risers must be explained. Much of the safety-related equipment throughout the plant is controlled by cables running to the main control room. (CP&L Direct Panel IV, Exhibit 4, p. 10). Safety equipment and systems could not be tested, which was a prerequisite to

commercial operation, until the safety-related cable had been pulled. (Id.) The safety-related cable could not be pulled until the details of the raceway design in the cable spreading room beneath the main control room were established. (Id.) Risers and their supports are a part of this raceway.

As a result of the March 1979 Three Mile Island accident, the Nuclear Regulatory Commission (NRC) ultimately issued new requirements concerning the design of nuclear plant control rooms and especially Main Control Boards (MCB). (Canatom Report, p. 6-81; CP&L Direct Panel IV Prefiled Testimony, pp. 46-51; CP&L Direct Panel IV, Exhibit 4). In anticipation of these regulatory changes, CP&L ordered a redesigned MCB for Harris in June 1981. (Canatom Report, p. 6-82). It was delivered to the site one year later in June 1982, and by November 1982 the MCB was anchored (Canatom Report p. 6-82).

The installation of the MCB was affected by a misunderstanding over the adequacy of MCB welds. (Id.) CP&L and Canatom agree that any problems with the MCB welds should not have prevented cable pulling to the MCB by November 1982. (CP&L Rebuttal Panel III Prefiled Testimony, p. 24; Canatom Report, p. 10-68). Thus, the pulling of safety-related cable could have begun in November 1982 as far as MCB installation is concerned. In other words, the problems relating to MCB installation did not delay the critical path of construction.

Canatom also identified a delay in the design and installation of auxiliary equipment panels. (Canatom Report, p. 6-84, 10-68 to 10-69). The auxiliary panels were finally installed in March 1983. (Id.) These panels were needed to provide a place for the instruments that had been removed from the MCB in the post-TMI redesign of the MCB. (Id.) Because work on the auxiliary panels went hand-in-hand with the work on the MCB, Canatom testified that the panels should have been designed, installed, and ready for receipt of safety-related cable by November 1982 -- just the same as the MCB. (Id.) CP&L admitted that the design and procurement of these panels "could have been accelerated" but that their installation was not necessary to start cable pulling. (CP&L Rebuttal Panel III Prefiled Testimony, p. 25). Under the rationale of either Canatom or CP&L, it is clear to the Commission that the pulling of safety-related cable could have begun in November 1982 as far as installation of the auxiliary panels was concerned. The delay with respect to these auxiliary panels did not affect the critical path.

The most significant delay to cable pulling, the delay that affected the critical path, relates to design and installation of cable risers, and in particular their supports. (Canatom Report, p. 6-83 to 6-84 and 10-69 to 10-70). Canatom testified that CP&L should have begun to redesign these riser supports by at least September 1981 but neglected to do so until May 1982 and that this delayed the start of cable pulling which could have begun when the MCB was installed in November 1982 but in fact did not begin until July 1983. (Tr. Vol 34, part 4, at 10; part 2, at 332.)

"Cable tray" is a ladder-like metal structure that is used to route cables from point to point in horizontal runs. "Cable risers" are similar structures used to route and support cables in vertical runs, from one horizontal tray to another or from a horizontal tray through a hole in the ceiling and into a piece of equipment. Cable tray and cable risers are held in placed by steel "supports." (Tr. Vol 55 at 72.) Safety-related cable is carried by horizontal cable trays in the cable spreading room beneath the main control

room. (Tr. Vol. 36, pp. 82-84). It is then guided up into the main control room by risers, which are in effect just cable trays in a vertical position. The cable then passes through openings in the floor of the main control room and goes into equipment such as the MCB, where it is terminated. (Id.) When the MCB was redesigned after the TMI accident, the cable coming up into it from the cable spreading room below had to be rerouted. The MCB redesign was completed in March 1981, and by April 1981 CP&L was redesigning the cable routing, and revising the cable tray design and fire barriers to conform to the new cable routing. (Canatom Report, p. 10-69). Revised cable tray drawings were issued to the site beginning in July 1981. (Id.) In Canatom's opinion, once the revised cable tray drawings arrived at the site, CP&L had sufficient information to redesign the risers that carried the cable from the trays to the MCB. (Canatom Report, p. 10-69). Canatom gives the Company the benefit of the doubt by concluding that riser redesign should have begun, if not by July 1981 when the necessary information was available, "at least" by September 1981. (Id; Tr. Vol. 40, pp. 42-43). Yet CP&L did not begin the redesign of risers until May 1982. (Canatom Report, p. 10-69). If CP&L had redesigned risers in September 1981 instead of May 1982, the pulling of safety-related cable could have commenced in November 1982, instead of July 1983. (Canatom Report, p. 10-69 to 10-70).

Canatom concludes that if the concurrent delays relating to MCB installation and welds, auxiliary panels, and cable risers had been avoided, then the critical path activity of pulling cable could have started seven months earlier. (Canatom Report, p. 10-74). This is a conservative assessment because in counting the period from November 1982 to July 1983, it excludes the months of November 1982 and July 1983 from the calculation to arrive at a delay period of seven months. Of the three parallel delays discussed by Canatom, the problem with cable risers was "the real critical path." (Tr. Vol. 36, p. 46).

CP&L had originally planned to receive delivery of the MCB in February 1981 and to pull safety-related cable in August 1981. (Tr. Vol. 59, pp. 92-93). In fact, the MCB was not delivered until June 1982 due to its post-TMI redesign, and safety-related cable pulling did not begin until July 1983. (Tr. Vol. 59, p. 93). Thus, not only did these activities start at later dates than planned, but also the duration between MCB delivery and cable pulling was extended from a planned six months to an actual 13 months. (Id.)

CP&L admitted that it had planned to pull cable "immediately" after the MCB was installed. (CP&L Rebuttal Panel III Prefiled Testimony, p. 9). The MCB was essentially installed by November 1982, but cable pulling did not begin. The original plan had assumed that cable trays, risers, and associated supports would be substantially completed by the time the MCB was ready. (Id.) Accordingly, CP&L contemplated that the cable tray and riser layout drawings and the detailed designs of tray supports would be completed prior to installation. (CP&L Rebuttal Panel III Prefiled Testimony, p. 10). This was largely achieved. The revised cable raceway routing was established in April 1981, and cable tray support drawings were released to the field beginning in July 1981. (Tr. Vol. 59, p. 99; Canatom Report, p. 6-83 and 10-69; CP&L Direct Panel IV, Exhibit. 4, p. 19). The delay problem was with risers and in particular their supports.

CP&L's plan had been to have field personnel install risers without detailed custom designs. (CP&L Rebuttal Panel III Prefiled Testimony, p. 10).

Consequently, Ebasco supplied layout drawings showing the location of risers but provided only "typical" designs of riser supports instead of a detailed design for each riser support. (Id.) CP&L witnesses testified that Ebasco had supplied riser support designs in 1978 and that these designs were adequate for construction of the plant. Under this design, risers and riser supports were to be "field run" using what were called "typical" designs, i.e., risers were to be installed without detailed custom designs. With "field run" designs, Ebasco supplied layout drawings showing the location of risers and "typical" designs of riser supports. Field personnel would then select appropriate "typical" riser support designs for the different applications contemplated by the riser layout drawings. If there was an interference, field personnel would modify the typical design as necessary. This approach had been applied in other U. S. nuclear plants. (Tr. Vol 55 at 73, 81-2). CP&L witness Reinsch testified that the use of typical designs had been a common practice in the industry for a number of years, but he stated that during this period the NRC's increased emphasis on quality assurance, inspection and as-built verification made use of typical designs "difficult if not impossible." (Tr. Vol. 56, p. 143-144).

Canatom witness Giaccio testified that CP&L's typical designs were not sufficient for the riser support installation. He testified that a typical design is akin to a reference work that the architect/engineer keeps on his shelf; the typical design cannot be applied until the typical design is assigned a location and assigned dimensions. Witness Giaccio testified that until this happened, the typical was no more than a library reference. (Tr. Vol 36 at 102, 106). Canatom testified that this process did not begin to occur for the Harris Plant until May 1982. Canatom witness Knowlton testified that CP&L did not realize until a month before the redesigned control board was to be delivered that it would need to redesign the riser supports. (Tr. Vol 36 at 98).

CP&L witness Loflin and Parsons testified that CP&L did not simply have Ebasco's library reference typical designs. The Ebasco typicals had been put on drawings and the specific drawings had been approved, signed out and issued to the field for construction. These drawings gave typical support designs, layout, spacing criteria and all other information required for installation of the risers and supports. (Tr. Vol. 59 at 111-12; Vol 60 at 86). However, the typical riser support designs proved to be "unworkable in the field." (Tr. Vol. 59, p. 101). CP&L witnesses testified that the Company experienced problems in riser support installation after the process began in December 1981. Installation was impeded principally by the congestion in the cable spreading room due to increased cable quantities, additional fire barriers and their supports. It became difficult, if not impossible, to install riser supports precisely as prescribed by the typical support designs. In most instances the typical designs had to be modified to permit installation. In some instances, the modifications were substantial. (Tr. Vol. 55 at 82-84).

CP&L witnesses testified that field modifications to typical riser support designs had been accepted practice in plants built before the NRC began to place increased emphasis on verbatim conformance between design documents and construction. At the Harris Plant, however, in accordance with the newly adopted quality assurance practices, such field modifications could not be approved without approval through a formal design change process. In addition, inspectors were becoming much more demanding in requiring specific and detailed

design documents from which they could do their inspections. (Tr. Vol. 55 at 82).

CP&L witnesses testified further that a meeting was held on April 29 and 30, 1982, between Ebasco and CP&L to address the concerns that the typical support designs did not provide the details that were required to install and inspect. At the conclusion of that meeting, they determined to proceed with the installation of riser supports using the typical support designs as a base and, where conflicts arose or additional detail was required, to modify or provide additional guidance through the formal design change process. This was the process of beginning the redesign of riser supports in detail. (Tr. Vol. 55, pp. 82-84). CP&L witnesses testified this procedure worked, but it was cumbersome because of the time required for CP&L to initiate design change requests and for Ebasco to respond out of its New York office. Also, many more riser supports required customized designs than had been anticipated. In an effort to accelerate the riser installation process, CP&L and Ebasco agreed in January 1983 to abandon further attempts to install riser supports using typical support designs; Ebasco would assign design engineers to the Harris Plant site to customize the riser support designs and expedite turnaround time for design change approval. Priority was given to those support designs that were needed first in order to start cable installation. (Tr. Vol. 55 at 83-4).

CP&L offered two reasons why the riser supports were not redesigned from "typicals" to detailed designs until May 1982:

> (1) It was about this time that CP&L first became aware that the congestion in the cable spreading room, coupled with the new quality assurance practice of requiring that installed supports conform with the literal requirements of the design drawings, would make it necessary to provide supplemental design detail for many riser supports;
>
> (2) It would have been impractical to have commenced detailed design of the riser supports in the spreading room until <u>after</u> associated cable tray and cable tray supports were installed since detailed riser support designs could not be prepared without knowing the <u>exact</u> location of potential interferences. (CP&L Rebuttal Panel III Prefiled Testimony, p. 22). (Emphasis in original).

The Commission rejects these reasons because, as discussed below, CP&L had all the information it needed to redesign riser supports by July 1981, and it should have known by then that the "new quality assurance practice" would be required to satisfy the NRC.

Canatom testified that it would not be unreasonable in July 1981 "to expect the riser layouts to come to the site with the details complete on the drawings." (Tr. Vol. 40, p. 42). With respect to CP&L's claim that the congestion was so severe that the "<u>exact</u> location" of interferences had to be known, Canatom stated that,

> If...the requirements were such that the designers in the office could not do those details because they needed the <u>exact dimensions</u> on the site it would not be unreasonable to assume that the small part of this [riser support detailed design] could be started right

then in July with the receipt of the drawings as they came to site. (Tr. Vol. 40, p. 42). (Emphasis added).

Canatom then observed that it had allowed CP&L some extra time by slipping the date for starting detailed riser designs from July 1981 to September 1981. (Tr. Vol. 40, pp. 42-43). The Commission adopts Canatom's conclusion. Once the MCB was redesigned, CP&L had the information to determine what cables went where. This is demonstrated by the fact that the new cable raceway routing was established just one month later, in April 1981. (Tr. Vol 59, p. 99; CP&L Direct Panel IV, Exhibit 4, p. 19). With the new cable routing established, the need for new fire barriers and modifications to cable tray and riser layouts became apparent. (CP&L Rebuttal Panel III Prefiled Testimony, pp. 17-18). The new cable routing also provided CP&L with the information it needed to determine the location of fire barriers, cable trays, and risers, which in turn meant that it could calculate the seismic loads on the electrical raceway. The seismic loads and the riser layouts are key items for designing supports. The growth in cables and the seismic loads must have been known to CP&L before July 1981 because that is when "Ebasco began to release revised cable tray and riser layout drawings and detailed tray support designs for installation in the field." (CP&L Rebuttal Panel III Prefiled Testimony, p. 18).

As noted above, cable risers are essentially vertical cable trays. CP&L had sufficient information to issue detailed designs of cable tray supports by July 1981. With the cable routing known and the detailed design drawings for cable trays and their supports and riser layouts arriving on site for installation in July 1981, CP&L and Ebasco had all the design information they needed to start detailed design of riser supports. Once the elements of the congestion were known from the design drawings, there was no need to wait and see how it looked after being constructed. After all, the point of the "new quality assurance practice" was to have the constructed plant conform precisely to the design drawings. In this situation, the layout and tray support designs available in July 1981 should have provided CP&L with essentially the same information about the congested condition of the cable spreading room as viewing it after construction.

Another reason why the Commission cannot accept CP&L's "congestion" argument is that detailed riser support drawings were in fact made without the designers' waiting to see the cable spreading room as built. The evidence in this case includes examples of design drawings for risers and supports that, as CP&L admitted, have a fine level of detail -- fine enough to satisfy the NRC's strict verbatim compliance requirements. (Tr. Vol. 59, p. 122; Public Staff Audit Exhibit, Volume 1, p. 308-311, 316-318). These drawings have details specified to the fraction of an inch. (Public Staff Audit Exhibit, Volume 1, p. 308-311). Yet they were prepared by Ebasco out of its New York office. (Tr. Vol. 59, p. 122). Ebasco did not have to view the as-built congestion to prepare these detailed riser support designs. The Commission concludes that detailed riser support designs could have been produced without waiting for associated cable tray and cable tray supports to be installed. The exact location of potential interferences could be determined from the drawing designs available beginning in July 1981, which was the information Ebasco had available to it in New York when it did detailed support drawings from May 1982 to January 1983.

The procedure used beginning in May 1982 for redesigning "typicals" into detailed drawings was, in CP&L's words, "cumbersome because of the time required for CP&L to initiate design change requests and for Ebasco to respond." (CP&L Rebuttal Panel III Prefiled Testimony, p. 20). Consequently, in January 1983 Ebasco engineers were assigned to the Harris site "to customize the riser support designs and expedite turnaround time for design change approval." (CP&L Rebuttal Panel III Prefiled Testimony, pp. 20-21). The Commission concludes that this is the real reason Ebasco came to the Harris site, and not, as one CP&L witness suggested at the hearing (Tr. Vol. 59, p. 123), because the interferences were compounding.

CP&L's argument concerning "new" quality assurance practices and the increasing NRC demands for detailed design documents is no more tenable than its "congestion" argument. Just as the Commission accepts that the cable spreading room was congested and difficult to work in, so too does the Commission accept that the NRC was placing "greater emphasis on license applicants' ability to document that plants were built in literal accord with design documents...." (CP&L Rebuttal Panel III Prefiled Testimony, p. 13). The question is whether this should have been known to CP&L in July or September of 1981 so as to prompt detailed design of riser supports at that time. The question is whether CP&L could not have reasonably known until the spring of 1982 that its plan for allowing undocumented field modifications to "typicals" would not satisfy NRC requirements for documentation. On the basis of the evidence, the Commission concludes that CP&L should have realized by mid-1981 that the NRC's increasing demand for detailed documentation would require detailed design documents for riser supports, not just "typicals."

CP&L described the transition from "typicals" to detailed riser designs in AR-270. (Public Staff Audit Exhibit, Volume 1, p. 160-161). There was nothing imprudent about CP&L's initial decision to use typicals.

> Up to the late 1970s, the standard industry practice was for the detailed design of risers and their supports to be carried out in the field based on typical configurations provided by the design organization. This practice was followed at Harris; Ebasco released typical riser drawings for construction in 1978. (Public Staff Audit Exhibit, Volume 1, p. 160).

It appears from this statement that "typicals" were standard practice up to the late 1970s. Nonetheless, CP&L rebuttal witnesses maintained that "typicals" lost their feasibility as of 1982. (Tr. Vol. 59, p. 101). CP&L acknowledged that 1982 was not in the late 1970s (Tr. Vol. 59, p. 102), but blamed the discrepancy in dates on "support staff with good intention[s]" that wrote the audit response containing the "late 1970s" date. (Tr. Vol. 59, p. 113). However, CP&L's direct testimony also states that "typicals" were standard industry practice "through the late 1970s." (CP&L Direct Panel IV, Exhibit 4, p. 14). The Commission is more inclined to believe CP&L's audit response and direct testimony. The Commission concludes that CP&L was imprudent to continue with the use of "typicals" after they had ceased to be standard industry practice.

CP&L's rebuttal argument that "new quality assurance practices" arising from stricter NRC documentation requirements did not require the abandonment of "typicals" until 1982 is at odds with the Company's own direct testimony.

CP&L's direct prefiled testimony states that, "roughly since 1980 it has been necessary to have QA [Quality Assurance] documentation of nuclear construction that approached 'courtroom quality'...." (CP&L Direct Panel IV, Exhibit 6, p. 1). CP&L chronicles the events that led to ever-increasing NRC requirements for documentation of construction. (CP&L Direct Panel IV, Exhibit 6). Increased NRC scrutiny and stricter documentation requirements did not occur precipitously in 1982; they built up as the result of many events over several years. (Id.) For example:

--The March 1979 accident at Three Mile Island led to a major shift in NRC policy, a shift that increased the emphasis on quality assurance. (CP&L Direct Panel IV, Exhibit 6, pp. 9-10).

--In May of 1979 the NRC found quality assurance violations at the Marble Hill nuclear project and issued a stop-work order that was not lifted until 1982. (CP&L Direct Panel IV, Exhibit 6, pp. 10-12).

--In July 1979 the NRC issued IE Bulletin 79-14, which, in the absence of a formal engineering re-evaluation, required for seismic purposes that construction be documented in "verbatim compliance with piping design documents." (CP&L Direct Panel IV, Exhibit 6, p. 12). "IE Bulletin 79-14 had burdensome, industry-wide effects, requiring much stricter adherence to design requirements and much more comprehensive documentation than had been previously required for nuclear power plant construction." (CP&L Direct Panel IV, Exhibit 6, pp. 12-13).

--In December 1979 the NRC issued a stop-work order at the Midland Nuclear Power Station in response to several quality assurance problems. The two-unit plant, which was 85% complete, ultimately had to be cancelled. (CP&L Direct Panel IV, Exhibit 6, pp. 13-14).

--In April 1980 the NRC halted construction work at the South Texas Project due to problems in the quality assurance program. This followed a lengthy investigation that began in November 1979. (CP&L Direct Panel IV, Exhibit 6, pp. 14-15).

--In June 1980 the Atomic Energy Act was amended to increase by twenty-fold the fines the NRC could impose, up to $100,000 per violation per day. The amendment also added criminal penalties for harassment or intimidation of nuclear inspectors on the job. (CP&L Direct Panel IV, Exhibit 6, p. 15).

--In October 1980 the NRC issued for comment a new, aggressive enforcement policy. The new policy described severe penalties and stated that vigorous enforcement action would be taken against licensees who did not pay meticulous attention to detail and compliance. Although this enforcement policy was not formally adopted as a regulation until 1982, the NRC used it as guidance for its staff in taking enforcement actions starting in 1980. (CP&L Direct Panel IV, Exhibit 6, pp. 15-16).

--In early 1981 the NRC investigated quality assurance "irregularities" at the Zimmer Nuclear Plant. Deficiencies in the handling of nonconforming conditions and deficiencies in quality assurance records were identified by the NRC. This led to an April 1981 Immediate Action Letter requiring extensive quality assurance work and changes. The NRC subsequently determined that the plant's quality was indeterminate. Zimmer was abandoned even though it was 97% complete. (CP&L Direct Panel IV, Exhibit 6, pp. 17-18).

These events make it clear that CP&L was correct in noting the need for construction documentation approaching "courtroom quality" by 1980. Along the same lines, they make it clear that by July 1981 the "typicals" were inadequate. A utility that could not document the quality of its construction with detailed design drawings, or a utility whose construction differed from its design drawings due to undocumented field modifications, was taking a terrible risk with the NRC. This was the type of risk presented by proceeding with "typicals" in 1981, and it is a key reason why CP&L should have begun detailed design of riser supports in 1981.

CP&L's management failure was that it did not realize in timely fashion that it needed to do a detailed design of riser supports. As testified by Canatom, with respect to the information necessary to design detailed riser supports, "The seismic loads were known; the location was known; the requirements to fasten were known." (Tr. Vol. 36, p. 121). Canatom opined that CP&L had just overlooked the need to redesign the riser supports until a month before the MCB arrived. (Id.) One convincing piece of evidence that Canatom cited to support this theory was the minutes from a CP&L senior management construction review meeting in late 1982. (Tr. Vol. 36, p. 46). The meeting minutes state, "We have not pulled safety cable immediately after putting the control board in place because we have had minor difficulties with the control board." (Id.) As Canatom observed (Tr. Vol. 36, pp. 46, 121), this indicates that senior management was under the mistaken impression that the MCB weld problems and other "minor difficulties" were causing the critical path delay to the start of cable pulling, when in fact the critical path delay was due to riser supports. CP&L did not at that point realize where the project's critical path lay, which explains how it allowed an avoidable delay to occur.

By July 1983 the executive management had discovered the critical path, but unfortunately this discovery came too late to avoid the delay. The minutes of CP&L's July 1983 "Executive Management Review" meeting (Public Staff Audit Exhibit, Volume 1, p. 291-293) mention the delay caused by redesign of cable risers:

> One major impact from the incident at Three Mile Island in March 1979 has been Nureg 0660 [issued May 1980] which required the inclusion of human factors in the design of the main control board. Prior to the issue of Nureg 0660, CP&L had become concerned with the human factor requirements and had employed a consultant to evaluate the Harris main control board. The results of the evaluation were to redesign the board. The board was redesigned, built, and finally delivered June 1982. This was 16 months after the originally scheduled delivery date. The redesign also caused other problems. <u>The cable routing was significantly changed from the original design. This in</u>

> turn required extensive redesign of both the cable tray risers and the riser supports. An additional eight months has been lost during this redesign phase. We require six months to prepare for cable pulling after receipt of the riser design. This represents a significant delay in cable pulling from the originally scheduled date of August 1981. Currently, we are scheduled to begin pulling cable in August 1983. (Public Staff Audit Exhibit, Volume 1, p. 292-293). (Emphasis added).

CP&L agreed on the witness stand that this executive management assessment from 1983 was the reason, "in a very abbreviated form," for the cable pulling delay. (Tr. Vol. 59, p. 95). The meeting minutes indicate the delay may have been a month longer (until August 1983, eight months instead of seven months) than calculated by Canatom. Most importantly, these minutes establish (1) that the cable risers and their supports required a "redesign," (2) that this redesign caused delay, and (3) that the redesign resulted from the cable rerouting prompted by the MCB changes. These minutes support the Canatom position.

In AR-569 the Company acknowledged that riser supports were not designed with the cable tray support system, but were done later through the issuance of Design Change Notices (DCN) from July 1982 through March 1983. (Public Staff Audit Exhibit, Volume 1, p. 298-299). Some of these DCNs, with attachments, are in evidence. (Public Staff Audit Exhibit, Volume 1, p. 303-324). The DCNs refer to specific Field Change Requests (FCRs) as the reason for the design changes, and the referenced FCRs are included in the exhibits. (Id.) All of the FCRs are signed by a Discipline Engineer and a Senior Resident Engineer for CP&L. (Public Staff Audit Exhibit, Volume 1, p. 303, 314, and 321). These FCRs characterize the Company's failure to do a detailed design of riser supports in sharp contrast to CP&L witnesses at the hearing.

FCR-1562, dated May 1982, states, "Installation of seismic cable tray risers installation details as well as a number of riser supports was left out of original design due to a design oversight." (Public Staff Audit Exhibit, Volume 1, p. 303). Additionally, "Cable tray riser details for riser installation as well as a number of riser supports was either not provided or not properly identified in the original design, this information is essential for the proper installation of cable tray risers in all areas." (Id.) Finally, "This solution will allow the seismic cable tray risers to be installed in a responsible manner as well as maintain riser continuity thru [sic] out the plant. This problem was due to a design oversight." This FCR was not limited to an isolated example. It listed dozens of risers in the cable spreading room that suffered from the "design oversight" problems of "no supports provided for riser" and "no detail provided." (Public Staff Audit Exhibit, Volume 1, p. 304-307). Similarly, FCR-1854, dated August 1982, states, "There has been no supports provided for the following cable tray risers...." (Public Staff Audit Exhibit, Volume 1, p. 314). FCR-1746, dated July 1982, states, "A number of cable tray riser supports were left out of the original design. .... These supports are essential for the proper installation of these particular tray risers." (Public Staff Audit Exhibit, Volume 1, p. 321). All of these FCRs apply to the Unit 1 Reactor Auxiliary Building, elevation 286', which is the location of the cable spreading room underneath the MCB. (See Tr. Vol. 59, pp. 97, 115).

CP&L explained that the engineer who wrote these FCRs had enough information to install the risers with "typicals," but that

> the amount of second-guessing he was getting by the inspectors and the inspectors by the NRC regulators was such that he could not come up with typicals installed in the field that were acceptable and his course of least resistance was to come back to engineering and request a detailed design. (Tr. Vol. 59, p. 118).

This is precisely why CP&L should have used detailed designs rather than "typicals." Even though riser supports could be installed from "typicals," they were not acceptable. As listed above, there were numerous regulatory events prior to July 1981 that should have alerted CP&L of the need for detailed designs so as to satisfy the quality assurance documentation requirements of the NRC.

The Commission concludes that CP&L reasonably should have known by July 1981 of the need to design riser supports in detail rather than to rely on "typicals," that it was feasible to do so, and that the Company's failure to do so by at least September 1981 was imprudent and caused an avoidable delay of at least seven months in the start of cable pulling.

DELAY IN COMPLYING WITH APPENDIX R

CP&L's compliance with Appendix R is discussed on pages 3-21 to 3-22 and 10-70 to 10-74 of the Canatom audit report. CP&L primarily addressed the issue by its Direct Panel IV and its Rebuttal Panel III.

CP&L's fire protection program for Harris had been approved by the NRC in 1978 under the requirements of Appendix A to Branch Technical Position (BTP) 9.5-1. (CP&L Panel IV, Ex. No. 5, at 4-5). Construction of the plant had proceeded based on that approval.

Appendix R to 10 C.F.R. Part 50 was adopted by the NRC in November 1980 to become effective in February 1981. By its terms, Appendix R applied only to plants that had received operating licenses prior to January 1, 1979. It did not apply to new plants such as Harris which were still under construction. (Tr. Vol. 55 at 90.)

In July 1981, the NRC staff issued NUREG 0800, which was a revision to the Staff's Standard Review Plan. NUREG 0800 essentially stated that Appendix R requirements would subsequently be used by the Staff in reviewing the fire protection programs of plants under construction. (Tr. Vol. 55 at 91). The Standard Review Plan does not have the legal force and effect of regulations, although in a practical sense it tends to have this effect. (Tr. Vol. 60 at 20-21).

CP&L Direct Panel IV and Rebuttal Panel III testified that the NRC notified CP&L by letter dated September 30, 1981, that Appendix R would be used as a guideline in evaluating plants under review for operating licenses. (Tr. Vol. 55 at 63 and 91). The NRC at that time requested CP&L to perform a "comparison of your fire protection program to justify any deviations from Appendix R." (CP&L Panel IV, Ex. No. 5, at 10).

CP&L witnesses testified that CP&L immediately took action on this request. However, Appendix R was new and largely uninterpreted. CP&L's first steps were to direct Ebasco to begin gathering data on what was being done at other plants under construction and to contact other utilities itself. On October 22, 1981, CP&L met with representatives of Duquesne Light Company to discuss their experience with Appendix R at Beaver Valley. On November 10, 1981, Ebasco provided a summary of outstanding fire protection issues at the St. Lucie and Waterford projects. In early December 1981, Texas Utilities provided information regarding compliance with fire barrier requirements. (Tr. Vol. 55 at 92). Throughout November and December 1981, CP&L met with Ebasco to outline possible courses of action. At CP&L's request, in December 1981, Ebasco submitted a formal estimate of the engineering effort that would be required in order to compare CP&L's existing fire protection programs with Appendix R requirements. In January 1982, Ebasco was authorized to perform an Appendix R study. This study was to include, among other things, an initial evaluation to determine areas of the plant that did not appear to meet Appendix R criteria and planning for the execution of a safe shutdown analysis. (Tr. Vol. 55 at 92-93).

The contentions raised by Canatom and witness Schlissel center on the time spent in initiating and preparing the safe shutdown analysis (SSA) required under Appendix R. Company witnesses testified that there are two steps to the SSA: (1) the preparation and collection of procedures for plant shutdown in various situations and the identification of key equipment, power and control systems necessary to implement those procedures; and (2) an analysis to verify that there is sufficient redundancy or other protection to ensure that the various safety systems will function under different accident scenarios. (Tr. Vol. 55 at 95).

Ebasco began work on the first part of the SSA in January or February of 1982. (Tr. Vol. 60 at 47-50; Public Staff Audit Exhibit, Vol. 1, p. 346.) This part of the SSA work was completed by approximately June 1982, at which time the analytical portion of the SSA work began. Ebasco completed a draft of the SSA by November or early December 1982 and presented it to CP&L for its review. (Tr. Vol. 55 at 95-96; Public Staff Audit Exhibit, Vol. 1, p. 349).

CP&L witnesses testified further that the draft SSA identified nine of the plant's fire areas that did not comply with Appendix R. (Tr. Vol. 55 at 93). Ebasco proposed various physical modifications and additions to the plant in order to achieve compliance. CP&L was concerned that these construction modifications would have cost and schedule impacts. (Tr. Vol. 55 at 93-94).

CP&L decided to attempt to reduce the construction impacts of Appendix R. At CP&L's direction, Ebasco began to refine the draft SSA and to do additional analysis to show compliance with the requirement through engineering analysis. Canatom stated that CP&L rejected the draft SSA as too expensive and that CP&L itself took on some of the work to redo the SSA. (Canatom Report, p. 10-72). Ebasco's additional analysis was completed in mid-March 1983. (Tr. Vol. 60 at 59). Company witnesses testified that this additional work ultimately saved both time and money on the project. (Tr. Vol. 55 at 93-94)

The SSA was formally submitted to the NRC in July 1983. (Tr. Vol. 59 at 53). Appendix R has a provision for granting exceptions to its criteria if the proposed design provides an acceptable alternative. Accordingly, instead of

making wholesale construction modifications, CP&L sought 29 specific exceptions from the Appendix R requirements. (Tr. Vol. 55 at 99).

CP&L met with NRC staff between September 1983 and January 1984 to discuss the exceptions requested. Ultimately, CP&L was denied two of the exceptions. (Tr. Vol. 55 at 94, 99). The denial of these two exceptions meant that CP&L had to install a remote cold shutdown facility because the design of one area of the plant did not meet the acceptance criteria of Appendix R. The preliminary engineering for this remote shutdown facility was performed at the same time the exception requests were pursued. When it became apparent in late 1983 that the NRC would not grant the exception, the design was completed and the remote shutdown facility was installed. (Tr. Vol. 55 at 99-100).

Attorney General witness Schlissel testified that the completion of Harris was delayed by at least seven months by CP&L's tardy response to beginning the Appendix R work. In his view, CP&L should have begun work on the SSA no later than July 1981. According to Mr. Schlissel, three actions between November 1980 and July 1981 should have led CP&L by July 1981 to direct Ebasco to initiate an SSA. These events were: the NRC's adoption of Appendix R in November 1980; the NRC notification beginning in the spring of 1981 to other nuclear plants under construction that their fire protection programs would be evaluated against the requirements of Appendix R; and issuance in July 1981 of NUREG 0800, incorporating Appendix R into the licensing review of plants under construction. (Tr. Vol. 40 at 261-62).

Witness Schlissel identified several utilities that started the SSA work for their plants under construction prior to the work being started on Harris. From these examples he concludes that other utilities were more aggressive than CP&L in undertaking and submitting SSAs.

CP&L Rebuttal Panel III testified that the adoption of Appendix R would not have indicated a need for CP&L to begin an SSA since Appendix R explicitly applied only to plants that had received operating licenses prior to January 1, 1979. (Tr. Vol. 55 at 90). The Panel also testified that the issuance of NUREG 0800 should not have caused CP&L to start an SSA for Harris immediately and that it would have been imprudent to have responded to NUREG 0800 without further guidance from the NRC staff on what it expected CP&L to do.

Dr. Mattson, who worked for the AEC and NRC, testified that the NRC staff does not apply everything in the Standard Review Plan to all plants. Rather, the Staff decides on a plant-by-plant basis what parts of the SRP to apply and how. (Tr. Vol. 60 at 71-72). Witness Mattson testified that CP&L was reasonable in waiting to begin working on Appendix R until the NRC staff raised the issue of Appendix R in the context of the Harris operating license. (Tr. Vol. 55 at 97). Dr. Mattson was cross examined as to testimony he had filed in other proceedings. For example, in testimony which Dr. Mattson filed in Connecticut in May 1988 on behalf of Connecticut Light and Power and the United Illuminating Company, Dr. Mattson testified that "in July 1981, [with the issuance of NUREG 0800] the Seabrook Project first finally <u>came under the full force of the new requirements</u>." (Tr. Vol. 55, p. 181). (Emphasis added).

CP&L witnesses Loflin and Cutter also testified that during the Appendix R rulemaking, the NRC had directed its staff to formulate a new fire protection rule for plants that were still under construction. (Tr. Vol. 60 at 10, 73).

CP&L could have begun work under NUREG 0800 and then have had all of the work based on NUREG 0800 negated by the promulgation of the new rule. (Tr. Vol. 60 at 73-74). Witnesses Loflin and Cutter testifed that the Company had experienced this very situation in doing fire protection work at the Robinson and Brunswick Plants. (Tr. Vol. 56 at 12-14; Vol. 60 at 72-74).

Witness Schlissel testified that although "preparatory" work on the SSA started in January, 1982, Ebasco did not start work on the SSA itself until June 1982. CP&L witnesses testified that the first phase of the SSA, preparing safe shutdown procedures and identifying key equipment and components, began in January 1982 and the second phase, the analysis, began in June 1982. (Tr. Vol. 55 at 92-93; Vol. 60 at 36-37).

Canatom's proposed three-month disallowance is premised on the amount of time it took CP&L in 1982-1983 to complete the SSA. CP&L had participated as an intervenor in a lawsuit which challenged the validity of Appendix R. Canatom asserted that CP&L's reaction after the March 1982 court decision upholding Appendix R "was not one designed to aggressively minimize the delay these requirements were bound to cause." Canatom testified that CP&L rejected months of Ebasco's work on the SSA and then spent several months redoing this work. (Tr. Vol. 34, part 3 at 102). Canatom's criticism was thus focused on a three-month delay during December 1982 through August 1983.

According to CP&L, the resolution of Appendix R requirements delayed the plant six months. (CP&L Direct Panel IV, p. 46). CP&L attributed the six-month delay to regulation. (CP&L Direct Panel III, Exhibit 3, pp. 4, 10). Canatom testified that CP&L's compliance with fire protection requirements took longer than it should have and that the avoidable delay "could be viewed as being from November 1982 to July 1983" -- an eight-month period. (Canatom Report, p. 10-73 to 10-74). However, Canatom opted for a "more conservative approach" and recommended disallowance for a three-month avoidable delay. (Canatom Report, p. 10-74, 10-75). Mr. Schlissel, testified that the Company's slow response to Appendix R requirements resulted in a seven-month avoidable delay. (Schlissel Prefiled Testimony, p. 220).

The Commission is presented with two distinct periods involving the issue of whether CP&L's compliance with Appendix R requirements was timely or was the cause of an avoidable delay. The first period is the time from the adoption of Appendix R by the NRC to February 1982, when Ebasco began work on Appendix R. The second period is from the completion of Ebasco's draft SSA in November 1982 to CP&L's submittal of the Harris SSA to the NRC in July 1983.

We will first consider the period from adoption of Appendix R until February 1982.

CP&L noted that, "A key element of the Appendix R requirements is the performance of a Safe Shutdown Analysis (SSA)...." (CP&L Direct Panel IV, Exhibit 5, p. 14). When the final version of Appendix R was adopted in November 1980, it was clear that compliance would have to be demonstrated through an SSA. (CP&L Direct Panel IV, Exhibit 5, p. 6; Public Staff Audit Exhibit, Volume 1, p. 330; Schlissel Prefiled Testimony, pp. 190-191). Thus, it was incumbent upon CP&L to begin work on an SSA for Harris as soon as it became apparent that Harris would have to comply with Appendix R criteria. Yet, Ebasco did not initiate Appendix R review work (including the SSA) for the

Harris project until February 1982, per CP&L's request. (Public Staff Audit Exhibit, Volume 1, p. 346).

When Appendix R was adopted in November 1980, it only applied to plants that were operational prior to January 1979. (CP&L Rebuttal Panel III Prefiled Testimony, p. 27). CP&L asserted in rebuttal that it "had no reason to believe [Appendix R] had any applicability to the Harris Plant." (CP&L Rebuttal Panel III Prefiled Testimony, pp. 27-28). The Commission finds compelling evidence in the record to contradict this claim. As Canatom stated, CP&L could have anticipated that Appendix R would eventually apply to Harris. (Tr. Vol. 35, p. 67; Tr. Vol. 40, pp. 32-33). It would have been illogical to assume that operating plants would be required to backfit to comply with this new regulation but plants under construction would be allowed to get by with the old standards. (See Tr. Vol. 40, pp. 32-33). In fact, CP&L said as much on two different occasions. In its direct testimony, CP&L stated:

> Although the Fire Protection Rule applied only to plants licensed to operate before January 1979, it became clear that the NRC intended also to review newer plants against Appendix R. It also became apparent to CP&L that if the NRC was requiring Appendix R modifications at operating plants whose fire protection programs had previously been approved by the NRC, then the NRC would not license a new plant, such as the Harris Plant, unless it also met the new standards of Appendix R. (CP&L Direct Panel IV, Exhibit 5, p. 9).

Thus, in contrast to CP&L's rebuttal testimony, the Company did have reason to believe that Appendix R requirements would apply to Harris at the time Appendix R was issued. This is confirmed by a CP&L audit response (AR-153) to Canatom:

> It was obvious to CP&L that a new plant, such as Harris, would not be allowed by the NRC to be licensed to meet fire protection requirements that were rejected for our operating plants which were already licensed and had already received Safety Evaluation Reports for fire protection requirements. It, therefore, became necessary to modify the fire protection features at Harris in light of our experience at the operating plants. (Public Staff Audit Exhibit, Volume 1, p. 356).

Appendix R and the SSA had a major impact on the critical path activity of cable pulling. (Tr. Vol. 40, pp. 31-32). Appendix R was adopted in November 1980. Since it was "obvious" that Appendix R requirements would apply to Harris, there is a serious prudence question as to why CP&L waited until February 1982 to start Appendix R work.

CP&L had to have been familiar with Appendix R when it first went into effect because in February 1981 the Company intervened in a lawsuit to challenge the regulation. (Schlissel Prefiled Testimony, p. 193).

Even though Appendix R initially applied only to operating plants, the NRC soon thereafter demonstrated its intent to apply Appendix R requirements to plants under construction. In December 1980, Houston Power and Light Company was advised that its South Texas Project, then under construction, should come into compliance with Appendix R. (Schlissel Prefiled Testimony, p. 194). By

March 1981, just one month after the effective date of Appendix R, the NRC was informing other utilities of its intention to use the Appendix R provisions to evaluate the fire protection programs of plants then under construction. (Schlissel Prefiled Testimony, p. 195). Thus, by the spring of 1981 it was becoming increasingly apparent that plants under construction, such as Harris, would have to comply with Appendix R.

The next major event was the NRC's issuance of NUREG 0800 in July 1981. This NUREG essentially incorporated the provisions of Appendix R into the NRC's Standard Review Plan (SRP). (Canatom Report, p. 10-70 to 10-71; Schlissel Prefiled Testimony, pp. 198-200; Public Staff Audit Exhibit, Volume 1, p. 330; CP&L Direct Panel IV, Exhibit 5, pp. 9-10). The significance of the NRC's incorporating Appendix R into the SRP cannot be overstated. The SRP is the NRC staff's basis for reviewing license applications. (CP&L Direct Panel IV, Exhibit 2, p. 59). Although the SRP does not technically have the force of law, for all practical purposes it has the same impact as a formal regulation. (CP&L Direct Panel IV, Exhibit 2, p. 60). "Indeed, the introduction to the SRP makes it explicitly clear that the review process will be delayed if an applicant seeks to deviate from the criteria identified in the SRP...." (Id.) As CP&L stated in its direct testimony, "Since the SRP sets forth the criteria used by the NRC Staff in evaluating operating license applications, the inclusion of the Appendix R provisions into the SRP was intended to impose those fire protection requirements explicitly on plants under construction, such as the Harris plant." (CP&L Direct Panel IV, Exhibit 5, pp. 9-10).

Despite this clear mandate from the NRC in July 1981, CP&L failed to have Ebasco initiate Appendix R work until seven months later in February 1982. (Public Staff Audit Exhibit, Volume 1, p. 346). CP&L's rebuttal testimony attempted to excuse this delay by suggesting that, despite the incorporation of Appendix R into the Standard Review Plan by which Harris would be judged, "the NRC Staff already had approved the Harris fire protection program, and CP&L did not expect further difficulty." (CP&L Rebuttal Panel III Prefiled Testimony, p. 28). Given that the regulation (Appendix A) under which CP&L had been previously approved was in effect "deleted" by NUREG 0800 in July 1981, (CP&L Direct Panel IV, Exhibit 5, p. 9), CP&L was imprudent to wait so long before starting the review work that would establish if the Harris fire protection program complied with the Appendix R criteria being used by the NRC staff. The following cross examination of CP&L rebuttal witness Mattson apparently indicates the utility's attitude toward Appendix R:

> Q. You're saying that the utilities could effectively ignore this requirement in the Standard Review Plan?
>
> A. Absolutely. .... (Tr. Vol. 60, pp. 19-20).

This testimony contrasts with CP&L's direct testimony about the importance of the SRP and how deviations from the SRP could result in delays. (See above; CP&L Direct Panel IV, Exhibit 2, pp. 59-60).

On September 30, 1981, the NRC wrote CP&L as follows:

> <u>The technical requirements of Appendix R</u> to 10 C.F.R. 50 <u>are now being used</u> as guidelines in our evaluation of the fire protection program for plants under review for operating licenses.

> It has been our recent practice to perform the fire protection reviews for OL plants using the provisions of Appendix R. Accordingly, as part of your overall fire protection program submittal, we request that you include a comparison of your fire protection program to Appendix R to 10 CFR Part 50. Specifically identify and justify any deviation from Appendix R. Deviations from Appendix R should be identified as early in the review as possible, so that they may be resolved and all fire protection features be implemented by the time the plant is ready for fuel loading. (Canatom Report, p. 10-71, quoting the NRC letter). (Emphasis added).

Despite the fact that this should already have been known to CP&L from the issuance of NUREG 0800 in July 1981 and despite the NRC's emphasis on doing this work as early as possible, CP&L continued to delay.

CP&L testified that Appendix R was "mushy" and "confusing," that the NRC staff was amending it, and that this is why the Company did not "run out and just wholeheartedly embrace it." (Tr. Vol. 60, pp. 21, 28). Canatom acknowledged that Appendix R evolved and changed and that interpretation of it was difficult. (Tr. Vol. 35, pp. 51-52). However, Canatom emphasized that a more aggressive approach than that taken by CP&L was needed to resolve the problems of changing NRC interpretation. (Tr. Vol. 35, pp. 50-51, 52, 64-65). Utilities building nuclear plants needed to have conferences and continuing dialogue with the NRC "as early as possible" to iron out interpretation problems. (Id.). This approach produced notable success with the St. Lucie 2 project. (Id.; Public Staff Audit Exhibit, Volume 2, p. 1010). The Commission agrees with Canatom. Changing interpretations of regulations were an unavoidable aspect of building nuclear plants in the time frame of the Harris project. However, the NRC was issuing interpretations and explanations of Appendix R from 1981 to 1986. (CP&L Direct Panel IV Prefiled Testimony, p. 42). If CP&L had waited for all the "confusion and uncertainty" (Id.) surrounding Appendix R to be settled, the plant would still be unfinished today.

CP&L's reluctance is displayed in the following notes of an October 22, 1981, meeting between CP&L and Duquesne Light Company: "CP&L is taking position that we are not going to proceed further on some of these Fire Prot & Emerg Response Facilities until get NRC approval -- have been burned before on good faith." (Public Staff Audit Exhibit, Volume 1, p. 384). Thus, despite the fact that Appendix R was adopted in November 1980, despite the fact that the NRC made Appendix R criteria applicable to the SRP in July 1981, and despite the September 1981 NRC letter written specifically to CP&L and demanding that any deviations from Appendix R be identified and justified, CP&L nonetheless decided that it was "not going to proceed further. . . " When questioned about the preceding quotation from CP&L, Canatom responded that the Company was in a regulatory environment in which "one has to be aggressive...in terms of trying to get things resolved." (Tr. Vol. 36, p. 153). CP&L's approach was not aggressive.

CP&L's delay on Appendix R compliance was in marked contrast to its actions in dealing with another uncertain regulatory change. The Company anticipated post-TMI "human factors" changes to the Main Control Board and was able to redesign the MCB well before the pertinent NRC requirements were issued. (CP&L Direct Panel IV Prefiled Testimony, p. 75). CP&L's success with

these evolving requirements was a direct result of its "proactive approach" and "aggressive measures." (CP&L Direct Panel IV Prefiled Testimony, pp. 47, 50-51). It is unfortunate that CP&L did not adopt the same approach in addressing the changing fire protection requirements.

Other utilities were more aggressive than CP&L in seeking to comply with Appendix R requirements for plants under construction. An Ebasco internal memorandum from December 1981 shows that Ebasco had already undertaken studies for Appendix R conformance at the St. Lucie and Waterford projects. (Public Staff Audit Exhibit, Volume 1, p. 391). CP&L testified that in late 1981 Ebasco provided a copy of the SSA from the Waterford plant. (Tr. Vol. 60, p. 34). Thus, other utilities had already performed Appendix R studies before CP&L began the preparatory work. (Tr. Vol. 60, p. 38).

CP&L stated in rebuttal that it "took action immediately" after the September 1981 letter from the NRC. (CP&L Rebuttal Panel III Prefiled Testimony, p. 29). The examples it cites include the October 22, 1981 meeting with Duquesne Light Company where CP&L decided it was "not going to proceed further...." (Public Staff Audit Exhibit, Volume 1, p. 384). The other examples consist of meetings with Ebasco and information gathering from other utilities. (CP&L Rebuttal Panel III Prefiled Testimony, p. 29). While CP&L may have considered this "immediate action," it was not the type of analysis required by the NRC to identify and justify Appendix R deviations at the Harris plant. As Canatom observed, discussing Appendix R did not constitute working on it. (Tr. Vol. 36, p. 170).

CP&L even admitted that the "preparatory" work on Harris Appendix R compliance did not begin until January 1982, and it continued to May 1982. (Public Staff Audit Exhibit, Volume 1, p. 331; Tr. Vol. 60, pp. 36-37; CP&L Direct Panel IV, Exhibit 5, p. 14). Based on the March 5, 1982, Ebasco progress report, the Commission concludes that this Appendix R work, as opposed to mere discussions and negotiations between Ebasco and CP&L over the scope of work, did not begin until February 1982. (Public Staff Audit Exhibit, Volume 1, p. 345-346). Nonetheless, the essential point is that CP&L delayed in starting even the preparatory phase of Appendix R review work until months after it was obvious that this work had to be done.

Canatom did not specifically quantify the period from July 1981 or September 1981 to February 1982 as an avoidable delay that should be disallowed. However, Canatom testified that this period was "a very long time to analyze" a requirement as serious as Appendix R. (Tr. Vol. 40, p. 34). They also testified that "a lot more work could have been done prior to February." (Tr. Vol. 36, p. 138). Witness Schlissel, was more definite. He concluded that CP&L should have initiated its Safe Shutdown Analysis by July 1981 "at the latest." (Schlissel Prefiled Testimony, p. 210). He determined that as much as 11 months of avoidable delay occurred due to CP&L's late start of the SSA (Schlissel Prefiled Testimony, pp. 211-212), but he recommended disallowance of a more conservative seven months. (Schlissel Prefiled Testimony, p. 223).

The Commission concludes that CP&L imprudently waited too long to initiate Appendix R review work and that CP&L could have started this work by as early as July 1981 and certainly by September 1981.

We now turn to consideration of the period of time from Ebasco's completion of its first draft SSA until CP&L's submittal of the final SSA to the NRC.

Ebasco presented a draft Safe Shutdown Analysis to CP&L in a meeting on December 2-3, 1982. (Public Staff Audit Exhibit, Volume 1, p. 335). Canatom testified that after receiving the draft SSA, "CP&L rejected this as being too expensive and CP&L's HPES [Harris Plant Engineering Section] took on some of the work to help produce the initial SSA report, which was finally submitted to the NRC on July 22, 1983." (Canatom Report, p. 10-72). Canatom focuses on the period from when Ebasco completed the draft SSA in November 1982 to when the final SSA was submitted to the NRC in July 1983 as the most significant area of avoidable delay. Canatom notes, "The avoidable delay for this activity path could be viewed as being from November 1982 to July 1983 -- the time CP&L spent redoing Ebasco's work [on the SSA]." (Canatom Report, p. 10-73 to 10-74).

The performance of other nuclear plants is convincing evidence that CP&L did not proceed as fast as it prudently should have in preparing the SSA and submitting it to the NRC. The July 1983 SSA submittal to the NRC came 22 months after CP&L received the September 1981 notification from the NRC regarding Appendix R evaluation for Harris. By way of comparison,

> The Perry Nuclear Plant filed its requests for deviations from Appendix R in June 1982. This was 15 months after the NRC had sent a letter requesting an analysis demonstrating compliance with Appendix R.
>
> Similarly, Commonwealth Edison transmitted the Safe Shutdown Analysis for the Byron Plant to the NRC in June 1982. Again this was 15 months after the utility had been informed that the plant's fire protection program would be evaluated against the Appendix R requirements.
>
> The Seabrook Plant's SSA was filed in April 1982, with[in] 13 months of the [date] notice was received indicating that the plant's fire protection program would be evaluated against the requirements of Appendix R.
>
> Interestingly, Northeast Utilities, parent Company of five of the utilities which along with CP&L brought the legal challenge to Appendix R, filed the Safe Shutdown Analysis for the Millstone 3 Nuclear Plant on February 2, 1983. This was more than 5.5 months before CP&L submitted the Harris Plant's SSA. (Schlissel Prefiled Testimony, pp. 208-09).

CP&L maintained that the time reasonably required to prepare an SSA could vary greatly from plant to plant. (CP&L Rebuttal Panel III Prefiled Testimony, p. 33). The Commission agrees that plant comparisons can be deceptive due to varying conditions. As with our previous discussion of plant comparisons, the Commission finds that they provide context but that they do not provide evidence of imprudence.

CP&L's rebuttal statements (CP&L Rebuttal Panel III Prefiled Testimony, pp. 31-32) that it did not reject the Ebasco draft SSA as too expensive and

"did not reperform Ebasco's work" on the SSA in the December 1982 to July 1983 time frame are not convincing. In response to a Public Staff Data Request, CP&L stated that it developed "alternative methods of compliance [for Appendix R] with less impact on the Harris plant cost...." (Public Staff Audit Exhibit, Volume 1, p. 389). This can only mean that all or at least part of the SSA was redone to find less expensive means of complying with Appendix R. Likewise, CP&L's rebuttal testimony stated that the Company decided to have additional analysis done on the draft SSA to reduce the cost impact of Appendix R modifications proposed by Ebasco. (CP&L Rebuttal Panel III Prefiled Testimony, pp. 30-31). This is exactly the reason Canatom identified as why it took so long to submit the SSA after Ebasco prepared its draft. (Canatom Report, p. 10-72 to 10-74).

CP&L claimed that the "additional analyses" performed for the SSA in 1983 saved time and money. (CP&L Rebuttal Panel III Prefiled Testimony, p. 31). However, CP&L never calculated these purported savings and could not state the amount at the hearing. (Tr. Vol. 60, pp. 51-52). The Company's basic position was that all the time spent performing "additional analyses" on Ebasco's draft was going to save so much money that the Company did not bother to figure out how much money it was going to save. (Tr. Vol. 60, p. 53). Again, the Commission cannot accept CP&L's testimony on this matter. As reflected in the quantification that follows, every day of delay in the completion of the project imposed a tremendous financing cost. (See also Tr. Vol. 40, p. 35 ["$1 million a day per day of delay"] and Schlissel Prefiled Testimony, p. 211 ["each month of potential delay meant an additional $10-$20 million"]). At this price, a prudent utility should have done a cost-benefit analysis before spending several extra months on a critical path activity in the hopes of reducing costs.

CP&L also attempted to depict a process wherein it was making refinements through "additional analyses" and "more detailed analysis" of a rough draft. (CP&L Rebuttal Panel III Prefiled Testimony, p. 31). However, a data response more bluntly described it as "reanalysis." (Public Staff Audit Exhibit, Volume 1, p. 388). The term "reanalysis" supports Canatom's position that much of the original analysis by Ebasco was redone. The Commission finds CP&L's effort on the witness stand to deny the use of its own word "reanalysis" (Tr. Vol. 60, pp. 45-46) is simply not persuasive.

The most telling evidence that CP&L took an unreasonably long time to submit the SSA to the NRC after receiving a draft from Ebasco is found in Ebasco's records. The minutes of the December 2-3, 1982, meeting between CP&L and Ebasco concerning the draft SSA contain ten pages of comments and actions to be taken. (Public Staff Audit Exhibit, Volume 1, p. 335-344). After Ebasco had sat through a two-day discussion of its draft SSA and noted all the changes and additional work that CP&L wanted, it concluded:

> Final report to CP&L by January 16, 1983.
>
> Estimated submittal to NRC by January 31, 1983. (Public Staff Audit Exhibit, p. 344). (Emphasis added).

Thus, Ebasco, who had been hired by CP&L because of its experience and qualifications, estimated that the SSA could be submitted to the NRC almost six months before CP&L actually submitted it. The Ebasco estimate is credible

because Ebasco had previously performed Appendix R reviews at two other nuclear plants. (Tr. Vol. 60, p. 56; Public Staff Audit Exhibit, Volume 1, p. 391).

In subsequent progress letters dated December 9, 1982, and January 14, 1983, Ebasco projected completion of the final Appendix R report for January 15, 1983, and February 1, 1983, respectively. (Public Staff Audit Exhibit, Volume 1, p. 347-351). CP&L's reaction was to say that these "were never rational dates." (Tr. Vol. 60, p. 59). CP&L then retracted this statement but did not offer another explanation why Ebasco was assuming a much more optimistic schedule for the SSA than the Company actually achieved. (Tr. Vol. 60, p. 60). In light of the nature of Ebasco's records, and in light of the qualifications and experience of Ebasco, the Commission does not regard the Ebasco estimates for completion of the SSA as irrational.

The Commission concludes that the SSA could have and should have been submitted to the NRC earlier than July 1983 and that CP&L was imprudent in not doing so.

QUANTIFICATION OF AVOIDABLE DELAY

It must be remembered that the two delays we have discussed--the delay in redesigning cable riser supports and the delay in Appendix R compliance--were proceeding on parallel paths. We must now turn to the tasks of determining the net avoidable delay and quantifying the delay.

The Commission adopts Canatom's conclusion that seven months of avoidable delay occurred with respect to the start of the critical path activity of pulling safety-related cable. (See Canatom Report, p. 10-74). This is the delay caused by failure to redesign cable riser supports until May 1982. However, it was the completion of cable pulling that affected the overall project duration. The completion of cable pulling was dependent not only on when cable pulling started, but also on compliance with Appendix R. This in turn was related to completion of the SSA. The earlier CP&L finished its SSA, the earlier it could prepare the exemption requests and modifications needed to satisfy the NRC, and the earlier cable pulling could be completed.

Canatom found that "as many as" four months of the seven-month avoidable delay in the start of cable pulling would have been offset by time reasonably required to comply with Appendix R. (Canatom Report, p. 10-75). This was based on Canatom's "conservative approach" in viewing the avoidable delay related to Appendix R compliance as only three months. (Canatom Report, p. 10-73 to 10-74). With this conservative approach, Canatom settled on a net effect of a three-month avoidable delay to the project. This does not include any delay penalty for the period from July 1981, when NUREG-0800 was issued, to February 1982, when Ebasco finally began Appendix R review work for Harris.

Mr. Schlissel, in contrast, found that the seven-month delay in the start of cable pulling, combined with the seven-month delay in start of Appendix R work, had the net effect of a seven-month avoidable delay to the project.

The Commission, on the basis of all of the evidence, concludes that CP&L's imprudence caused five months of avoidable delay. The evidence indicates that prudent management would have taken a more aggressive approach in complying with the requirements of Appendix R. It is clear that CP&L dealt with the

changes to the main control board that resulted from the Three Mile Island accident in an prudent and aggressive manner. If a similar approach had been taken with respect to Appendix R compliance, CP&L would have begun work on its SSA earlier and would have submitted its SSA earlier. The Commission finds and concludes that CP&L should have recognized the need to act on Appendix R by as early as July 1981, and certainly in response to the September 1981 letter from the NRC. A prudent response to these events would have led CP&L to begin work on the SSA, through Ebasco, by at least December of that year, two months earlier. The Commission believes that this is a reasonable approach fully supported by Canatom's testimony that "a lot more work could have been done prior to February." Similarly, prudent management, recognizing the critical path and realizing the tremendous expense of each month's delay, would have completed work on the SSA and submitted the document to the NRC at least three months earlier, as testified by Canatom. As noted above, Ebasco projected submittal of the Appendix R report to the NRC by January or February of 1983. The Commission finds this evidence important and persuasive. Still, the Commission has not held CP&L to the deadline projected by Ebasco. The Commission's findings of delay allows for significant slippage of this projected date. The Commission recognizes that CP&L must not be held to a standard of perfection and that the draft SSA required further work. However, the Commission believes that prudent management would have recognized more keenly the urgency of this work and the expense of delay. The evidence indicates that CP&L's Appendix R review work could have reasonably been ready for submittal to the NRC five months earlier. This would have advanced the completion of cable pulling and ultimately completion of the overall project by at least five months. Finishing the project five months earlier is the result that a prudent utility should have achieved through reasonable attention to the changing regulatory requirements experienced on the Harris project.

Two quantification methods have been presented to the Commission, both by Canatom. (Canatom Report, p. 10-75 to 10-78). One method calculates the AFUDC and site support costs during the actual period of the delay; the other calculates just the AFUDC costs at the end of the project's construction on the theory that if delay had been avoided, the plant would have been operating earlier and therefore would have avoided the cost of the last months' AFUDC. (Id.). Canatom listed several factors that weigh in favor of the second quantification methodology. (Tr. Vol. 40, pp. 28-31). Witness Spann for CP&L testified that this second method was inappropriate because it "includes AFUDC accrued on expenditures made after the delay." (Spann Prefiled Testimony, p. 26). The Commission finds the first quantification methodology of Canatom to be appropriate. The Commission agrees with Dr. Spann that the delay should be quantified as of the time it occurred. The first quantification methodology considers not only the AFUDC costs at the time of delay but also the site support costs during that time. The Commission finds the site support costs to be a legitimate consideration that should be taken into account in quantifying avoidable delay. Although the Commission has found a net five months of delay over an extended period of time in the late 1981 to early 1983 time frame, the Commission finds it appropriate for quantification purposes to consider the AFUDC and site support costs as of early 1983, the time where the two delays came together to hold up the critical path of construction. Using Canatom's first methodology, five months of delay is calculated as follows:

	Amount (000's)
Five months AFUDC during delay	$ 58,500
Five months support costs during delay	38,215
AFUDC accrual from the time of the delay	34,315
Total	$131,030

The Commission finds that the amount of $131,030,000 ($71,365,000 on a North Carolina retail jurisdictional basis) should be excluded from CP&L's rate base on grounds of the imprudence found herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding of fact is contained in the testimony of CP&L Rebuttal Panel I, CP&L Rebuttal witness Reinsch, Canatom, and Attorney General witness Schlissel.

Both Canatom and witness Schlissel have proposed disallowances of Harris Plant costs because of alleged design and construction errors. Canatom proposes a disallowance of approximately $11.2 million for design and construction errors. Witness Schlissel proposes a significantly larger disallowance of either $146 million or $164 million, depending on whether certain of his other adjustments are accepted.

The proposed disallowances are based on two different issues. These are: (1) the number of field change design documents written on the Harris Project; and (2) the unit rates achieved by the Project. Both Canatom and witness Schlissel testified that these issues related to the amount of rework on the Harris Project, the costs of which in their opinion should be disallowed. The proposed disallowances are summarized in the table below:

Proposed Engineering and Construction Disallowances (Millions)

	Canatom (Based on FCRs)	Schlissel (Based on FCRs and Unit Rates)
Engineering	$8.66	$26
Construction	$2.58	$66 (Direct Labor)
		$23.7 (Nonmanual)
TOTAL	$11.24	$146 or 164*

*Witness Schlissel's total includes AFUDC not included with his individual adjustments.

We turn now to a discussion and general overview of the evidence regarding these issues and the proposed disallowances.

I. GENERAL OVERVIEW OF THE EVIDENCE

1. Field Change Requests

Canatom proposes to disallow $11.2 million for Field Change Requests (FCRs) written to account for engineering mistakes and construction misfabrication. (Tr. Vol. 34, part 3, pp. 359-361). Witness Schlissel proposes a disallowance on the same basis, but his proposal is to disallow approximately $26 million for these FCRs. (Ex. DAS-32 at Schedule 9).

CP&L Rebuttal Panel I testified that FCRs were a broad category of design change documents whose overall purpose was to permit personnel at the site to obtain a clarification of or correction to a project design document or to record a deviation from such a document and to obtain approval for a change or corrective action. Deviations from a design document could occur for many reasons. According to the CP&L witnesses, FCRs varied significantly in importance and impact. FCRs could be used to correct mistakes in designs or to seek approval of construction work that did not conform with a drawing but was acceptable based on engineering analysis. FCRs were also used to seek interpretations of design documents or to request more detail on particular installations. (Tr. Vol. 45, pp. 41-42).

There were approximately 57,500 FCRs written on the Harris Project. Canatom testified that this number of design change documents was "significant." (Tr. Vol. 34, part 2, p. 35). Canatom also testified that CP&L had performed two studies in 1983 that identified the root causes of the FCRs. These studies identified ten root causes for FCRs. Canatom testified that four of these categories (Missing Drawing Details, Incompatible Drawing Details/Interferences, Mismatch of Engineering/Construction Tolerances, and Missing Tolerances) represented FCRs that were related to engineering. Based on these two studies, Canatom testified that 56 percent of the FCRs (or 32,200) were engineering-related. (Tr. Vol. 34, part 2, pp. 35-41).

Canatom similarly testified that the category "Construction Misfabrication" was made up of FCRs related to construction errors. Based on these studies, Canatom concluded that 16.7 percent of the FCRs (9,602 FCRs) were construction-related. (Tr. Vol. 34, part 2, pp. 319-320).

Canatom testified further that CP&L had done a third FCR study in 1986 to attempt to determine what percentage of FCRs were written because of regulatory requirements. This study demonstrated that 79 percent of the total number of FCRs written had a root cause in regulation. Canatom then calculated 21 percent (non-regulatory root cause) of the engineering-related FCRs and concluded that 6,762 FCRs (21% x 32,200 engineering FCRs) were the result of avoidable engineering deficiencies. (Tr. Vol. 34, part 2, p. 41). Similarly, Canatom calculated 21 percent of the construction-related FCRs and concluded that 2,016 FCRs (21% x 9,602 construction FCRs) were the result of avoidable construction errors. Canatom testified that it then calculated the average cost of resolving an FCR and then calculated its proposed disallowance of $11.2 million. (Tr. Vol. 34, part 3, pp. 369-361).

Witness Schlissel testified that his analysis of FCRs was similar to that of Canatom. Rather than identifying five of the ten categories in the 1983 FCR

studies, as Canatom did, witness Schlissel testified that he would also hold the Company responsible for a sixth category, Vendor Misfabrication. The six categories of FCRs comprised 78 percent of the FCRs written by 1983. Thus, witness Schlissel testified that 78 percent of the FCRs (45,023 FCRs) were caused by errors attributable to CP&L. Witness Schlissel then eliminated 55 percent of those FCRs based upon the Company's representations that resolution of those FCRs had no construction impact. Witness Schlissel thus proposed to disallow 45 percent of the FCRs he identified as errors, or 20,260 FCRs. He quantified the cost of these FCRs in the same way as did Canatom. (Tr. Vol. 40, pp. 297-98; Ex. DAS-32 at Schedule 9).

Witness Schlissel further testified that he does not accept the 1986 FCR study showing that regulation was the root cause of 79 percent of the FCRs. He testified that he had reviewed several hundred FCRs and the log of FCRs and concluded that errors, and not regulatory change, had accounted for the majority of FCRs. (Tr. Vol. 40, pp. 185-88).

CP&L Rebuttal Panel I testified that FCRs are inevitable on any nuclear project because deviations from design documents are inevitable, especially with the amount of change mandated by regulation over the life of the Harris Plant. The Panel testified that FCRs had to be written to record every deviation, no matter how trivial. They further testified that FCRs were essential for compliance with regulatory requirements. When doing design work, the engineer cannot visualize all of the possible interferences and other problems that exist in the field. The Harris Plant is filled with miles of cable and pipe and thousands of tons of concrete and steel, all intertwined in a very complex manner. The Panel testified that no engineer, regardless of skill level, could create design documents from which the plant could be built without additional information, changes of design, or clarification of details. No craftsman could ever perform the demanding level of skilled work required without having to deviate from a design document or without making a mistake. (Tr. Vol. 45, pp. 42-43).

The CP&L witnesses also testified that the use of FCRs changed dramatically over the life of the Harris Project. They testified that in the construction of nuclear plants during the 1970s, the number of FCRs was much smaller than at later plants. Problems with interferences or tolerances or other minor deviations at earlier plants were corrected in the field based on the judgment and experience of field engineers without going through the FCR process. In the 1980s, with the increased emphasis by the Nuclear Regulatory Commission (NRC) on quality assurance and on verbatim compliance of plant as-built conditions with design codes and calculations, all such deviations (even very minor ones) and their solutions had to be documented. This increased the use of FCRs dramatically. (Tr. Vol. 45, p. 43).

The CP&L witnesses further testified that the number of FCRs on the Harris Plant was not unusual when that number is put in context. Approximately 552,000 cubic yards of concrete, 2,850 miles of cable, and 75,000 tons of steel were installed. Over 100,000 drawings were created by the engineers. Tens of thousands of analyses and studies were conducted. CP&L asserts that the following statistics indicate that the number of FCRs was not excessive:

- If all 57,500 FCRs are attributed to the entire work force, one FCR occurred every 1,550 hours worked (equivalent to approximately 1.3 per person per year);

- If all the FCRs are attributed solely to the craft workers, one FCR occurred every 630 hours worked (equivalent to approximately three per person per year);

- If all the FCRs are attributed solely to the engineers, one FCR occurred every 241 hours worked (equivalent to one every six weeks per engineer);

- If the FCRs are attributed to craft workers and engineers, one FCR occurred every 879 hours worked. (Tr. Vol. 45, pp. 43-45).

CP&L witness Reinsch testified that the total number of FCRs at the Harris Plant was not unusual and that it was his experience that the number of design change documents for recent nuclear plants was in the high tens of thousands. (Tr. Vol. 56, pp. 150-51). On cross-examination, witness Reinsch identified plants that had 60,000 and 69,000 such documents. (Tr. Vol. 56, pp. 178). He testified that the total number of design change documents at the Harris Plant indicated that the amount of design rework required due to engineering and construction changes was reasonable. (Tr. Vol. 56, p. 151).

CP&L witness Loflin testified that CP&L had taken a number of steps to minimize the number of FCRs written. Mr. Loflin testified that as head of the Harris Plant Engineering Section he and his line supervisors discussed and reviewed FCR trends on a weekly basis from 1979 through the end of the project. He testified that CP&L kept close oversight on FCRs during the entire project and actively sought ways to reduce the number of FCRs and methods to resolve outstanding FCRs. Witness Loflin identified several actions CP&L took to monitor, control and reduce the number of FCRs. (Tr. Vol. 45, pp. 70-73).

Witness Loflin also testified that the interpretation made by Canatom and witness Schlissel of the 1983 FCR studies was inaccurate. He testified that the six categories identified by Canatom and witness Schlissel as error-driven would include any FCRs written to correct discrepancies from design documents or to accept them after engineering review. He testified that the greatest portion of FCRs in these categories were driven by the escalated quality assurance and regulatory inspection environment. The categories were named (e.g., "Missing Drawing Details") to identify areas that engineering and construction could take action to resolve. This legend was not designed to identify the regulatory-driven root cause of the FCRs, but focused on what within CP&L's control could be done to reduce the number of FCRs. (Tr. Vol. 45, p. 72).

CP&L witness Parsons also testified that witness Schlissel had not understood the 1986 FCR study that identified 79 percent of the FCRs as regulatory-driven. Witness Parsons testified that the "Regulation" category in the 1986 study was designed to capture the percentage of FCRs written because of the NRC's changed practices. He noted that plants built in the 1970s had only a fraction of the number of FCRs that are written for current plants. Witness Parsons testified that this increase does not indicate that prior plants were built and designed by more skillful personnel. In fact, according

to witness Parsons, the same organizations (and many of the same people) have been involved in these plants in the various time frames, and one would expect that they would become more skillful with increased experience. (Tr. Vol. 45, p. 73).

Mr. Parsons testified further that the increase in the number of FCRs for plants built in the 1980s occurred because of changed NRC practices and emphasis. According to Mr. Parsons, a field engineer or craft worker could no longer use his or her judgment to move a pipe or conduit to avoid an interference. This change would have to be documented and approved through the FCR process. He stated that these types of problems occur on all major construction jobs; the difference with nuclear construction in the 1980s was that every minor deviation from a design document must be documented, analyzed, and approved. Witness Parsons testified that this phenomenon is what CP&L was attempting to capture in the "Regulation" category. (Tr. Vol. 45, pp. 73-74).

Witness Parsons also testified that the use of FCRs to document every minor deviation from design documents was necessary. He explained that the NRC essentially shut down the Zimmer project, and that it was eventually cancelled, because the quality of the plant was "indeterminate." Witness Parsons testified that the owners of Zimmer could not document that the design and construction of the plant had been accomplished the way it should have been. He concluded that the use of FCRs helps to avoid this type of problem and is a necessity. (Tr. Vol. 45, p. 74).

CP&L Rebuttal Panel I also testified that Canatom was not conducting a prudence analysis but, instead, was using a standard of perfection on the issue of FCRs. The Panel testified that Canatom had identified all of the FCRs that resulted from errors, and then proposed to disallow all of them. According to the CP&L witnesses, no one could achieve the design and construction of something as complex as a nuclear plant without mistakes being made. The witnesses testified that such mistakes and errors are a part of the engineering and construction process and cannot be avoided. (Tr. Vol. 45, pp.41, 45).

The CP&L witnesses also testified that neither Canatom nor witness Schlissel had identified a single action or event by the Company relating to FCRs that was imprudent; that neither Canatom nor witness Schlissel stated any conclusion concerning whether the Company had an excessive number of Field Change Requests or whether the Company acted properly to try to minimize the cause of such design change documents; and that witness Schlissel did not address whether the Company had exercised appropriate control and oversight over the work. CP&L asserts that witness Schlissel simply described the existence of the FCRs and proposed to disallow $26 million in engineering costs simply because the FCRs exist. (Tr. Vol. 45, pp. 74-75).

The CP&L witnesses testified that a prudence analysis should start with the realization that human beings are not perfect and do not have perfect foresight. Given this, the inquiry in prudence terms should be whether the Company took the appropriate steps to minimize the number of individual errors and thus the number of FCRs related to errors. The Panel testified that the focus should be on the steps the Company took to control and monitor the work and that the auditor should inquire whether appropriate procedures were in place, whether quality assurance programs were implemented, whether experienced managers and personnel were hired, and so on. The CP&L witnesses stated that

prudent management cannot prevent errors from being made; however, prudent management can and does take steps to attempt to minimize the number of errors. (Tr. Vol. 45, pp. 45).

The Company witnesses testified that Canatom's own report indicated that CP&L had been prudent in monitoring and controlling the work. They also noted that Canatom did not find imprudence in the organization, supervision, procedures, or quality assurance of the project. (Tr. Vol. 45, pp. 46-47).

2. Unit Rates

Attorney General witness Schlissel proposed to disallow another $90 million in costs of the Harris Plant that he alleges were incurred because of rework. He testified that extensive rework was reflected in the project's unit rates, or productivity figures, which worsened over time. Witness Schlissel's proposed disallowance is based on disallowing 50 percent of the total manual labor cost increase between the 1979 definitive estimate and the final cost of the plant that can be attributed to changes in unit rates. (Tr. Vol. 40, pp. 295-96).

The term "unit rate" refers to the amount of time required to install a measure of a certain commodity. For example, concrete unit rates are measured by the average time required to install a cubic yard of concrete. Unit rates for pipe and cable are measured in the amount of time required to install a linear foot of the item. Unit rates measure the productivity of craft labor in building the plant.

On the Harris Project, CP&L included in its unit rates the amount of time spent reworking, or redoing, various items. For example, if a welder spent ten hours installing a hanger, the unit rate would be ten hours per hanger. If he then spent ten additional hours reworking the hanger, the project counted the hanger only once so the unit rate would then be 20 hours per hanger. The unit rates for various commodities did increase (or worsen) during the project, and witness Schlissel's theory is that these unit rate increases were caused in large part by the rework on the project. Witness Schlissel testified that the cost of 6.13 million manual man-hours, or $66 million, should be disallowed. In addition to his direct labor adjustment, witness Schlissel proposed a related nonmanual labor adjustment of $23.7 million. He testified that the expenditure of the extra 6.13 million manual man-hours led directly to additional nonmanual man-hours for supervision and quality assurance/quality control inspection. By using the ratio of the manual and nonmanual hours on the project, witness Schlissel calculated a proposed disallowance of $23.7 million in nonmanual costs. (Tr. Vol. 40, pp. 295-99).

Witness Schlissel testified that these adjustments were necessary to disallow the costs of imprudently caused rework. He testified that the adjustments had to be estimated in this manner because CP&L did not collect rework data and thus no direct documentation on the specific cost of rework existed. (Tr. Vol. 40, pp. 158-62). Witness Schlissel thus adopted the increase in unit rates as a proxy for the amount of rework done on the project.

In support of his allegation that there was extensive rework at Harris, witness Schlissel testified regarding problems encountered in several areas of the project. He testified that CP&L had extensive problems in the area of

electrical installation (cable, cable tray, conduit, electrical equipment) and that poor quality was a significant problem in this work. (Tr. Vol. 40, pp. 197-212). He also testified that CP&L experienced problems with the acceptability of structural welds on seismic pipe hangers, and had similar problems with the welds on seismic Category 1 supports for cable tray, conduit and HVAC (heating, ventilation and air conditioning). (Tr. Vol. 40, pp. 213-34). Similarly, witness Schlissel discussed problems in the procurement of the containment liner of the plant. (Tr. Vol. 40, pp. 235-50). He also testified that poor craft labor and supervisory practices led to the wasting of quality control and construction inspection man-hours. (Tr. Vol. 40, pp. 251-56). Witness Schlissel cited a number of documents that discussed the problems CP&L was having in these areas.

CP&L Rebuttal Panel I addressed witness Schlissel's allegations concerning the problems in these various areas. The CP&L witnesses testified that they had indeed experienced problems in the areas identified by witness Schlissel. They testified about the causes of the problems and the steps the Company took to resolve them.

In addition, the Company witnesses sponsored a report on the causes of the unit rate increases at the Harris Plant. That report (CP&L Rebuttal Panel I Exhibit 1), a 186-page document, discusses the various factors that influenced unit rates and the management actions CP&L took to address these factors.

Beyond addressing the problems encountered and the steps CP&L took to deal with those problems, the CP&L witnesses testified that witness Schlissel's testimony was difficult to rebut because he never indicated how or why or even whether the Company was imprudent in any of the areas he discussed. The CP&L witnesses testified that witness Schlissel simply quoted from documents that described problems CP&L faced and then proposed to disallow $146 million to $164 million based on the existence of those problems. (Tr. Vol. 45, pp. 65).

The Company witnesses also testified that witness Schlissel had engaged in a tremendous leap of logic in proposing his $66 million and $23.7 million disallowances. They point out that witness Schlissel discussed problems leading to rework in only three areas (electrical, pipe hangers, and seismic supports). The CP&L witnesses testified that witness Schlissel had not addressed anywhere in his testimony any problems in the areas of civil, pipe erection, pipe welding, pipe whip restraints, plumbing and drainage pipe, yard fire protection, primary coolant loop, and HVAC ductwork. Nevertheless, witness Schlissel purports to disallow 50 percent of the cost increase due to unit rate increases in all of these areas. CP&L witness Nevins testified that, if witness Schlissel had limited his proposed disallowances to the areas he actually discussed in his testimony, a direct labor adjustment of $22 million (instead of $66 million) and a nonmanual labor adjustment of $7.9 million (instead of $23.7 million) would have been calculated. (Tr. Vol. 45, pp. 102-03).

II. CONCLUSIONS REGARDING DESIGN AND CONSTRUCTION ERRORS

For all of the reasons set forth below, the Commission adopts the findings and conclusions of Public Staff witness Canatom, Inc., with respect to the unreasonable and imprudent level of engineering and construction errors at the Harris Project.

Engineering and construction errors are inevitable on any large construction project such as Harris. The real issue is whether the extent of those errors goes beyond a reasonable level due to imprudent management. Careful consideration of the whole record in this case leads the Commission to conclude that there is credible, substantial, and competent evidence of an unreasonable and imprudent level of errors on the Harris project. Given the incomplete record-keeping by CP&L of errors and their costs, the fairest, most reasonable and most conservative approach to quantifying those imprudent design and construction errors is that presented by Canatom.

1. <u>CP&L'S METHODS FOR IDENTIFYING AND RESOLVING ERRORS PROVIDE A MEANS OF ESTIMATING THE EXTENT OF ERRORS</u>

CP&L had a variety of methods for identifying and resolving errors on the Harris Project. One of the most commonly used methods was the Field Change Request procedure. Field Change Requests were site-originated design changes used to address both design deficiencies and construction problems. (Canatom Report, p. 4-23). About 57,500 FCRs were issued over the course of the project (Canatom Report, p. 4-23, 25), although not all of them were caused by CP&L errors.

Of all the methods CP&L used to identify and resolve problems at Harris, FCRs were the only method quantitatively studied to determine what percentage were due to causes within CP&L's control. Consequently, FCRs are the basis for Canatom's quantification relating to engineering and construction errors. (Canatom Report, pp. 10-79 to 10-81).

There were also Pipe Hanger Problem reports (PHPs) that were comparable to FCRs, but were uniquely focused on pipe hangers. (Tr. Vol. 47, p. 86).

Another method involved Nonconformance Reports (NCRs), which were called Deficiency and Disposition Reports (DDRs) prior to 1983. The 7,884 NCRs on the Harris project were used to resolve improper work practices and as-built conditions that did not conform to the approved design. (Canatom Report, pp. 4-22; Schlissel Prefiled Testimony, p. 120).

The method commonly used by CP&L's Architect/Engineer, Ebasco, to correct or change its engineering drawings was the Design Change Notice (DCN). There were about 5,500 DCNs for Harris. (Canatom Report, pp. 4-23). The DCNs were issued from Ebasco's New York office to advise the site that a previously approved design was being revised. (Tr. Vol. 47, p. 111; Canatom Report, pp. 4-23). DCNs were used for more complex problems and required more engineering hours, generally, than did FCRs. (Tr. Vol. 47, pp. 111-112; Canatom Report, pp. 4-24).

When it came to actually correcting the mistakes that had been identified, CP&L either made a change to the design drawing so that the drawing accurately reflected the as-built condition, or the Company performed rework. Thus, an increase in errors would be reflected in the number of design changes and in the amount of rework. (Tr. Vol. 47, pp. 82-83).

Design drawing changes sometimes were used by themselves to correct discrepancies between the as-built plant and the approved design. This could occur with the use of an FCR/PW (Permanent Waiver) in situations where the

as-built condition was technically adequate, even though it deviated from the design drawing. Design changes were usually faster and less expensive than rework because they only involved changing a drawing, as opposed to rebuilding part of the plant. Design changes could also be done in conjunction with rework, or rework alone could be used to correct the as-built condition so that it conformed to the approved design. Rework meant that part of the Harris plant that had already been constructed had to be done over again, or required additional work. (Tr. Vol. 47, p. 118). It can be defined as "work required to modify, replace or correct equipment or components that have been fabricated and/or installed not in compliance with the current technical requirements." (Canatom Report, pp. 6-72).

The difficulty in judging the reasonableness of CP&L errors at Harris arises from the fact that FCRs, PHPs, NCRs, DCNs, and rework were due to both CP&L mistakes and root causes like regulatory change that were not CP&L's fault. (See Tr. Vol. 47, pp. 82-89). Another complicating factor is CP&L's lack of rework records. Because CP&L did not record the amount of rework and its causes, it is impossible to determine with mathematical certainty what portion of rework was due to errors and whether the level of errors contributing to rework was reasonable or excessive. (Tr. Vol. 48, pp. 90-91). The lack of rework records is particularly significant because the errors with major impact would usually have to be corrected through rework instead of through simple design drawing changes.

The lack of root cause studies for PHPs, NCRs, DCNs, and rework is surprising in light of CP&L's commitment to the Nuclear Regulatory Commission. In 1983, a senior CP&L officer told the NRC, "I expect all operations to be evaluated and for any identified problems to be traced to their root causes so that we can address true problems rather than just symptoms." (Public Staff Audit Exhibit, Volume 1, p. 1151).

CP&L stated several reasons why it did not track the amount and root cause of most rework on the project. CP&L's contract with Daniel, the constructor of Harris, left the utility, not the constructor, responsible for the constructor's mistakes. (Public Staff Audit Exhibit, Volume 1, p. 101). For this reason, CP&L stated that it felt no need to track rework in the majority of instances. (Tr. Vol. 48, pp. 92, 94). CP&L witnesses also testified that it was not common industry practice to track rework. (Tr. Vol. 48, p. 91). The Company further noted that rework could be used to monitor productivity and to forecast cost and schedule, but that it used other measures to perform these functions. (Public Staff Audit Exhibit, Volume 1, p. 101). Finally, CP&L stated that rework was difficult to define, difficult to trace the root causes for, and difficult to cost out. (Public Staff Audit Exhibit, Volume 1, pp. 101-103).

The Company's excuses for not tracking rework are not persuasive. First of all, while tracking rework was not a universal practice on nuclear construction projects, it is clear that it was done on some projects and was a feasible practice. This is supported by CP&L's own statement that, "Rework information has also been used on construction projects...." (Public Staff Audit Exhibit, Volume 1, p. 101; see also Tr. Vol. 48, p. 92). Second, the contractual limitation that kept CP&L from backcharging Daniel for errors leading to rework was not a good reason to ignore rework altogether. By tracking the causes and extent of rework, CP&L could have benefited the project

by identifying recurring mistakes and taking action to avoid them. This also would have incidentally provided a record from which CP&L's prudence in managing the level of errors could be judged.

Moreover, the Company's use of "other measures" to monitor productivity and forecast cost ignores the fact that these "other measures" may have been inferior to good rework records. In 1984, senior CP&L managers noted that a significant source of past estimating error had been overstatement of productivity, and that a principal cause was activities for which little quantity credit could be taken. (Public Staff Audit Exhibit, Volume 1, p. 220). Rework, by definition, was an activity for which little quantity credit could be taken, so the failure to track it obviously contributed to CP&L's estimating errors. CP&L even admitted that tracking rework would have helped the Company avoid estimating errors and any overstatement of productivity. (Tr. Vol. 48, p. 96).

However, CP&L maintained that tracking rework would have been a costly, burdensome process. (Id.). This echoes the Company's position that rework would have been difficult to define, track, and cost. (Public Staff Audit Exhibit, Volume 1, pp. 101-103). These claims by the Company are contradicted by substantial, competent evidence in the record. For the first year of construction on Harris, the Company actually did track the rework impact of specific regulatory changes. (Public Staff Cross Exhibit, pp. 104-108, 122-124). It took a mere 65 man-days (engineering) from CP&L and an equal amount of time from Ebasco to develop a "reliable estimate" of the material, installation and engineering costs for rework resulting from the root cause of regulation. (Public Staff Audit Exhibit, Volume 1, p. 122). There is no reason why the same could not have been done for rework resulting from the root cause of errors.

The Commission notes that CP&L told the Canatom auditors, "CP&L has not attempted to calculate the additional capital costs associated with specific regulatory events" because the accounting systems for the Harris Project were not "structured to capture the level of effort or quantity of materials needed to fulfill specific regulatory requirements." (Public Staff Audit Exhibit, Volume 1, p. 162). This statement is questionable in light of the fact that CP&L did track the dollar value of both the level of effort and the quantity of materials needed for rework to fulfill specific regulatory requirements during the first year of construction, and did so with relatively little effort in terms of man-days expended. The weakness of CP&L's explanations for its lack of rework records damages the Company's credibility.

Despite the absence of rework records, another avenue exists for estimating the extent of errors on the Harris project. This avenue, as noted by CP&L, Canatom, and witness Schlissel, consists of CP&L's own studies of the root causes of FCRs. (Tr. Vol. 48, p. 93; Canatom Report, pp. 4-25 to 4-28, 6-78 to 6-80; Schlissel Prefiled Testimony, pp. 106-119). These studies were prompted by a report from the Institute for Nuclear Power Operations (INPO). In June 1982, INPO evaluated the Harris Project. The INPO report observed that over 1,100 FCRs had been issued in the previous six months, that a "large number" of the FCRs were caused by "field error," and that some errors appeared to be recurring. (Schlissel Prefiled Testimony, p. 108). INPO also noted that CP&L had no trending analysis to identify and correct root causes of FCRs. (Id.). CP&L conducted a follow-up report and then in March 1983, did a review

of 400 existing FCRs to determine their root causes. (Canatom Report, pp. 4-25). In December 1983, CP&L completed a second survey of FCR root causes; this time based on a sample of 1,000 FCRs. (Canatom Report, pp. 4-26). The March and December 1983 studies assigned each of the sample FCRs to one of the following categories:

1. Missing drawing details
2. Incompatible details/interferences
3. Mismatch of tolerances
4. Missing tolerances
5. Construction misfabrication
6. Vendor misfabrication
7. Field engineering preferences
8. Design of details in the field by intent
9. Engineering improvements
10. Incomplete work procedures
11. Unidentified

These 1983 FCR studies by the Company are an invaluable tool, given the lack of more complete records, for determining the extent of errors relative to other causes of design changes on the Harris project. Canatom determined that the first four (4) categories are engineering-related design deficiencies. (Canatom Report, pp. 4-25). The fifth category is obviously construction-related. These are the root cause categories that Canatom used to quantify imprudent errors on the Harris project. The Commission concludes that the use of these categories is appropriate as a measure of errors. The very words of "missing," "incompatible," "mismatch," and "misfabrication" strongly imply error on the part of those designing and constructing the plant. These are CP&L's own words. The stated purpose of these 1983 FCR root cause studies was to reduce the number of FCRs, thereby indicating that CP&L believed management was responsible for and could control the amount of construction misfabrication and design deficiencies. (Public Staff Audit Exhibit, Volume 1, pp. 007, 027; Tr. Vol. 47, pp. 89-90).

As noted earlier, the presence of errors on a large project is inevitable and therefore some level of errors is reasonable. The issue here is to what extent, if any, did the number of design deficiencies and amount of construction misfabrication at Harris exceed a reasonable level.

The 1983 FCR studies show that 56% of the FCRs reviewed had engineering-related design deficiencies as their root cause. (Canatom Report, pp. 4-28). Another 16.7% of the FCRs reviewed were due to construction misfabrication. (Canatom Report, pp. 6-79). Canatom applied these percentages to the total number of FCRs on the Harris Project (57,500) to estimate that there were 32,200 design deficiency FCRs (Canatom Report, pp. 4-28) and 9,602 construction misfabrication FCRs (Canatom Report, pp. 6-79) for Harris. The Commission finds that this is a reasonable method for estimating the root causes of all FCRs.

Thus, CP&L's own root cause studies of one of the many methods (FCRs) for identifying and resolving problems indicate that 72.7% (56% + 16.7%) of the design changes were due to design deficiencies and construction misfabrication. Unfortunately, there are no root cause studies of PHPs, DCNs, or rework. However, for a period of time the Company did track the reasons for NCRs, and

this supports the results of the 1983 FCR studies. CP&L's own NCR trending data for the first half of 1984 indicated that the categories of "Personnel Error," "Installation/Construction Errors," and "Procedural Violations" accounted for [illegible]% of the NCRs. (See Schlissel Prefiled Testimony, p. 123). Likewise, the "Nonconformance Trend Analysis Meeting Minutes" for the first quarter of 1984 indicated that 72% of the NCRs were due to either "Personnel Error" or "Procedure Violation." (Public Staff Audit Exhibit, Volume 1, p. 045). The fact that CP&L chose to categorize these NCRs by the words "error" and "violation" demonstrates that the large majority of NCRs was the fault of the Company rather than outside causes like vendors or regulators. In this regard, the NCR trend analysis in the first part of 1984 corroborates the results of the 1983 FCR studies, which assigned a large majority of the FCRs to root causes that appear to be within CP&L's control and responsibility.

The extensive use of FCRs at Harris and their close relationship to PHPs, NCRs, DCNs, and rework means that the proportion of errors reflected in FCRs is strong evidence that a similar proportion of errors were the cause of PHPs, NCRs, DCNs, and rework. In other words, the extent of errors shown in FCRs is representative of errors project-wide, even though it is only a partial record of errors. The Commission concludes that for an estimated 72.7% of the design changes and rework at Harris to be caused by design deficiencies and construction misfabrication far exceeds the bounds of reasonableness if these problems were largely the Company's fault. In the absence of persuasive justification from the Company, this level of problems would indicate significant imprudence on the part of management, which was responsible for controlling the number and impact of errors on the project.

2. CP&L'S EXPLANATION OF THE EXTENT OF DESIGN DEFICIENCIES AND CONSTRUCTION MISFABRICATION

CP&L offered two main justifications for the extremely high percentage of design deficiencies and construction misfabrication. The first is that regulatory impact accounts for much of these problems. The second is that Canatom has applied a standard of perfection to a situation where not all FCRs represent errors and relatively few errors occurred, given the number of work hours expended on the project.

CP&L's direct and rebuttal panels painted a detailed picture of the cost and schedule impact that both regulatory change and the increasingly strict interpretations of regulations had on the Harris project. Canatom expressly agreed that regulatory impact on the Harris project was severe. However, the degree to which regulation contributed to design deficiencies and construction misfabrication is a matter of disagreement between the parties.

The Company quantified the proportionate effect of regulation on FCRs in an FCR study performed in 1986. (Canatom Report, pp. 4-27). This new study eliminated the root cause categories used in the 1983 studies and substituted four new root causes for FCRs. The new categories and the percentage of FCRs in each are as follows:

Constructability	9.5%
Regulation	79.0%
Engineering work requests	6.6%
Work orders	4.7%

CP&L takes the position that if the root cause "Regulation" had been applied to the 1983 studies, then very probably around 79% of the FCRs reviewed in 1983 would have been due to regulation. (Public Staff Audit Exhibit, Volume 1, p. 007). Rebuttal Panel I for CP&L explained that many FCRs fell into the regulation category because they were the result of a strict regulatory climate where even trivial deviations from design drawings had to be documented. (Tr. Vol. 48, pp. 55-57; CP&L Rebuttal Panel I Prefiled Testimony, pp. 8-12).

In a similar vein, CP&L's consultant Cresap attributed 66% of the $2.454 billion cost of the Harris Project variance (from the 1979 estimate) to regulation. (CP&L Direct Panel III Prefiled Testimony, p. 8). There was no cost-driver for errors or design deficiencies or construction misfabrication. (Id.).

CP&L argues that Canatom has applied a standard of perfection instead of a standard of prudence with regard to design deficiencies and construction misfabrication. (CP&L Rebuttal Panel I Prefiled Testimony, pp. 7-14). Canatom recommended disallowance of the dollar value of the engineering hours associated with all design deficiency and construction misfabrication FCRs, reduced by 79% for regulatory impact. (Canatom Report, pp. 10-79 to 10-81). In effect, Canatom recommended disallowance of about 15% of the FCRs. (Tr. Vol. 47, pp. 100-101). CP&L claimed that Canatom had deemed imprudent "any individual error" and that Canatom was insisting that "the Harris Plant should have been built without any errors." (CP&L Rebuttal Panel I Prefiled Testimony, pp. 7-8).

CP&L maintains that the focus should be on whether management prudently monitored and controlled the work. (CP&L Rebuttal Panel I Prefiled Testimony, pp. 12-13). The Company went on to quote a number of favorable Canatom findings which it claims demonstrate that the Company prudently, if not perfectly, monitored and controlled the work. (CP&L Rebuttal Panel I Prefiled Testimony, pp. 13-14).

The Company asserts that many FCRs were simply a tool used to document minor deviations that were normal and insignificant on a project with less than perfect personnel. (CP&L Rebuttal Panel I Prefiled Testimony, pp. 7-12).

CP&L further testified that not all FCRs were due to errors, but even if they were, then few FCRs occurred relative to the number of work hours on the project. (CP&L Rebuttal Panel I Prefiled Testimony, pp. 11-12). Similarly, the Company stated that the errors at Harris were "limited in scope," were "not major," and did not dramatically impact the job. (Tr. Vol. 47, p. 110). However, CP&L did not present any evidence that quantified the number or the cost of errors.

3. THE DESIGN AND CONSTRUCTION PROBLEMS DID HAVE A SIGNIFICANT IMPACT ON THE COST OF HARRIS

First of all, the Commission believes after review of the whole record that the number of design and construction problems at Harris was significant. At 35 engineering hours per FCR and $36.60 per engineering hour (Canatom Report, p. 10-79), the 57,500 FCRs alone represent over 2,000,000 hours of engineering effort (equal to a team of 1,000 engineers working full time for a year) at a cost of more than $73,000,000. Design deficiencies and construction misfabrication accounted for 72.7% of this, according to CP&L's own FCR studies.

However, this rough calculation of the hours and cost involved in design and construction problems at Harris is not all inclusive. A similar calculation for the cost of engineering hours would have to be performed for the 5,500 DCNs, the unknown number of PHPs, and the 7,884 NCRs due to errors, with deductions where these procedures overlap each other, to get a measure of the engineering impact of design and construction problems as a whole. Such a calculation is not possible based on CP&L's records, but even if it were, it would still ignore the major impact of design deficiencies, construction misfabrication, and rework on construction hours and construction costs. Other cost and time impacts such as schedule delays and other "ripple effects" are also ignored by such a calculation. Given the large cost of engineering hours for FCRs alone, the order of magnitude for design and construction problems for the project as a whole is clearly significant. The Commission cannot conclude that this level of design and construction problems is reasonable or prudent on its face. The Commission specifically rejects any contention that the number of FCRs on the Harris Project, or the larger universe of engineering and construction errors represented in the number of FCRs, was insignificant.

4. CP&L HAS OVERSTATED THE ROLE OF REGULATION IN CAUSING DESIGN AND CONSTRUCTION PROBLEMS

The justifications offered by CP&L to explain the number of FCRs are not persuasive. With respect to regulatory impact, it is clear that the number of FCRs increased greatly to insure that the plant had the documentation needed to satisfy the NRC. CP&L's 1986 FCR study attributed 79% of all FCRs to regulation. As Canatom noted, however, the 1983 studies had a legitimate purpose--to help the Company identify and correct specific root causes of FCRs--but by 1986 the opportunity for corrective action had passed. (Canatom Report, p. 4-27). CP&L prepared the 1986 FCR study in anticipation of litigation _after_ the Company's consultant (Cresap) began preparing a prudence defense in November 1985 and _after_ the Commission's "Order Regarding Investigation" was issued in December 1985. (Tr. Vol. 47, pp. 94-95). The Commission concludes that the Company's 1986 FCR study is biased insofar as it shows that as many FCRs as possible were the fault of regulation rather than the fault of CP&L.

This conclusion is supported by the definition of "regulation" used in the 1986 FCR study. CP&L witnesses admitted that they defined the category "regulation" in an "extended" (Tr. Vol. 47, p. 95) and "broad" (Tr. Vol. 48, p. 55) manner. In fact, the definition was so extended and broad that it included any FCR "written primarily to obtain engineering approval of conditions so that

inspection could be completed; or it was the result of an outside inspection or audit." (Public Staff Audit Exhibit, Volume 1, p. 15). Thus, if part of the plant was built in violation of NRC requirements due to an error on the part of CP&L's construction personnel, then the FCR used to correct the misfabrication would be classified as having the root cause of regulation. Or, if an outside inspection found faulty construction, the error could be attributed to "regulation." CP&L's failures to design and build to existing regulations were the fault of regulation, not CP&L, in CP&L's 1986 FCR study. (Tr. Vol. 41, p. 53).

As one CP&L witness explained, "the root cause of having to write the F.C.R. is the requirement for proof of compliance, not the fact that the error existed or didn't exist." (Tr. Vol. 48, p. 58). In fact, none of the definitions of the so-called root causes in the 1986 study had any mention of errors, construction misfabrication, or design deficiencies. (Public Staff Audit Exhibit, Volume 1, pp. 14-15). Thus, the existence of errors was not identified in the 1986 FCR study. The Commission concludes that the 1986 FCR study is inaccurate insofar as it may, by design, preclude any possibility of CP&L errors causing FCRs.

CP&L's attempt to blame most of the FCRs on regulation suffers further credibility problems when a key discovery document is reviewed. In Audit Request Number 627 (AR 627) Canatom asked the Company why the root cause categories in the 1983 FCR study described in AR 344 and the categories in the 1986 FCR study described in AR 288 were so different. (Public Staff Audit Exhibit, Volume 1, pp. 006-007). As part of its response, CP&L attempted to bolster the 1986 FCR study by stating that it "was developed from a sample of over 44,000 FCRs" whereas the 1983 FCR study "was developed from a much smaller sample...." (Id.). That statement is highly suspect. The March 1983 study sampled 400 FCRs and the December 1983 study sampled 1,000 FCRs, for a total of 1,400 FCRs sampled in 1983. (Public Staff Audit Exhibit, Volume 1, pp. 003-004). By contrast, the 1986 study sampled 1,361 FCRs although the total number of FCRs existing at that time was 44,171. (Public Staff Audit Exhibit, Volume 1, p. 050: calculated by adding the number of FCRs in the column entitled "sample size"). Thus, the 1983 studies, which had root cause categories for design deficiencies and construction misfabrication, actually sampled more FCRs than the 1986 study where CP&L used its "extended" definition of regulation. Contrary to the implication contained in CP&L's Audit Response 627, the 1986 FCR study did not sample 44,000 FCRs.

The Commission concludes that the 1986 FCR study and CP&L's arguments in defense of that study are not credible, and that the 1986 study overstates the impact of regulation on FCRs by not distinguishing which FCRs were due to CP&L errors.

A similar problem occurs with other evidence presented by CP&L to quantify the impact of regulation. The cost variance analysis performed by Cresap for CP&L attributed $1.6 billion or 66% of the cost variance in the 1979-1987 period to "regulation." (CP&L Direct Panel III Prefiled Testimony, p. 8). Although this analysis purported to give the reasons for the cost variance, there was no analysis of the cost impact of CP&L errors, and the Cresap witness could not specify the level of CP&L errors. (Tr. Vol. 17, p. 52). Cresap's "cost drivers" simply looked at where the dollars were spent--not how well they were spent on Harris. (Tr. Vol. 49, pp. 134-135). The cost analysis by CP&L's

consultant did not consider prudence. (Id.). The Commission concludes that the Company's evidence which attributes 66% of the cost variance to "regulation" completely ignores the crucial issue of whether CP&L prudently incurred these costs.

5. CP&L IMPRUDENCE CONTRIBUTED TO THE DESIGN AND CONSTRUCTION PROBLEMS AT HARRIS

The Commission has reviewed all the evidence surrounding the issue of whether CP&L prudently monitored and controlled the work at the Harris Plant. While the number of errors was prudently controlled for the bulk of the Harris Project, there were clear instances of chronic and unreasonable problems that were not prudently controlled by CP&L. Time and space limitations preclude a complete recitation of all the evidence concerning problems at Harris that exceeded a prudent or reasonable level. (One CP&L witness observed that there were 700,000 documents available). (Tr. Vol. 50, p. 125). However, some examples are illustrative:

(A) The 1982 INPO evaluation of Harris found that a "large number" of the FCRs were caused by "field error" and that "some errors appeared to be recurring." (Schlissel Prefiled Testimony, p. 108). Recurring errors are evidence that management is not prudently controlling the work. Worse still, the INPO report stated that CP&L had not done a trending analysis to identify and correct the causes of FCRs. (Schlissel Prefiled Testimony, p. 108). CP&L responded by conducting its root cause surveys of FCRs in 1983. CP&L also maintained that it had reviewed the number and source of FCRs throughout the project. (CP&L Rebuttal Panel I Prefiled Testimony, pp. 37-38). However, the basic fact revealed by the INPO report is indicative of imprudence: From the start of construction in January 1978 until five years later in 1983, CP&L did not analyze the root causes of FCRs so as to identify and correct problems within the Company's control. It was not reasonable for management to ignore for so long an important tool that could have been used to reduce costly problems on the project.

The validity of the INPO evaluation is supported by CP&L's own management, which described the INPO report as "the most in-depth inquiry into the project" and "a good evaluation approach." (Public Staff Audit Exhibit, Volume 1, p. 263).

Not only did CP&L fail to analyze root causes of FCRs for many years, it also failed to analyze root causes of rework, PHPs, NCRs, and DCNs for the entire duration of the project. It is, therefore, no surprise that errors and problems at Harris led to an NRC violation. The 1983 report of the NRC's Construction Assessment Team noted that builders of nuclear plants were required to have measures that would promptly identify and correct conditions adverse to quality. (Tr. Vol. 40, pp. 26-27). The NRC then stated that the Harris "engineering organization did not have a procedure for identifying and correcting deficiencies, deviations, and nonconformances." (Tr. Vol. 40, p. 27).

(B) A fundamental cause of imprudence was the myopic focus of construction management on fast construction at the expense of quality construction. The obvious problem here is that poor quality has to be

corrected, which can result in more time wasted to perform design changes and rework than was saved by the initial rush job. This management flaw was observed early in the Harris construction process in a 1979 CP&L memo:

> Attached is an example of our inability to place responsibility for performance or quality construction on the field construction supervision. I say we because I feel both CP&L and Daniel management are responsible because of their actions or inactions. Granted, Daniel management is responsible by contract; but, when the field troops only hear 'production' from both sides of management and engineers and inspectors are continuously challenged for limiting production, the stage is set to play 'catch me if you can.'
>
> During our initial operations cases were reported where superintendents signed off [concrete] pour cards when initially placed in the pour box. Subsequently, we wrote letters requesting that field engineers and inspectors give me names of individuals guilty of this procedure violation. Of course, no names were submitted.
>
> There is continuous management attention from both sides to getting 'CI and QA Sign Off' on the day of the pour; but, I am not aware of comparable management attention to getting the work done correctly by the crafts. The excuse we so conveniently give is that if everyone played the part of QA nothing would ever get built. This is convenient and reflects apparent greater pressure from upper management on schedule and cost than on quality. ....
>
> ....
> In my opinion, our lack of success is relatively simple. When CP&L and Daniel management address cost and schedule they do it with firm conviction as if their existence depended on it. Conversely, when quality is addressed it is always in a different context. Our field personnel are very observant and respond to the drummer with the loudest beat. (Public Staff Audit Exhibit, Volume 1, pp. 051-052).

The emphasis on schedule at the expense of quality is, in the Commission's opinion, a management failure that undoubtedly caused an excessive number of construction errors.

The imprudence stems from the chronic nature of this management failure over the many years of the Harris Project--it was repeatedly identified as a problem by CP&L from 1979 (see above) through 1984. For instance, a 1981 CP&L presentation on pipe hanger problems observed that, "hanger design and supply is a control, 'management', problem, not a technical problem." (Public Staff Audit Exhibit, Volume 1, p. 54). CP&L further noted:

> Failure of responsible field supervision to ensure that hanger installation meets design requirements and welding acceptance criteria. The major concern in this area has been the supervisors' dedication to production only. While production is, of course, essential to the project, production without the necessary quality is no production at all. Management, as well as supervisors, must recognize that quality goes hand-in-hand with production. Quality

must be built in to a product; it cannot be inspected into it. (Public Staff Audit Exhibit, Volume 1, p. 055).

This management failure persisted for even more years, as shown by a 1984 "CP&L Personnel Diagnostic Study" conducted by Ebasco, the firm that was Architect/Engineer for Harris and designer of most of CP&L's power plants. CP&L witnesses attempted to discredit this study by characterizing it as a sales pitch. (Tr. Vol. 48, pp. 68, 72, 74). However, the study includes exact quotations from managerial and supervisory personnel in the Harris Plant Engineering Section of CP&L who were at the Harris site and had "considerable experience" working on the Harris project. (Public Staff Audit Exhibit, Volume 1, p. 083). The Commission finds that the comments and quotations of responsible, experienced CP&L personnel in the 1984 "CP&L Personnel Diagnostic Study" are credible, competent and substantial evidence. Out of eight quotations on the overall technical quality of construction at Harris, only two described it as "good." (Public Staff Audit Exhibit, Volume 1, pp. 99-100). After noting a division of opinion on the subject, the study included the following discussion of the quality of construction:

> One respondent stated that 'Daniel's skill level is too low and they take short cuts.' Another said that 'Daniel is schedule driven and subject to compromise.' This group believes that the construction is of low quality, that CP&L is not controlling Daniel and has contributed to the problem. (Public Staff Audit Exhibit, Volume 1, p. 088).

Other quotes from CP&L personnel regarding the quality of construction include:

> --I have problems with some of it, particularly as time gets short. They try more short cuts now. We still have to maintain safety. They don't have the sense of responsibility for the job.
>
> --I'm not real pleased with Construction on what they're doing. .... Daniel is schedule driven, and under the pressure to meet dates. They may compromise quality.
>
> --In my personal opinion, low quality. .... It will be a major maintenance headache. This is because of CP&L's lack of experience and our schedule pressures.
>
> --Quality product will be there, but it's taken a lot of agony. .... There are some bad practices here which are well-known. (Public Staff Audit Exhibit, Volume 1, pp. 99-100).

The Commission concludes that CP&L management imprudently overemphasized schedule at the expense of quality for years on the Harris Project. This management problem undoubtedly increased the number of errors on the project, and therefore constitutes substantial evidence that the number of errors was excessive due to imprudence.

(C) Welding problems, particularly with hangers and supports, were a major problem on the Harris Project. CP&L maintained that these problems occurred industry-wide due to increasingly stricter NRC weld criteria, and that

the Company prudently worked to minimize these problems. (See, e.g., CP&L Rebuttal Panel I Prefiled Testimony, pp. 54-62). The industry-wide problem with strict welding requirements has its origin, at least in part, in the industry's own failure to maintain quality in the absence of strict regulation. (Tr. Vol. 35, p. 125). Once again, the Commission finds substantial evidence that the Company has overstated the impact of regulation and understated its own errors. At a senior management meeting in July 1978, CP&L noted that, "Welder skill and availability did not meet requirements." (Canatom Report, p. 6-60). Management evidently failed to take satisfactory action because in September 1980 the Resident NRC Inspector found problems with both weld symbols on hanger drawings and the welds used to install the hangers. (Public Staff Audit Exhibit, Volume 1, p. 060). Welds posing a potential safety concern had been passed by CP&L as acceptable when they were unacceptable, and this forced a reinspection of completed welds. (Public Staff Audit Exhibit, Volume 1, p. 061). CP&L's October 1980 report on the weld problems demonstrates that the problem was caused not only by bad drawings from the vendor, but also by poor welding by the field personnel and failure of the Quality Assurance (QA) personnel to see that the proper welds were applied. (Public Staff Audit Exhibit, Volume 1, p. 061). The lengthy list of workmanship problems included blatant errors such as "missing welds" and "weld type applied not the same as drawing" that this Commission does not believe were the fault of "regulation." In fact, during cross-examination, a CP&L witness testified, "Yes, I think we've admitted that a large percentage of those would be field errors." (Tr. Vol. 48, p. 35).

The October 1980 report estimated that several months of work would be required to undo the damage done by bad welds:

> Drawing errors will be reported to Ebasco by pipe hanger memos (PHPs). Workmanship errors will be corrected by field rework or will be accepted to 'use-as-is' by permanent waivers. Any rework done to any hanger will be reinspected for drawing compliance.
>
> We expect that our corrective action of 100% hanger reinspection will be completed by March 1, 1981. Rework, reinspection of rework, and resolution of PHPs, PWs, and FCRs will be necessary before total completion of this effort can be claimed. With 78% rejection rate, much rework and evaluation will be necessary. Expected overall completion date is May 1, 1981. (Public Staff Audit Exhibit, Volume 1, p. 062).

The cost and schedule impact of these weld problems, which occurred two years after CP&L knew it had a problem with welder skill, was severe. In a December 1980 CP&L memo, the weld reject rate was described as "excessively high," and the welding program still had "basic problems" even after welder retraining had begun. (Public Staff Audit Exhibit, Volume 1, p. 058). Problems with the welds ranged from "additional welds not called for by the drawings or welds omitted that are called for by drawings" to "minor surface defects which should have been corrected prior to requesting inspection." (Id.). The Commission concludes that many of these weld problems resulted from the failure of CP&L management to (1) obtain more skilled welders when management knew of the need for more skilled welders two years earlier, and (2) better supervise the training and work of its welders. The cause of problems like uncalled for welds and omitted welds lies with poor workmanship, not

stricter regulation. It is clear that the failure of CP&L management to adequately control the welding work when they knew it was likely to be a problem area has added unreasonable costs to the plant: "Rejection of welds for these type of defects results in rework which is wasted time for both the welders and the inspectors and is excessively costly and time consuming." (Id.).

A full year later, in December 1981, the weld reject rate had dropped to 34.5%, which was still a high failure rate. (Canatom Report, p. 6-61). Senior management responded with yet another retraining program. (Canatom Report, p. 6-61). Nonetheless, the high weld reject rate persisted and remained a topic at CP&L executive review meetings. (Canatom Report, p. 6-62). In 1983 CP&L decided to have a Daniel employee from another project, which was experiencing a very low weld reject rate, come and review Harris and make recommendations for improvements. (Canatom Report, p. 6-62). This indicates that while weld problems may have been industry-wide, it was possible to perform better than Harris did. More importantly, CP&L was not able to avert "excessively costly and time consuming" (Public Staff Audit Exhibit, Volume 1, p. 058) weld reject problems year after year despite having known since 1978 that "Welder availability and skill did not meet requirements." (Canatom Report, p. 6-60). The welding problems at Harris would improve and then regress (Tr. Vol. 35, p. 129) - a pattern that does not show effective management control. The Commission concludes that the weld problems at Harris resulted from imprudent management as well as stricter regulation.

(D) The high cost of unacceptable quality that required rework can be attributed not only to the craft workers who performed the construction, but also to the Quality Assurance (QA) and Construction Inspection (CI) personnel who had the responsibility of ensuring quality. As noted above, some of CP&L's own managers at Harris identified unacceptable quality that required rework as a problem. One contributing cause to this problem in the first three years of construction appears to have been the lack of qualified Construction Inspectors. In 1981 the NRC cited CP&L for a violation of federal regulations in this regard. The "condition reported" was that:

> As of February 27, 1981 Construction Inspectors with very limited previous related education or experience are certified as unlimited mechanical and/or electrical inspectors and the Construction Inspection Supervisor responsible for the training, supervision and qualification of mechanical and electrical inspectors does not have sufficient education or background experience in either mechanical or electrical fields. (Public Staff Audit Exhibit, Volume 1, p. 072).

CP&L agreed that this was the case and took corrective action. (Public Staff Audit Exhibit, Volume 1, pp. 72-74). The significance of this violation lies in the fact that it is more expensive and difficult to rework construction errors at the end of the construction process, with the risk of rejecting the entire effort, than if an inspector can catch a defect during the construction process. (Public Staff Audit Exhibit, Volume 1, p. 069; Tr. Vol. 48, p. 51). Construction Inspectors performed the first formal round of inspection (Tr. Vol. 48, p. 51), so if they failed to identify defects the work could continue and a subsequent identification of the defect would be more expensive to correct. The Commission concludes that the Company's failure to use qualified

Construction Inspectors during the first three years of the construction was imprudent.

(E) In 1981 CP&L stated that, "It is conservatively estimated that 30% of the FCRs are due to Ebasco negligence and could be claimed as rework at no charge under Responsibility of Services (p. 17 of A/E Contract)." (Public Staff Audit Exhibit, Volume 1, p. 075). This percentage -- which does not even include the FCRs for construction errors -- belies the CP&L claim in the 1986 FCR study that 79% of the FCRs were due to regulation. At the hearing, CP&L denied the accuracy of the statement that it made in 1981. (Tr. Vol. 48, pp. 59-60). The Commission finds that the 30% figure (for FCRs due to negligence of Ebasco) is credible, especially since the study that attributes 79% of the FCRs to regulatory causes appears to include FCRs due to errors of CP&L (or its contractors like Ebasco).

There was a warranty provision in the CP&L/Ebasco contract, but CP&L did not use it to pursue claims against Ebasco for FCRs and rework that may have been caused by Ebasco negligence. (Tr. Vol. 40, p. 12). CP&L did negotiate some contract trade-offs with Ebasco, but there is no convincing evidence that CP&L recovered the costs of Ebasco's errors through these contract trade-offs. (Tr. Vol. 40 pp. 12-13). Indeed, there is no indication that CP&L recovered any dollar figure or even calculated the cost of Ebasco negligence. (Tr. Vol. 40, p. 13). The Commission finds that a prudent management would have determined the value of its claims against a contractor for that contractor's negligence, would have pursued such claims where it had a warranty provision, and that CP&L's failure to do so is an unreasonable cost that should not be passed on to the ratepayers.

(F) One example cited in the Canatom audit report illustrates the impact of rework on the Harris project. (Canatom Report, p. 6-74). CP&L's 1985 Budget Variance report showed that 2,905,304 man-hours were spent in 1985 installing process pipe, yet this "resulted in virtually no quantity credits." (Id.). At an average construction labor cost of $13.64 per man-hour (Public Staff Audit Exhibit, Volume 1, pp. 48-49), this means CP&L spent $39.6 million in direct costs alone to add nothing new to the plant. This large sum relates to just one commodity for just one year, and ignores the costs of AFUDC and indirects and delays.

CP&L explained that toward the end of a project a lot of labor hours are needed for finishing work that does not add new quantities. (Tr. Vol. 48, p. 9). The Commission is not persuaded by this explanation. CP&L admitted that the quality of extra labor hours for finishing work was predictable and therefore should have been factored into the budget estimate. (Tr. Vol. 48, pp. 9-10). The 2.9 million hours in 1984 that generated no quantity credits was a budget variance, meaning that it was unexpected work that CP&L had not factored into its budget estimate. Likewise, the other explanations offered by CP&L witnesses were predictable work requirements that should have been factored into the budget estimate. (Tr. Vol. 48, pp. 10-13). The Commission finds that a significant part of the 2.9 million hours must have been rework, as suggested by Canatom (Canatom Report, p. 6-74) and the Public Staff's cross examination (Tr. Vol. 48, pp. 9-14). CP&L witnesses at first denied that the 2.9 million hour variance included rework (Tr. Vol. 48, pp. 9, 13), but soon conceded that, "Again, there's always an element of error, and always an element of rework." (Tr. Vol. 48, p. 13; see also p. 14). CP&L retreated to

the position that rework would not have been one of the "primary" drivers behind the 2.9 million hours. (Tr. Vol. 48, pp. 13-14). However, the Company has not provided any credible explanation for such a huge budget variance on just one commodity in just one year. The Commission adopts the Canatom position that this is an example of significant rework showing up as an adverse productivity trend. (Canatom Report, 6-74).

The Commission further notes that CP&L identified hangers as causing the greater part (over 2 million hours) of the process pipe budget variance. (Canatom Report, p. 6-74). This must be noted in connection with CP&L's own recognition that hanger design and supply was a "management" problem, that there was a "failure of responsible field supervision" with respect to hanger installation, and that management's overemphasis on production was at the expense of quality. (Public Staff Audit Exhibit, Volume 1, pp. 054, 055). Quality problems lead to rework. The Commission concludes that a substantial part of the process pipe budget variance was due to management's failure to ensure the necessary hanger quality. This was a problem of excessive proportions. It resulted in unreasonable labor costs due to management imprudence.

(G) The excessive and imprudent level of FCRs at Harris is revealed in comments of CP&L's own managerial employees at the site. These comments were compiled by Ebasco in the CP&L Site Personnel Diagnostic Study of 1984. (Public Staff Audit Exhibit, Volume 1, pp. 080-100). This study noted that, "The number of FCR's is voluminous and perceived by some as excessive." (Public Staff Audit Exhibit, Volume 1, p. 84). It also observed that:

> Because of the volume of changes, there is currently a design freeze procedure in effect, but this is generally not enforced. Also, the NRC has become concerned about the volume of changes in the past year. As reflected in the Ebasco feedback, there exists some sentiment that some of these changes reflect sloppy construction practices and mismanagement of construction activities by CP&L and Daniel. (Id.)

These problems are consistent with the evidence that, "The majority of respondents voiced concern regarding the level of professionalism in the Construction effort and the need for greater teamwork between CP&L Engineering and Construction." (Public Staff Audit Exhibit, Volume 1, p. 89). Finally, the study found that one of three "unique aspects" of the Harris project that contributed to "the massive number of FCR's" was "Inexperience of CP&L Construction management and HPES [Harris Plant Engineering Section--part of the CP&L organization] team." (Public Staff Audit Exhibit, Volume 1, p. 84). Of all the conflicting evidence in the record concerning whether the number of FCRs was unreasonably large, the Commission finds these statements from CP&L's own personnel and Ebasco to be the most persuasive. The number of FCRs was large at Harris, and it would have been smaller but for mismanagement by CP&L. Of particular concern to the Commission is the fact that these observations about "sloppy construction practices," "mismanagement of construction activities," "lack of professionalism," and "inexperience of CP&L Construction management" were made in 1984--over six years after major construction began.

(H) Another illustration of imprudence appears in a presentation made during the Executive Management Review meeting of March 1983:

Daniel has initiated steps to improve productivity at the craft level. ....

The Daniel programs have not shown any improvements to date. We still have too much rework, and productivity is too low. Quality craft supervision is lacking. Craftsmen have not been trained to clean up after themselves; and as a result, too many man-hours are expended picking up after them.

This lower level of productivity has contributed to our being behind on percent complete and on our RFT schedule. (Canatom Report, p. 6-61 to 6-62; Public Staff Audit Exhibit, Volume 1, p. 079).

As admitted by a CP&L witness (Tr. Vol. 48, p. 65), prudence requires more than management noticing a problem; it requires that management achieve results in dealing with the problem. Much of the imprudence related to design deficiencies and construction misfabrication stems from CP&L's inability to eliminate or properly control recurring or continuing problems after management became aware of them. The failure of Daniel programs to show any improvement after management had focused on the problems and attempted to deal with them is one example. As noted in the preceding quotation, this management failure had a cost impact on the project--too much rework and lost productivity.

The foregoing examples illustrate our conclusion that CP&L did not in all instances throughout the history of the project prudently monitor and control the work at Harris.

6. CP&L'S REBUTTAL OF CANATOM ON THE ISSUE OF DESIGN AND CONSTRUCTION ERRORS IS NOT PERSUASIVE

The Company's rebuttal case attempted to show that the Harris construction effort had been "prudently monitored and controlled" by quoting favorable Canatom findings about the project. (CP&L Rebuttal Panel I Prefiled Testimony, pp. 13-14). First of all, the words "prudently monitored and controlled" are strictly CP&L's--they do not appear in any of the select Canatom findings quoted by CP&L. Second, CP&L admitted that these selected findings did not represent the whole Canatom audit. (Tr. Vol. 49, pp. 4-5, 27). Third, in addition to positive comments, the Canatom report noted a number of serious problems at Harris. (See, e.g., Canatom Report, pp. 6-60 to 6-62 and 6-74 to 6-79). Fourth, and most importantly, the Canatom findings that are positive about CP&L's performance reflect the balanced nature of the audit. They are consistent with the fact that Canatom found the Harris effort was well-executed in many respects, and they are consistent with the fact that Canatom's recommended disallowance for design and construction errors is less than 0.3% of the total plant cost ($11,244,618/$3,875,000,000), and Canatom's highest total recommended disallowance is only 7.5% of the total plant cost ($290,237,344/$3,875,000,000).

The main thrust of CP&L's rebuttal on the "FCR issue" (meaning, the recommended disallowance for design deficiencies and construction misfabrication) was that Canatom had applied a "standard of perfection." (CP&L Rebuttal Panel I Prefiled Testimony, pp. 7-14). For example, CP&L testified that under Canatom's approach,

> [A]ny individual error that was made by a designer, a draftsman, a welder, a carpenter or anyone else was deemed imprudent and the costs related to the error were disallowed. Canatom's standard demands that no one make an error on the details of designing, engineering or constructing the project.
>
> .... Canatom has insisted that the Harris Plant should have been built without any errors. (CP&L Rebuttal Panel I Prefiled Testimony, pp. 7-8).

This criticism is hyperbole and of no probative value. Based on a review of the whole record, the Commission concludes for the reasons stated below that Canatom's analysis is reasonable, conservative and fair to the Company, and not at all a "standard of perfection."

The Canatom report and the Public Staff cross examination exhibits reveal a number of CP&L errors and management failings that were not the subject of specific disallowance recommendations. These include:

(A) CP&L admitted that there were about 5,500 Design Change Notices issued for the Harris Project, and Canatom had not recommended any disallowance whatsoever for them. (Tr. Vol. 47, p. 112). The following cross examination of CP&L related to DCNs:

> Q. And its quite possible that some of those included errors on the projects [sic: project]. Isn't that true?
>
> A. I think we established ... that there's a finite probability that some of the DCNs were as a result of an error.
>
> Q. So, to that extent, they [Canatom] really haven't disallowed every single error on the project. Have they?
>
> A. To that extent, that's true. (Tr. Vol. 47, pp. 112-113).

(B) A CP&L memo noted that an inspector had discovered 150 bars of reinforcing steel ("rebar") were missing, "not to mention location and clearance problems." (Public Staff Audit Exhibit, Volume 1, p. 051). CP&L agreed that there was no disallowance recommendation by Canatom for this error. (Tr. Vol. 47, p. 134). The following cross examination of CP&L then took place:

> Q. So this, again, is an example where their [Canatom] standard of perfection missed an error; isn't it?
>
> A. I think it, I guess in the sense you're using it,it's correct, but I still feel like that when they thought the work was complete and it wasn't complete and they had to go out and get the bars and put them in, that that's the kind of things that happen on construction.
>
> Q. The sense I'm using it is what I read in your rebuttal testimony: any individual error was deemed imprudent. Canatom's

standard demands that no one make an error--just to make sure we're clear on what I mean
by--

A. (Interposing) In that sense, in that sense, you're correct.

The missing rebar was an example cited in a CP&L memo of a larger problem with management emphasizing production at the expense of quality. (Public Staff Audit Exhibit, Volume 1, pp. 051-052). Not only did Canatom not recommend a disallowance for the missing rebar error, it did not recommend a disallowance for the larger problem of management's failure to promote quality construction (except indirectly through quantification of FCRs due to errors).

(C) In April and May of 1981, CP&L performed a follow-up study on wait times and travel times for workers at Harris. (Public Staff Audit Exhibit, Volume 1, pp. 063-067). Four months after the original study, this follow-up study noted that, "we still have problems which result into [sic] excessive wait times and high travel times." (Public Staff Audit Exhibit, Volume 1, p. 064) (Emphasis in original.) Use of the word "still" indicates management's failure to correct a persistent problem that had been previously noted. The report went on to identify the following problems with staging and materials handling:

1. No detail schedule or operating plan.
2. Material is requisitioned too far in advance.
3. Material delivered to the hole lay down area is not used soon enough. Resulting into [sic] over-staging.
4. Material is dropped in the wrong area resulting into [sic] re-handling.
5. Short of trained operators.
6. Equipment loaded and sitting in the field up to two to three weeks.
7. Materials sitting in the hole waiting to be unloaded.
8. Poor quality maintenance on staging equipment. (Public Staff Audit Exhibit, Volume 1, p. 065).

These problems result from poor management. They are all the more disturbing because materials management "was investigated in great detail" three years earlier (Public Staff Audit Exhibit, Volume 1, p. 066), yet CP&L still did not avoid these problems. Finally, the report noted "that there was very little constructive communication between area superintendents and between crafts...." (Id.). (Emphasis in original.) The study's recommendation was that, "First, we must get our management people talking to each other, then the area superintendents, the general foremen, and foremen." (Id.). The lack of such communication is a serious management failure to be occurring three and a half years after construction started. The "excessive" (CP&L's word) wait and travel time resulting from this imprudence was not the subject of a Canatom disallowance recommendation, demonstrating once again that Canatom's position was quite conservative rather than a "standard of perfection."

(D) The eight enumerated examples in part 5 above indicate CP&L errors and management failings that were not the subject of specific disallowance

recommendations by Canatom. It is crystal clear that Canatom did not apply a standard of perfection.

As admitted by CP&L, the presence of engineering and construction errors at Harris would increase the number of design changes and the amount of rework. (Tr. Vol. 47, pp. 82-83). Design changes could be initiated by FCRs, DCNs, PHPs, or NCRs. (Tr. Vol. 47, pp. 83-87). Within all these categories affected by errors, Canatom chose only FCRs as a basis for a recommended disallowance. (Canatom Report, pp. 4-25 to 4-28; 6-78 to 6-79(b); 10-79 to 10-81). This was a practical necessity due to the fact that CP&L's only root cause studies concerned FCRs; however, it has the effect of limiting the disallowance in a way very favorable to the Company by ignoring all the rework and most of the design change categories that were impacted by errors.

Not all FCRs were due to errors, and this too is reflected in the Canatom recommendation. Canatom determined what percentage of FCRs were due to design deficiencies and construction misfabrication based on CP&L's own 1983 root cause studies. (Canatom Report, pp. 4-25 to 4-28; 6-78 to 6-79(b); 10-79 to 10-81). Thus, rather than create its own standard, Canatom applied the standard that CP&L itself devised. Canatom noted its doubts about CP&L's 1986 FCR study that attributed 79% of all FCRs to regulation (Canatom Report, p. 4-27), but in its quantification Canatom decided to accept this claim by CP&L. (Canatom Report, pp. 4-28 and 10-80a) As the Commission concluded earlier, the 1986 FCR study is not credible because it is biased insofar as it largely shifts responsibility for design and construction problems from the Company to the NRC, and the category of "regulation" was defined so broadly by CP&L that it included errors that were the Company's own fault. The net effect of Canatom's conservative acceptance of CP&L's 1986 FCR study is a recommended disallowance for design deficiencies and construction misfabrication that is based on only 15% of all the FCRs (which is only 21% of the design deficiency and construction misfabrication FCRs--the other 79% having been forgiven as due to regulation).

Canatom's recommendation was conservative in yet another regard. The recommended disallowance accepted at face value the Company's claim that an average of 35 engineering hours were spent on each FCR, at an average cost of $36.60. (Canatom Report, pp. 10-79 to 10-80; Public Staff Audit Exhibit, Volume 1, pp. 48-49). Thus, Canatom's recommendation only quantifies the engineering hours spent on FCRs to correct errors. CP&L stated that 55% of its FCRs had no construction impact (Public Staff Audit Exhibit, Volume 1, p. 49), meaning that 45% of the FCRs did have a construction impact. Yet the Canatom disallowance completely forgives the Company for all construction hours expended to correct errors addressed by FCRs. Again, this was a practical necessity due to the apparent lack of records on the number of construction hours spent to correct errors, but it has the effect of limiting the recommended disallowance in yet another way favorable to the Company.

CP&L employed a variety of means to reduce the number of FCRs it was writing for the Harris project. (See Public Staff Audit Exhibit, Volume 1, p. 27-43). One such means was generic FCRs, of which about 1,000 were used to "eliminate recurring redundant FCRs." (Public Staff Audit Exhibit, Volume 1, p. 009; Tr. Vol. 47, p. 102). The point of generic FCRs was to reduce the number of FCRs written, but it did not reduce the number of underlying "deviations" giving rise to the FCRs. (Tr. Vol. 47, p. 109). It is apparent

that several recurring errors may underlie one FCR, but the Canatom recommendation effectively treats it as just one error. The Canatom recommendation would disallow only the 35 engineering hours for a generic FCR when there could also have been construction rework hours spent on each of the recurring errors that gave rise to the generic FCR. The fact that CP&L reduced the number of FCRs written without a corresponding reduction in the number of errors means that the Canatom recommendation, which is based on a percentage of the FCRs written, is quite conservative in this regard also.

CP&L also criticized Canatom for finding that the engineering hours expended on Harris were slightly above median. (CP&L Rebuttal Panel I Prefiled Testimony, pp. 18-21). The basis of the criticism is that Canatom used a different source and a different number in the Beaver Valley 2 audit report. (Id.). Again, this is a misapplication of the Canatom reports. In the present case, Canatom took an industry median for engineering hours from a United Engineers & Constructors (UE&C) report and adjusted upward to account for the circumstances of the Harris Plant. (Canatom Report, p. 4-98). Through this method, Canatom determined that 13.3 million engineering hours would be reasonable for Harris. (Id.). Canatom further determined that the actual 13.9 million hours for Harris was quite close, and Canatom did not recommend any disallowance for excessive engineering hours. In the Beaver Valley 2 report, Canatom also used the UE&C report on engineering hours, but it used five other reports in addition. (Public Staff Audit Exhibit, Volume 1, pp. 164-166). From these reports, Canatom determined that at Beaver Valley 2 any engineering hours above 13.6 million would be unreasonable. (Tr. Vol. 49, p. 75; Tr. Vol. 40, pp. 18-20).

CP&L assumed that the industry median in the present case should be the same as the boundary of reasonableness in the Beaver Valley 2 case. However, Canatom was not so strict as to recommend that a median should be the test of reasonableness. In fact, if Canatom had applied the Beaver Valley 2 standard of 13.6 million hours as the limit of reasonableness to Harris, they would have recommended a disallowance of 300,000 engineering hours for Harris. In this sense, Canatom's "varying standard" has worked to the benefit of CP&L.

CP&L criticized Canatom in a number of other respects for making statements that were correct but in CP&L's opinion had an unduly negative tone. (CP&L Rebuttal Panel I Prefiled Testimony, pp. 21-25). The Commission concludes that Canatom's audit report in this case is an even-handed analysis. Rather than having applied a standard of perfection, Canatom has been conservative and fair to the Company.

7. THE COMMISSION ADOPTS CANATOM'S RECOMMENDED DISALLOWANCE FOR DESIGN DEFICIENCIES AND CONSTRUCTION MISFABRICATION

Having reviewed the whole record and taken into account contradictory evidence and conflicting inferences, the Commission concludes that CP&L was for the most part prudent in controlling the extent of design deficiencies, construction misfabrication, and other errors on the Harris Project. However, the record is replete with evidence, some of which is recited above, that to at least a small degree the Company's design and construction and management errors exceeded a reasonable level. The lack of records and root cause studies for rework, PHPs, NCRs, and DCNs limit the quantification methods that can be used to capture the level of imprudence. Canatom's conservative method of

quantifying the engineering impact of 15% of the FCRs--those FCRs which result from CP&L error--is reasonable under the circumstances. This quantification methodology is clearly tied to a cost of CP&L errors, but it is just a small part of the larger universe of errors on the project. The Commission concludes that this quantification fairly represents the cost of imprudence with respect to CP&L's design and construction errors. This amount of $11,244,000 ($8,662,000 plus $2,582,000) should be excluded from CP&L's rate base in determining the reasonable costs of the Harris plant. The North Carolina retail jurisdictional amount to be excluded is $6,124,000.

In reaching this conclusion, the Commission has rejected the methodology put forward by Attorney General witness Schlissel for quantifying the cost impact of design and construction errors at the Harris Project as being too extreme, particularly in comparison to the much more conservative methodology employed by Canatom. The Commission is particularly skeptical of Mr. Schlissel's proposed adjustments for manual and nonmanual labor which total almost $90 million based upon his assessment of the extent of rework and its effect on unit rates. The Commission notes that Canatom proposed no such adjustment or disallowance based upon its own assessment of the data employed by witness Schlissel. The Commission feels compelled to give much more credibility to the position of Canatom on this issue recognizing, in particular, Canatom's more extensive expertise and experience in conducting prudency audits. We have also been led to reject witness Schlissel's position for the reason that he has proposed disallowance of 50% of the costs associated with unit rate increases in all areas or categories when he himself addressed problems leading to rework in only three areas in his testimony. This is an arbitrary adjustment at best. While rework was undoubtedly a problem at Harris, we cannot adopt witness Schlissel's extreme quantification on the basis of the entire record in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Testimony concerning the proper amortization period for the Mayo Unit 2 abandonment loss was presented by Company witness Bradshaw, Public Staff witness Morgan, and DOD witness Larkin. Testimony concerning the cancellation of Harris Units 2, 3, and 4 was presented by Company Direct Panel I and Attorney General witness Perkerson.

CP&L now seeks to recover its investment in the cancelled Mayo Unit No. 2. Company witness Smith testified on the history of the plant. CP&L was granted a Certificate of Public Convenience and Necessity in 1977 for Mayo Unit 2. The plant was part of CP&L's generation additions plan from 1973 until 1987, when it was cancelled. Because it was a fossil unit, Mayo Unit 2 had greater flexibility for planning purposes than nuclear units and was thus rescheduled a number of times by the Company as developments concerning the Harris Plant and other plants unfolded. The Commission notes that we were kept informed of the status of Mayo Unit 2 in the periodic load forecast proceedings held pursuant to G.S. §62-110(c) and through other filings by the Company.

In April 1986, CP&L received a ruling from the North Carolina Environmental Management Commission that would have compelled the use of scrubbers on Mayo Unit 2, increasing both its construction costs and operation expenses. CP&L subsequently was able to negotiate a purchase power agreement with Duke Power Company with more favorable terms than the projected cost of

producing electricity from Mayo Unit 2. CP&L's Board of Directors approved cancellation of Mayo Unit 2 in March 1987. Mr. Smith testified that Mayo Unit 2 had provided assurance of system reliability to CP&L's customers during its planning life and that the cancellation of the unit was clearly in the best interest of the Company's ratepayers.

No party has challenged the prudence of CP&L's expenditures on Mayo Unit 2. These expenditures are accordingly deemed reasonable, see State ex. rel. Utilities vs. Conservation Council, 312 N.C. 59, 320 S.E.2d 679 (1984), and are appropriate expense items for recovery.

The only disagreement between the Company and the Public Staff regarding Mayo Unit 2 involves the period to be used in amortizing the investment. Company witness Bradshaw testified that CP&L's investment in Mayo 2 was made in good faith and that the decision to cancel the unit was made for the benefit of the ratepayers. Mr. Bradshaw has proposed a five-year amortization of the abandonment costs with no return on the unamortized balance. He testified that this amortization period is appropriate due to the size of the Company's investment. He further testified that the shareholders are paying a return to the senior security holders during the amortization period in which the Company is receiving no return on the unamortized portion of the abandonment loss. Public Staff witness Morgan and DOD witness Larkin have proposed a ten-year amortization of the abandonment costs with no return on the unamortized balance. They contend that a ten-year amortization period would provide a more equitable sharing of costs between ratepayers and the Company's shareholders.

The Commission, based upon the evidence presented in this proceeding, must determine an amortization period for Mayo Unit 2 which will result in a fair and equitable treatment of the abandonment loss to both the ratepayers of CP&L and the Company's shareholders. The Commission believes that it would be unjust and unreasonable to place the entire burden of the costs of plant abandonment losses on either the Company's shareholders or its ratepayers. Therefore, the Commission must determine the treatment that provides the most equitable allocation of the loss between ratepayers and shareholders.

The Commission, after careful consideration of the fairness to ratepayers and the Company of the two different amortization periods, concludes that the Company should be allowed to recover the system amount for the Mayo Unit 2 abandonment loss of $21,471,755 over a ten-year period. The Commission believes that the ten-year amortization period proposed by the Public Staff results in an equitable and appropriate sharing of the total costs associated with the loss. This is especially true in view of the fact that the Company's North Carolina retail cost of service already includes $28 million on an annual basis reflecting CP&L's abandonment costs of Harris Units 2, 3, and 4. In addition, as evidenced in the Company's filing, the total AFUDC accrued on Mayo Unit 2 was $10,408,754, on a total-Company basis. When compared to the total cost of the plant, the AFUDC ratio is approximately forty-seven percent. Such a high percentage indicates that the project went for an extended period without any appreciable construction activity. The fact that the AFUDC represents a return to investors for this extended period further supports the Public Staff's recommendation for a ten-year amortization period and thus a more equitable sharing of the loss between ratepayers and shareholders. This conclusion is also supported by the exhibit which the Public Staff used to cross-examine Mr. Bradshaw which indicates that the ratepayers would bear 63%

of the cost under a 10-year amortization period versus 77% of the cost under the five-year amortization period proposed by the Company.

Company witness Bradshaw also testified about the calculation of the cancellation cost for Mayo Unit 2. He testified that pursuant to the Commission's Order of June 16, 1987, postponing consideration of the Mayo cancellation until this case, he had calculated a carrying cost on the investment for the period August 1987 through July 1988 using the net-of-tax rate of return approved in Docket No. E-2, Sub 526. The Company's calculation was uncontested in this case. The Commission concludes that the Company's calculation of carrying costs is appropriate in determining the amount of cancellation costs to be amortized. The annual amortization approved for Mayo Unit 2 on a jurisdictional basis using the summer/winter peak and average demand allocation methodology excluding the NCEMPA buyback levelization is $1,475,000.

In addition to Mayo Unit 2, CP&L also proposed to continue to include in operating expenses the amortization of the three abandoned Harris nuclear units. This request is consistent with the Commission's rulings in CP&L's last four (4) general rate cases. Attorney General witness Perkerson, however, has challenged the prudence of CP&L's expenditures on Harris Units 2, 3, and 4. Witness Perkerson testified that CP&L did not do the correct studies between 1975 and 1983 to determine if the Harris Plant was economically superior to an alternative source of generation. She testified that CP&L had done a cost comparison study in 1975, but then did not perform any additional studies until 1981 when Harris Units 3 and 4 were cancelled. Had the Company done such studies, witness Perkerson asserts that the Company might have cancelled Harris Units 2, 3, and 4 sooner. Her conclusion was that CP&L has over-collected on the abandonment cost of the abandoned Harris units. On cross-examination, witness Perkerson also reiterated the Attorney General's objection on statutory grounds to the recovery of any investment in cancelled plant.

The Commission rejects witness Perkerson's position for several reasons. First, the Commission disagrees with the basic factual premise of witness Perkerson that Harris Units 2, 3, and 4 might have been cancelled earlier if additional cost alternative studies had been done. The evidence in this case demonstrates that comparative cost studies were in fact done between 1975 and 1981 that confirmed the economic justification for building Harris Units 2, 3, and 4. CP&L performed a busbar study in 1975 which showed that the Harris units had an economic superiority over coal plants. The Commission's Report in the first load forecast proceeding (Docket No. E-100, Sub 22, dated February 16, 1977) concluded that Harris Units 2, 3, and 4 were economically justified. In January 1978 the NRC, in granting the Construction Permit for the Harris Plant, concluded that the Harris Plant was economically superior to alternative generation sources. In the 1978 and 1979 load forecast proceedings (Docket Nos. E-100, Subs 32 and 35), the Public Staff's reports contained busbar studies (based on data provided in part by CP&L) supporting the construction of Harris Units 2, 3, and 4. Busbar studies conducted by CP&L in 1979 again showed the Harris units to be economically superior to coal. In 1980, the Public Staff in Docket No. E-2, Sub 336 criticized CP&L for cancelling the South River nuclear plant, based upon the Public Staff's belief that the capacity was needed and because nuclear power was apparently considered to be economically superior to coal.

In 1981, CP&L hired Ebasco to conduct a study which considered replacing Harris Units 3 and 4 with fossil capacity. That study, which witness Perkerson did not mention in her testimony, was completed only six months prior to the cancellation of Harris Units 3 and 4. It concluded that completing Harris Units 3 and 4 was economically superior to replacing them with coal units. In the 1981 load forecast proceeding (Docket No. E-100, Sub 40), the Public Staff's report again showed that Harris Units 2, 3, and 4 were economically justified based upon the information available from the Company. In addition, the Public Staff in 1981 contracted with ICF, Inc., to perform a least-cost energy study. That study, completed the same month that Harris Units 3 and 4 were cancelled, concluded that CP&L's resource plan represented the least-cost energy plan. At the time that report was entered, Harris Units 3 and 4 were still in the Company's forecast plan.

When Harris Units 3 and 4 were cancelled, the Commission was concerned that CP&L might have acted prematurely. In our Order in Docket No. E-100, Sub 40, issued on April 20, 1982, the Commission stated our concern that the cancellation of Units 3 and 4 could leave the Company without adequate reserves, and we stated our intention to monitor carefully the prudence of the decision to cancel.

CP&L subsequently cancelled Harris Unit 2 in 1983. CP&L witnesses testified that the Company could not have cancelled Unit 2 prior to that time and still meet its projected demand with adequate reserves. The Public Staff and the Commission both projected a need for Harris Unit 2 in Docket No. E-100, Sub 40. CP&L witnesses testified that the Company stopped making direct Unit 2 expenditures in 1981. In our Order in Docket No. E-100, Sub 46, the Commission, acting on the suggestion of the Public Staff that Unit 2 was no longer needed, required the Company either to justify continuing with Unit 2 or to cancel the unit, and it was cancelled shortly thereafter.

In summary, the evidence in this case shows that the economic merits of nuclear and coal generation were discussed before the Commission in 1977, 1978, 1979 and 1981, and Harris Units 2, 3, and 4 were shown to be economically justified. In studies conducted in 1975, 1979 and 1981 by CP&L and others, the Harris units were always demonstrated to be more economical than replacement fossil capacity. Against this array of evidence, witness Perkerson has produced no persuasive evidence that demonstrates that Harris Units 2, 3, and 4 should have been cancelled sooner. On cross-examination, she declined to give the date when she thought the units should have been cancelled. The Commission finds that witness Perkerson's view that the units should have been cancelled sooner is not supported by the record.

CP&L's financial management practices related to the Harris Plant were also examined by Public Staff witness Ben Johnson. Dr. Johnson found CP&L's management practices related to its financing of the Harris Plant to have been reasonable with only one exception: namely, that CP&L's management did not adequately address the financial risks and uncertainties of its commitment to the four Harris units. It was the opinion of Dr. Johnson that if CP&L had thoroughly examined the risks of financing the four Harris units, the Company might have either opted for cancellation at an earlier date or might have realized that the probabilities of cancellation of Units 3 and 4 were much higher than originally anticipated. The Commission rejects this portion of Dr.

Johnson's testimony for generally the same reasons set forth above in conjunction with our discussion of the testimony of witness Perkerson.

Beyond rejecting witness Perkerson's theory on evidentiary grounds, the Commission has other problems with it. The most significant of these is that we have already ruled on these cancellation costs in at least four (4) prior proceedings. 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 ten-year period with inclusion of the interest arising from the debt financing portion of the unamortized balance. In that case the Commission specifically stated that the decision to build Harris Units 3 and 4 and the subsequent decision to cancel those units were prudent. 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 Docket No. E-2, Sub 481, the Commission dealt with CP&L's decision to cancel the construction of Harris Unit 2 and ruled that the expenditures on the unit were prudent. Consistent with the ratemaking treatment of the earlier Harris cancellations (which was again considered and continued unchanged), the Commission ruled that the full abandonment losses of Harris Unit 2 should be amortized over ten years with no return allowed on or with respect to the unamortized balance. Our ratemaking treatment of abandonment losses was not appealed in any of these three rate cases. We believe that pursuant to the doctrine of res judicata, our final Orders in these three rate cases preclude the parties therein from relitigating the issue of whether it was prudent for CP&L to begin construction of and later cancel Harris Units 2, 3, and 4. See Utilities Commission v. Public Staff ___ N.C. ___ (No. 108A87, issued July 28, 1988); Utilities Commission vs. Edmisten, 294 N.C. 598 (1978). In CP&L's last general rate case, Docket No. E-2, Sub 526, the Commission reaffirmed this ratemaking treatment of the Harris abandonment costs. Our ratemaking treatment of CP&L's abandonment losses was then appealed for the first time, and this appeal is still pending.

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 those cases was, of course, decided on the basis of the statutes in the jurisdictions involved. The Commission refers to 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 ordered in this case for Mayo Unit 2 and previously ordered for the Harris abandonments. When both the decision to build a generating plant and the subsequent decision to cancel it are prudent, as is the case here for the Harris and Mayo units, the Commission believes that it is just and reasonable to allow amortization of the abandonment losses as operating expenses.

The Commission further 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 vs. 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 ratepayers and 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 Docket No. E-2, Sub 481 and which was cited in our Order in that rate case. Thus, the Commission continues to conclude that a liberal interpretation of the operation expense element of ratemaking so as to include the Harris and Mayo abandonment losses is appropriate here.

The Commission is not persuaded that G.S. 62-133(c) requires a different result. 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 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 vs. 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 our previous treatment of the Harris abandonment losses to be just and reasonable and we hereby reaffirm that treatment.

In summary, the Commission finds and concludes that our previous Orders (and in particular our Order in Docket No. E-2, Sub 481) constitute res judicata as to the prudency of CP&L's cancellation decisions, that our statutes authorize the ratemaking treatment of abandonment losses that we have adopted, that our treatment is just and reasonable, and that no evidence has been presented in this case to justify any change in that treatment. The Commission also finds it just and reasonable to allow recovery, pursuant to the same ratemaking treatment, of the Mayo Unit 2 abandonment expenses.

One other matter regarding Harris cancellation costs must be discussed. In conjunction with finding of fact 8 and the evidence and conclusions set forth in support thereof, the Commission rejected the position of the Attorney General that CP&L's choice of a four-unit cluster design for the Harris Plant in 1971 was imprudent. We also rejected the position of the Public Staff that CP&L was imprudent in not redesigning the Harris Plant in 1975. Except as described in findings of fact 9 and 10, the Commission has otherwise found that the costs incurred by CP&L in conjunction with its construction of the Harris Plant were prudently incurred. Nevertheless, the Commission further concludes that CP&L's utilization of the cluster design, while prudent in 1971 and 1975 and thereafter, has in fact resulted in the construction of excess common facilities at the Harris Plant in the fuel handling building, the waste processing building, the water treatment building, and the diesel generator and fuel oil tank building. These buildings were designed and built to serve four nuclear units. This being the case, the Commission concludes that it is just, reasonable, and appropriate to treat a reasonable portion of CP&L's investment in these common facilities for ratemaking purposes as cancellation costs which should be assigned to the three abandoned units at the Harris Plant. This ratemaking treatment will result in an equitable sharing of the cost of these common facilities between CP&L's shareholders and its North Carolina retail ratepayers. Such a sharing of the risk is appropriate under the facts and circumstances presented in this case. The Commission believes that it would be unreasonable and unfair to require CP&L's ratepayers to shoulder the entire cost and burden of the common facilities in question.

In quantifying the magnitude of the costs in common facilities which should be reallocated and reassigned as cancellation costs for Harris Units 2, 3, and 4, the Commission concludes that it is appropriate to use $180,558,000 as the value of the investment in common facilities to be treated as cancellation costs. This quantification is based on the quantification made by Canatom in support of its position on the 1975 redesign issue. While the Commission has specifically found that CP&L was not imprudent in failing to redesign the Harris Plant in 1975, we nevertheless conclude that Canatom's quantification serves as a reasonable basis upon which to reallocate common costs in the fuel handling building, waste processing building, and other buildings as cancellation costs. There is no question that the buildings in question are significantly larger than necessary to serve only Harris Unit 1. The fuel handling building at the Harris Plant is the largest building of its type in the United States and probably the world. To appreciate the size of CP&L's fuel handling building, one need only realize that it could hold two buildings the size of the Washington Monument inside it and still have additional space for 50 rooms the size of the Commission's hearing room. In addition, the evidence in this case indicates that most fuel handling buildings for twin-unit nuclear plants are generally no more than 100 to 200 feet in length as compared to the length of 600 feet for the fuel handling building at the Harris Plant. Furthermore, the second spent fuel pool is not even connected at this time. In adopting this quantification for cancellation costs, we recognize the testimony to the effect that some space in the fuel handling building has been put to uses, such as office space and a firehouse, for which the Company would have otherwise had to build other buildings. (Tr. Vol. 54, p. 4-5). However, the other buildings that the Company would have built for these uses would not have been as expensive (Id.) and this has been taken into account in Canatom's quantification. (Canatom Report, p. 10-60).

Treatment of CP&L's investment of $180,558,000 in these common buildings for ratemaking purposes as cancellation costs will serve to equitably apportion the risk and burden of those costs between CP&L's shareholders and its ratepayers. It is entirely fair and reasonable that these costs should be excluded from rate base and should be treated in a manner consistent with the other cancellation costs for Mayo Unit 2 and Harris Units 2, 3, and 4. Although, as noted above, the Commission believes that its Orders in previous rate cases constitute res judicata as to CP&L's cancellation decisions, these Orders do not preclude us from re-examining the amount of cancellation costs. We are here dealing with new cancellation costs that were not, and indeed could not have been, presented to us and quantified in the previous rate cases.

The Company has included $26,585,323 on a system basis and $18,311,933 on a North Carolina retail basis for amortization of Harris Unit 2 and $14,213,270 on a system basis and $9,866,790 on a North Carolina retail basis for amortization of Harris Units 3 and 4. The Commission has determined in previous cases that these costs were reasonable and were prudently incurred and should be recovered by the Company over a ten-year period. The Commission herein reaffirms the appropriateness of that treatment for continued application in this case. In addition, the Commission finds good cause to reallocate and reassign prudent costs in the amount of $180,558,000 on a system basis and $98,340,000 on a North Carolina retail basis as additional cancellation costs of Harris Units 2, 3, and 4. These costs will be excluded from rate base and will be treated in a manner consistent with all of the other cancellation costs discussed in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence supporting this finding of fact is contained in the testimony and exhibits of Public Staff witness Maness and Company witness Bradshaw. Public Staff witness Maness testified that in its calculation of the Allowance for Funds Used During Construction (AFUDC) rate, the Company has treated income tax savings associated with the accumulated Job Development Investment Tax Credits (JDITC) in a manner inconsistent with the Commission's ratemaking treatment of this item. More specifically, the Company has reduced the deferred income tax component of the AFUDC rate by an amount proportionate to the portion of the long-term debt component of the rate associated with JDITC. Mr. Maness testified that this treatment, conceptually equivalent to the JDITC adjustment to interest synchronization made in past rate cases by the Company and other utilities, increases the AFUDC rate.

Mr. Maness further testified that he disagreed with this treatment of JDITC in calculating the AFUDC rate because it would lead to the charging of higher rates to the ratepayers than would result from placing the CWIP investment in rate base, all other things being equal. Mr. Maness cited the Commission's Order in Duke Power Company, Docket No. E-7, Sub 408, to indicate that the Commission has ceased to allow the JDITC adjustment to interest synchronization for ratemaking purposes. He also referred to the Commission's Orders establishing the AFUDC rate determination methodology (Docket No. E-100, Sub 27; Docket No. E-7, Subs 161 and 173) to demonstrate that the Commission intends for the AFUDC accrual to correspond closely to the return the Company would recover if the CWIP investment was included in rate base. Mr. Maness stated that the Company's treatment of JDITC in the AFUDC rate calculation

violates this principle. He recommended that the Company cease to make this adjustment in the calculation of the AFUDC rate. (Tr. Vol. 29, pp.127-133).

Company witness Bradshaw testified that the Company does not contest the change in the AFUDC rate calculation recommended by Public Staff. (Tr. Vol. 21, p.137).

Based upon the foregoing and the entire evidence of record, the Commission concludes that the Company's treatment of JDITC in the AFUDC rate calculation is inconsistent with Commission ratemaking practice and should be changed. The exclusion of pro-forma income tax savings related to JDITC from the AFUDC rate results, all other things being equal, in a higher return being earned by the Company than would result from placing the CWIP investment in rate base. Such a result is in conflict with the Commission's intent, as expressed in its Orders, to allow an AFUDC return which corresponds closely to the approved rate of return for ratemaking purposes. The Commission does not believe that any adjustment to plant in service to reflect a correction of the AFUDC accrual is necessary at this time. The Commission reserves the right, however, to make such adjustments in the future should it then be found appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence supporting this finding of fact is contained in the testimony and exhibits of Public Staff witness Haywood and Company witnesses Bradshaw and Nevil, and Department of Defense witness Larkin.

The Company and the Public Staff disagree as to the appropriate treatment of the cost of power bought back by CP&L from the North Carolina Eastern Municipal Power Agency (Power Agency) under the Agreements in effect between the two parties. A description of the Power Agency Agreements was first presented in Public Staff witness Haywood's testimony in CP&L's last general rate case, Docket No. E-2, Sub 526. A recapitulation of this description, including an explanation of the components of the costs of capacity and energy bought back under the Agreements, can be found in Appendix A attached to witness Haywood's testimony in this proceeding. (Tr. Vol. 29, pp.93-95).

The following schedule sets forth the difference between the Company and the Public Staff as to the appropriate level of purchased capacity and non-fuel energy expense related to the Harris and Mayo units.

	Harris and Mayo Purchased Capacity and Nonfuel Energy Costs (000's)
Amount per Company	$25,065
Difference due to Public Staff adjustments to allocation factors	24
Company reallocated amount	25,089
Other Public Staff adjustments:	
Utilization of 1988 estimated costs for Mayo and Harris purchased capacity costs	(548)
Utilization of actual cost rates for Harris purchased non-fuel energy costs	81
Utilization of Public Staff recommended purchased mWh-Mayo	(8)
Utilization of Public Staff recommended rate of return on common equity	(462)
Disallowance of Harris plant investment recommended by Canatom Inc.	(1,070)
Removal of Harris land-related costs	(36)
Levelization of Harris purchased capacity costs over life of buyback	(4,014)
Exclusion of inflation factor	(83)
Difference due to allocation factors used within Harris and Mayo levelization calculations	191
Total other Public Staff adjustments	(5,949)
Amount per Public Staff	$19,140

The difference due to the Public Staff's adjustments to the allocation study is discussed in the Evidence and Conclusions for Finding of Fact No. 14. In accordance with that Finding of Fact, the Commission concludes that it is appropriate to calculate Harris and Mayo purchased capacity and nonfuel energy costs on the basis of the Public Staff's adjusted summer/winter peak and average demand allocation method (SWPA).

Of the remaining differences, the first relates to the Public Staff's utilization of 1988 estimated purchased capacity costs for the Mayo and Harris units. Public Staff witness Haywood testified that the Company used 1987 estimated costs. Witness Haywood stated 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 cost possible in the initial calculation of adjusted purchased capacity. (Tr. Vol. 29, p.74). Additionally, witness Haywood testified that she adjusted the state income tax rate used in the 1988 purchased capacity capital cost calculation to reflect the current North Carolina income tax rate of 7% (Tr. Vol. 29, p.77). In its proposed order, CP&L agreed that these two adjustments are appropriate.

The Commission concludes that the estimated 1988 costs, and a state income tax rate of 7%, are representative of the ongoing costs that the Company is actually experiencing. The Commission also concludes that it is appropriate to

reflect the most current cost possible in the initial calculation of adjusted purchased capacity, since the amount deferred under the levelization plan will be based on ongoing costs. The Commission notes that this is the same methodology approved in CP&L's last general rate case with regard to the costs of Harris and Mayo purchased capacity.

The second difference concerns the Public Staff's utilization of actual 1987 cost rates for Harris purchased nonfuel energy costs compared to the Company's use of estimated costs. Witness Haywood stated that since no provision had been made for the difference between actual and estimated nonfuel energy costs, the appropriate accounting treatment is to reflect the actual expense rather than an estimated amount which may or may not materialize. (Tr. Vol. 29, pp.74-75). CP&L agreed in its proposed order that it is appropriate to utilize the actual cost rates in the determination of purchased nonfuel energy costs.

The Commission concludes that the utilization of actual 1987 cost rates for Harris purchased nonfuel energy costs as recommended by the Public Staff and agreed to by CP&L is appropriate and should be adopted.

The third difference results from witness Haywood's utilization of the Mayo purchased mWhs determined in the Public Staff's fuel normalization recommendation. Since the Commission accepts the Public Staff's fuel normalization recommendation as discussed in Finding of Fact No. 15, the usage of the Mayo purchased mWhs as presented by witness Haywood is appropriate in determining the Mayo nonfuel energy costs.

The fourth difference relates to the appropriate rate of return on common equity to use in calculating purchased capacity capital costs. Witness Haywood testified 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. (Tr. Vol. 29, pp.75-76). The Company has utilized its current allowed return on equity of 12.63%, while witness Haywood has utilized the Public Staff's recommended return on common equity of 12.04%. (Tr. Vol. 29, p.75).

The Commission concludes, as it did in Docket No. E-2, Sub 526, that the rate of return on common equity allowed in this proceeding is the appropriate rate to use in calculating the capital costs of purchased capacity related to the Harris and Mayo Units. This rate will be incorporated into the Power Agency Agreements upon the issuance of this Order. Therefore, based upon the Evidence and Conclusions for Finding of Fact No. 23, the Commission concludes that the use of a 12.75% rate of return on common equity is appropriate.

The fifth difference concerns the disallowances of the Harris plant investment recommended by Canatom and other intervenors. Public Staff witness Haywood testified that the adjustment proposed by Canatom affects the level of Harris purchased capacity capital costs which should be passed on to the ratepayers. (Tr. Vol. 29, p.77).

Witness Haywood explained, on cross-examination, that she had flowed through the investment schedules the recommended Harris plant investment disallowance so that the ratepayers would have to pay only for the costs found to have been prudently incurred. (Tr. Vol. 29, p.109). She further stated

that she had reduced the total plant investment and then applied the necessary factors, such as ownership percentages and allocation factors. (Tr. Vol. 29, p.109). She acknowledged that this Commission does not have the authority to change contracts approved by the Federal Energy Regulatory Commission (FERC) but further stated that the Commission does have the authority to determine what is equitable for the North Carolina retail ratepayers to be required to pay. (Tr. Vol. 29, p. 110).

Witness Haywood testified that FERC had approved the formula to be used in the agreements between Power Agency and CP&L, but had not approved a specified dollar amount. She stated that in 1981, when the agreements were signed and approved, the estimated construction cost of Harris 1 was approximately $1.9 billion; the 1987 budgeted construction amount was about $3.9 billion. Moreover, at the time of approval, FERC did not know what the total construction cost would be. (Tr. Vol. 29, pp.113-114).

On redirect examination, witness Haywood testified that she did not understand FERC's approval of the formula or the filing of an update of costs to have involved a determination by FERC of the reasonableness and prudence of Harris costs. (Tr. Vol. 29, p.119).

Witness Haywood further stated, in response to a question from the Commission, that she had not altered the formula as approved by FERC but had simply reduced the total construction costs of the plant that is input into the formula to reflect the recommended disallowance. (Tr. Vol. 29, pp.114-115).

During cross-examination, witness Haywood testified that she was aware that the North Carolina Utilities Commission cannot prevent a Company within its jurisdiction from recovering the cost of power purchased at a Federal Energy Regulatory Commission (FERC) approved rate. Witness Haywood agreed during cross-examination that the Power Coordination Agreement (hereinafter referred to as PCA) has been approved by the FERC. She further stated that, in her opinion, the Public Staff's recommendation does not alter the formula in the contract which was approved by the FERC, but only the amounts used in the formula.

The formula referred to is found on Exhibits PCA-II-12 and PCA-II-13 of the PCA which provide a narrative explanation of investment information used for the purchased capacity capital cost calculations. The definition provided for Original Investment states that the Harris expenditure requisition is accumulating, and shall continue to accumulate during the construction period, all direct and indirect costs the Company incurs and would have charged to the Harris and Mayo accounts assuming the units had not been sold. The PCA also specifically excludes from the calculation any consideration of jurisdictional inclusions of CWIP in rate base.

CP&L implied in its cross-examination of Public Staff witness Haywood that adjusting the Harris purchased capacity costs included in retail rates is preempted by FERC's approval of the PCA. The Company apparently relied on the decision of the United States Supreme Court in Nantahala Power & Light Company v. Thornburg, 476 U.S. 953 (1986). That case held that an order of this Commission allocating to Nantahala more entitlement power from TVA than the allocation adopted by FERC in a wholesale rate proceeding was preempted by federal law. In it the Court affirmed and extended the "filed-rate" doctrine,

which provides that interstate power rates approved by FERC must be given binding effect by state commissions in setting retail rates. Id. at 962. The doctrine is not limited to rates per se but includes a formula used to determine rates. Since the hearing, the U. S. Supreme Court has decided another case dealing with federal preemption in the area of utility ratemaking, Mississippi Power & Light Company v. Mississippi, 56 U.S.L.W. 4751 (No. 86-1970, June 24, 1988).

The Commission believes that the plant investment amounts used to calculate Harris purchased capacity capital costs must include all direct and indirect costs incurred in accordance with the PCA, regardless of the prudence disallowances hereinbefore found and discussed. On October 30, 1981, the FERC in Docket No. ER82-9-000 accepted the PCA for filing and ruled that it should become effective as a rate schedule upon initiation of service. Therefore, the PCA is a FERC filed and approved rate schedule under which CP&L purchases wholesale power in interstate commerce for resale to its retail customers. In two recent cases cited above, the U.S. Supreme Court held that state commissions in regulating retail rates cannot disallow costs and expenses incurred by the regulated utility under FERC regulated wholesale transactions. Nantahala; Mississippi Power & Light.

In the Mississippi Power & Light case, the utility purchased power from Grand Gulf 1 nuclear power station owned by Middle South Energy, Inc., pursuant to a Unit Power Sales Agreement. Both Mississippi Power & Light (MP&L) and Middle South Energy (MSE) are subdivisions of Middle South Utilities. The Unit Power Sales Agreement (PSA) was filed with and regulated by FERC as a wholesale rate. The Mississippi Supreme Court ruled that the Mississippi Public Service Commission (MSPC) should examine, in the context of setting retail rates, whether the construction and operation of Grand Gulf was prudent. The Supreme Court ruled that this was an issue not examined and actually determined by FERC. The U.S. Supreme Court reversed. It held:

> It is now settled that '''the right to a reasonable rate is the right to the rate which the Commission (FERC) files or fixes, and . . . except for review of the Commission's orders, [a] court can assume no right to a different one on the ground that, in its opinion, it is the only or the more reasonable one.''' Nantahala, 476 U.S., at 963-964 (quoting Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 341 U.S. 246, 251-252 (1951)) . . . States may not bar regulated utilities from passing through to retail consumers FERC-mandated wholesale rates. "The filed rate doctrine ensures that sellers of wholesale power governed by FERC can recover the costs incurred by their payment of just and reasonable FERC-set rates. When FERC sets a rate between a seller of power and a wholesaler-as-buyer, a State may not exercise its undoubted jurisdiction over retail sales to prevent the wholesaler-as-seller from recovering the costs of paying the FERC-approved rate. . . . " Id. at 970 . . . . Today [we] hold that the MPSC may not enter an order "trapping" the costs MP&L is mandated to pay under the FERC order allocating Grand Gulf power or undertake a "prudence" review for the purpose of deciding whether to enter such an order.

Mississippi Power & Light, 56 U.S.L.W. at 4756.

The costs CP&L incurs in buying back power from the Power Agency under the PCA are identical, within the context of the "filed rates" doctrine, to those incurred by Mississippi Power & Light from Middle South Energy under the PSA. The Public Staff seeks to distinguish the two situations by arguing that "while the buyback may appear to be a wholesale purchase of power, it is in fact a mechanism to phase-in the sale of the Harris plant to Power Agency (former wholesale customers of CP&L) over a number of years." We are not persuaded by this distinction. Furthermore, the Public Staff concedes that "flowing through the disallowance to the buyback may leave CP&L with costs which it must pay to Power Agency but may not recover in retail rates." We believe that this is exactly the kind of "trapping" of costs prohibited by Nantahala and Mississippi Power & Light. This Commission is preempted by operation of the Supremacy Clause of the United States Constitution from reducing retail rates by disallowing costs CP&L incurred under the PCA based on the prudence disallowances made in this case.

The sixth difference between the Company and the Public Staff relates to the removal of Harris land-related costs. Public Staff witness Haywood testified that the Harris land-related cost adjustment recommended by Public Staff witness Maness, discussed in the Evidence and Conclusions for Finding of Fact No. 17, affects the allowable level of Harris purchased capacity capital costs. Company witness Bradshaw, in his additional direct testimony, accepted the Public Staff's exclusion of the Harris land Allowance for Funds used During Construction (AFUDC) amount. According to witness Bradshaw in 1981, as a result of negotiations with Power Agency for the sale of a portion of Harris, the Company divided the Harris land into two expenditure requisitions so that the land not directly associated with the Harris Project would be severed from the project. However, the AFUDC costs and certain overheads accrued on the nonproject land between 1973 and 1981 were not transferred from the project land account. They remained in the project land account and continued to accrue AFUDC through the compounding process until the plant was placed into service in 1987. It is these dollars of Harris land AFUDC that both the Company and the Public Staff have agreed to remove from the calculation of purchased capacity costs. The only difference between the parties is due to the Public Staff's reflection of its removal of three months of the Harris land AFUDC being included in the Canatom three month delay quantification rather than in its Harris land AFUDC adjustment.

The Commission, as discussed elsewhere, does not agree with the parties that the Harris land-related costs in question should be removed from rate base. However, the Commission recognizes that as a result of negotiations with Power Agency for the sale of a portion of Harris, back in 1981, the Company divided the land into Harris project land and nonproject land. Therefore, the Commission concludes that for purposes of calculating the level of Harris purchased capacity capital costs, the removal of the Harris land AFUDC costs as agreed to by the parties is appropriate.

The seventh difference between the Public Staff and CP&L concerns the levelization of Harris purchased capacity costs over the 15-year life of the buyback, as proposed by Public Staff witness Haywood. Up through the close of the hearings CP&L proposed that the levelization calculation should be based on a 10-year period, beginning with the commercial operation date of Harris. However, in its proposed order, CP&L concludes that in light of the June 24, 1988, decision of the U.S. Supreme Court, previously discussed, it is unlawful

to levelize over either its proposed 10 years or the Public Staff's 15 years. Levelization over the life of the buyback is the same recommendation presented by the Public Staff and adopted by the Commission in CP&L's last general rate case.

Initially, we must consider CP&L's argument that the two recent United States Supreme Court cases discussed above, Nantahala and Mississippi Power and Light, render our levelization plan unlawful. In order to understand their argument, it must be remembered that the level of capacity that CP&L buys back from the Power Agency declines each year over the 15-year life of the buyback agreement. Thus, CP&L's costs for this purchased capacity decline each year. If the Commission were to set retail rates on the basis of CP&L's costs at any one year, the ratepayers would pay more for this expense than CP&L would actually incur for this expense during the next year and during the succeeding years of the buyback period. Absent subsequent rate cases, CP&L would increasingly overrecover these purchased capacity costs. Thus, the Commission found it appropriate to levelize the costs of these buybacks. Under levelization, CP&L recovers through retail rates substantially less than it pays the Power Agency during the early years of the buyback period and substantially more than it pays the Power Agency during the later years of the buyback period.

CP&L argues that levelization is unlawful because it is not being allowed to recover through retail rates the costs it actually incurs under the PCA. The Commission cannot agree. CP&L's argument overlooks the fact that in the future it will be permitted to recover more than the costs it will incur in the later years of the buyback period and that over the life of the buyback period it will be permitted to recover all of the costs incurred. When the Commission established the levelization plan in connection with CP&L's last general rate case in Docket No. E-2, Sub 526, the Commission established a deferred account to track the difference between the levelized costs and the Company's actual costs for Harris and Mayo purchased capacity and provided for the deferred account to accrue a return based on the overall-net-of-tax rate of return approved by the Commission. The Commission provides for the balance in the deferred account to be adjusted as necessary and to be flowed into the levelization calculation so that it would be recovered during the remainder of the levelization period. The Commission found that the deferred account was not necessary in order to levelize costs, that cost could instead simply be levelized on the basis of estimates, but that the deferred account should be implemented in order to "allow the Company an opportunity to recover its actual costs through the deferred account and earn a return on deferred revenues." The Commission noted that "[l]evelization 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 cost being levelized. All of these benefits will be realized without the frequent proceedings which could otherwise be necessary to provide them."

As noted above, the states are prohibited by the "filed rates" doctrine from "trapping," i.e., refusing to reflect in retail rates, costs a utility is mandated to pay under a FERC-approved rate. We do not believe that our levelization plan constitutes such "trapping" of costs. In this case, the FERC-approved costs will decline year by year. Rather than calling the utility in for a new rate case each year in order to track this decline in costs, the

Commission has established a levelization of these costs and has provided a mechanism which will enable the Company to recover its actual costs and to earn a return on any deferred revenues. Rather than "trapping" expenses, the Commission is assuring CP&L that it will recover its actual expenses under the buyback arrangement. We find nothing in either the Nantahala or the Mississippi Power and Light cases which prohibits such a levelization plan.

Having reached the conclusion that levelization is proper, the Commission must now address the issue as to what would be the appropriate time period to use. The Company, prior to the June 24, 1988, decision of the U.S. Supreme Court, chose a 10-year levelization period in an effort to comply with Statement of Financial Accounting Standards No. 92 (SFAS 92), issued in August 1987 by the Financial Accounting Standards Board. (Tr. Vol. 29, p.98). Witness Haywood discussed the nature of SFAS 92. She stated that SFAS 92, entitled Regulated Enterprises - Accounting for Phase-In Plans, specifies the appropriate method of accounting for phase-in plans for financial reporting purposes under generally accepted accounting principles. This statement was promulgated in response to the increasing number of phase-ins being adopted by regulatory commissions throughout the country for new electric utility plants.

According to SFAS 92, a phase-in plan is defined as follows:

> 3. The term phase-in plan is used in this Statement to refer to any method of recognition of allowable costs [1] in rates that meets all of the following criteria:
>
>   a. The method was adopted by the regulator in connection with a major, newly completed plant of the regulated enterprise or of one of its suppliers or a major plant scheduled for completion in the near future (hereinafter referred to as "a plant".)
>   b. The method defers the rates intended to recover allowable costs beyond the period in which those allowable costs would be charged to expense under generally accepted accounting principles applicable to enterprises in general.
>   c. The method defers the rates intended to recover allowable costs beyond the period in which those rates would have been ordered under the rate-making methods routinely used prior to 1982 by that regulator for similar allowable costs of that regulated enterprise.
>
> ----------
>
> [1] The term allowable costs is used throughout this Statement to refer to all costs for which revenue is intended to provide recovery. Those costs can be actual or estimated. In that context, allowable costs include interest costs and an allowance for earnings on shareholders' investment. (SFAS No. 92, Paragraph 3)

Witness Haywood testified that if a plan meets the definition of a phase-in plan (by meeting all of the above criteria), the Company must determine if

costs deferred under the plan can be capitalized for financial reporting purposes. That determination is made by evaluating the phase-in plan against four criteria:

a. The allowable 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 allowable costs that will be deferred under the plan.
c. All allowable costs deferred under the plan are scheduled for recovery within 10 years of the date when deferrals begin.
d. The percentage increase in rates scheduled under the plan for each future year is no greater than the percentage increase in rates scheduled under the plan for each immediately preceding year. That is, the scheduled percentage increase in year two is no greater than the percentage increase granted in year one, the scheduled percentage increase in year three is no greater than the scheduled percentage increase in year two, and so forth. (SFAS No. 92, Paragraph 5)

If the phase-in plan does not meet all of these criteria, none of the costs deferred for ratemaking purposes can be capitalized for financial reporting purposes. Witness Haywood noted that SFAS 92 does not attempt to prohibit certain ratemaking methodologies but only dictates financial accounting procedures. (Tr. Vol. 29, pp.80-82). In her opinion, it is still uncertain whether the statement applies to the levelization plan. She explained that the most important benefit of the Harris levelization plan is not its moderation of current rate increases, but instead is its prevention of future overrecoveries. She also noted that the levelization plan does not provide for gradually increasing rates, as would occur under the typical phase-in of a large utility plant. Instead, it sets rates at a level which is intended to remain relatively constant over the life of the buyback. (Tr. Vol. 29, pp.83-84).

Company witness Bradshaw testified that the definition of a phase-in under SFAS 92 would include the levelization of Harris purchased capacity costs and, for that reason, he reduced the levelization period from the life of the buyback to 10 years from the date of commercial operation. (Tr. Vol. 21, pp.101-102). He stated that the Company's concern was that the buyback levelization and the Harris plant phase-in approved in Docket No. E-2, Sub 511, would be considered one phase-in. He further stated, on cross-examination, that if this were the case, and if the buyback portion did not qualify for capitalization under SFAS 92, there would be a problem in that the entire Harris phase-in would not qualify. (Tr. Vol. 21, pp.231-232). Ms. Haywood testified, however, that the levelization plan is a separate plan standing on its own. She noted that the Public Staff maintained and the Commission stated in its Final Order in Docket No. E-2, Sub 526, as follows:

> 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. (Order issued August 27, 1987, p.25).

Witness Haywood stated that the Public Staff requested during its investigation in this case that the Company obtain a statement of opinion from its independent auditors as to whether the levelization of Harris purchased capacity costs approved by the Commission in Docket No. E-2, Sub 526, is a phase-in plan for purposes of applying SFAS 92. She also stated that the statement subsequently provided by the independent auditors was not in any way a conclusive response. She, therefore, saw no reason to change the levelization period previously approved by the Commission. Given the continuing uncertainty, she did not believe it appropriate to anticipate the applicability of SFAS 92 by reducing the levelization period in this case. (Tr. Vol. 29, pp.84-85).

Witness Haywood also stated that it was not her opinion that generally accepted accounting principles should in all cases determine the appropriate ratemaking treatment of costs. In this case, however, she reiterated the Public Staff's position in the Company's last case: if the levelization plan is determined by an authoritative source to be a phase-in plan under SFAS 92, the Public Staff would not oppose modification of the levelization plan at an appropriate time. Modification is permitted under SFAS 92 before the statement is applied to a phase-in plan, as set forth below:

> 17. Application of this Statement to an existing phase-in plan shall be delayed if both of the following conditions are met:
>
>   a. The enterprise has filed a rate application to have the plan amended to meet the criteria of paragraph 5 of this Statement or it intends to do so as soon as practicable.
>   b. It is reasonably possible that the regulator will change the terms of the phase-in plan so that it will meet the criteria of paragraph 5 of this Statement.
>
> If those conditions are met, the provisions of this Statement shall be applied to that existing phase-in plan on the earlier of the date when one of those conditions ceases to be met or the date when a final rate order is received, amending or refusing to amend the phase-in plan. However, if the enterprise delays filing its application for the amendment or the regulator does not process that application in the normal period of time, application of this Statement shall not be further delayed. (SFAS No. 92, Paragraph 17). (Tr. Vol. 29, pp.85-86).

Witness Bradshaw testified, on cross-examination, that if the levelization plan is not modified in this rate case, the Company might not have another opportunity to seek modification. He further stated that his interpretation of the modification rule relates to an existing plan, one that

is in effect at the time of the rate proceeding. He admitted that this interpretation was his opinion and he had not obtained any outside independent evidence to confirm it. (Tr. Vol. 21, pp.234-235).

Department of Defense witness Larkin testified that, in his opinion, it is not clear that SFAS 92 applies to the Harris buyback levelization. (Tr. Vol. 32, p. 216). Mr. Larkin also testified that "the key motivating factors underlying the implementation of a phase-in plan appears to be lacking with respect to the Harris levelization." (Tr. Vol. 32, p. 226). He recommended presenting a statement of the facts to the Financial Accounting Standards Board (FASB) for a technical interpretation.

The Commission is aware of the levelization plan approved in the Company's last general rate case. The Commission continues to believe that the levelization of purchased capacity costs over the life of the buyback is beneficial to the ratepayers and does not harm the Company. The Commission is of the opinion that a 15-year recovery period will serve to better align present and future customer payment responsibilities with the benefits which flow from the buyback arrangements. The Commission is also aware of the issuance and the nature of SFAS 92. Although the statement does not attempt to prohibit certain ratemaking methodologies, it does dictate financial accounting procedures. The Commission is not convinced, however, that SFAS 92 does indeed apply to the Harris levelization plan. There are several factors which weigh against such an interpretation. First, it should be noted that the most important benefit of the Harris levelization plan is not its moderation of current rate increases but its prevention of future overrecoveries of declining costs. Phase-in plans within the context of SFAS No. 92 are typically designed to mitigate rate shock. Second, the levelization plan does not provide for gradually increasing rates, as would occur under the typical phase-in of a large utility plant (the type of phase-in at which SFAS 92 appears to be aimed). Levelization sets rates at a level which is intended to remain relatively constant over the life of the buyback. Third, it is questionable whether the Harris levelization plan meets the criterion of Paragraph 3(c) in SFAS 92. Paragraph 3(c) reads as follows:

> c. The method defers the rates intended to recover allowable costs beyond the period in which those rates would have been ordered under the ratemaking methods routinely used prior to 1982 by that regulator for similar allowable costs of that regulated enterprise. (SFAS No. 92, Paragraph 3(c))

The Commission believes that levelization would have been a reasonable ratemaking practice, if the buybacks or similar situations had existed for the Company prior to 1982. If that had been the case, and if the Commission had adopted levelization, the Harris levelization plan would not meet criterion (c) and thus would not be a phase-in plan under SFAS 92.

The Commission, of course, cannot determine the proper ratemaking treatment of a hypothetical situation in the past. It is precisely this uniqueness that makes a comparison with pre-1982 ratemaking treatments impossible. It appears that the Financial Accounting Standards Board was

primarily concerned with the issue of phase-ins of high cost plants which could be compared to ratemaking treatments of new plants prior to 1982.

Fourth, and most importantly, the evidence presented in this case shows that the Company has been unable to obtain an opinion from its independent auditors as to the applicability of SFAS 92 to the Harris levelization. These are the persons most qualified to render an opinion as to the applicability of specific financial accounting standards to the Company's costs. If they are unable to render such an opinion, the Commission has significant doubt as to whether SFAS 92 in fact applies to the levelization. The life-of-the-buyback levelization period is preferable from both an economic and a ratemaking standpoint. The Commission concludes that it would be improper, without direct, authoritative evidence supporting the applicability of SFAS 92, to reduce the Harris buyback levelization to an arbitrary 10-year period.

The Commission cannot overemphasize the fact that the levelization plan and the phase-in of the Harris plant investment and capital costs adopted in Docket No. E-2, Sub 511, are separate plans. As stated in the Commission's Final Order in Docket No. E-2, Sub 526, these plans were adopted in response to different issues and different situations; therefore, the Commission cannot agree with witness Bradshaw's contention that these plans might be considered one and the same. Although the Commission is not the body that will ultimately decide what costs are subject to SFAS 92, the best evidence such a body would have to rely on would be the intent of this Commission as reflected in its Orders.

Nor does the Commission share witness Bradshaw's interpretation of the modification provisions of SFAS 92. This language refers to any plan that has been determined to be a phase-in. At this time, there has been no such determination regarding the levelization of Harris purchased capacity costs, as evidenced by the lack of such a determination by the independent auditors. If it could not be established that a phase-in plan exists prior to the hearings in this proceeding, the opportunity for modification of an existing plan under Paragraph 17 of SFAS 92 cannot have been foregone as of the date of this Order. In summary, the Commission concludes that the levelization of purchased capacity costs over the life of the buyback and the tracking of actual costs versus levelized costs by way of the deferred account mechanism established in Docket No. E-2, Sub 526 are appropriate for use in this proceeding.

The eighth difference between the parties concerns witness Haywood's exclusion of a factor used by the Company to inflate demand-related production expenses over the levelization period.

Witness Haywood testified that the inflation adjustment is inappropriate, because it introduces into current rates a generalized estimation of future inflation for many years into the future. She added that the level of inflation predicted by the Company, based on the annual GNP price deflator, may or may not occur. The further into the future one proceeds, she noted, the less reliable the Company's predictions become. Witness Haywood stated that the Public Staff's calculation of demand-related production expenses, on the other hand, is based on the Company's 1988 estimate of these production expenses. This estimate is appropriate because of the nature of the levelization calculation and the resulting cost deferral account. According to witness Haywood, since the amount deferred will be based upon ongoing costs, it

is appropriate to reflect current costs in the levelization calculation. She also stated that the 1988 estimate of demand-related production expenses, only one year into the future, is considered reliable enough under the Agreement to be utilized to determine the estimated payments actually made by CP&L to the Power Agency in 1988.

Witness Bradshaw testified that the Company utilized an inflation factor based on the annual GNP price deflator to approximate demand-related production expenses that would be experienced over the levelization period. He agreed, however, that no such adjustment was made by the Commission in the Company's last general rate case. (Tr. Vol. 21, p.237).

The Commission concludes that the exclusion of the factors used to inflate demand-related production expenses is appropriate. These factors are inherently unreliable, while the 1988 estimated costs utilized by witness Haywood are the same costs that are currently being utilized by the Company to prepare Power Agency's billings. The most currently-developed ongoing costs should be utilized in determining the levelized amount, because of the nature of the levelization calculation and the resulting deferred account. Since the deferrals are estimated up to the date of the Order, and the levelization calculation is based on the Order date, use of current costs is preferable to use of past costs. Levelization of purchased capacity costs without an inflation factor subjects the Company to no more risk than does the traditional ratemaking process. In fact, the deferred account removes the risk of nonrecovery of costs the Company would otherwise face. Although demand related production expenses may vary over time for several reasons, variability in costs is a risk which the Company faces each day in its operations. This variability is caused by many factors, both expected and unexpected. It can cause the Company either to overcollect or to undercollect its expenses. One of the purposes of the regulatory process is to deal with such variability in costs through adjustments in rates.

If the Commission can compensate for known, predictable factors which cause variability in costs, and do it in a way which benefits the ratepayers yet does not harm the Company, it is certainly in the ratepayers' best interest for the Commission to do so. This is exactly what levelization of purchased capacity costs will achieve: the removal of the effect of the known decrease in the purchased capacity buyback from year to year. However, use of inflation factors projected several years into the future anticipates unknown and unpredictable changes. These changes are best left to the traditional ratemaking process, which allows for adjustments in rates as such changes become known and actual.

The final difference between the parties results from the Public Staff's use of its recommended allocation factors within the levelization calculation. The Company's filing reflects the allocation factors approved by the Commission in Docket No. E-2, Sub 526.

In Finding of Fact No. 14, the Commission accepts the cost-of-service study recommended by the Public Staff. The allocation factors in that study represent the North Carolina retail portion of future costs; therefore, the use of these allocation factors is appropriate in determining the North Carolina retail levelized purchased capacity costs.

The Commission, therefore, concludes that the level of Harris and Mayo purchased capacity and nonfuel energy expenses appropriate for use in this proceeding is $20,772,000. This amount consists of the following amounts which should be included in the calculation of other operation and maintenance expenses:

Item	Amount
Harris purchased nonfuel energy	$ 1,242,000
Mayo purchased nonfuel energy	158,000
Harris levelized purchased capacity	17,683,000
Mayo levelized purchased capacity	1,689,000
Total	$20,772,000

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Company witness Nevil, Public Staff witnesses Haywood and Lam, CIGFUR-II witness Phillips, and Department of Defense witness Lim presented testimony on cost allocation methodology and/or adjustments to the cost allocation studies.

Cost Allocation Methodology

Inasmuch as CP&L provides service to several jurisdictions as well as the buyers of the Roxboro Unit 4, the Mayo Unit 1, the Brunswick nuclear plants, and the Shearon Harris nuclear plant, its total system costs must be allocated to the various jurisdictions in order to determine their proper cost responsibility. The jurisdictional cost-of-service study serves to determine the North Carolina retail jurisdictional cost responsibility in this rate case proceeding. The fully distributed cost-of-service study serves to determine cost responsibility among the various North Carolina retail customer classes. In 1980, the Commission initially adopted the peak and average method in Docket No. E-2, Sub 391, using solely the summer peak. In Docket No. E-2, Sub 444, the Commission modified the Company's peak and average method by using both the summer and winter peaks. This was the method adopted by the Commission in Docket No. E-2, Subs 461 and 481. In Docket No. E-2, Sub 526, the Company proposed the 12-month coincident peak method, but the Commission found the summer/winter peak and average method still to be the most appropriate.

Pursuant to Commission order in Docket No. E-2, Sub 526, the Company filed cost allocation studies in this case, based on the following methodologies: summer/winter peak and average (SWPA) with and without a minimum system and 12-month coincident peak (12CP) with and without a minimum system. The results of these studies show the effects of the various methods of allocating production plant and the distribution of total system costs. The SWPA method classifies production plant in part as demand-related and in part 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 contribution to each of the system's 12 monthly peaks.

Witness Nevil recommended using the 12CP method for allocating production level demand-related costs, testifying that it has several advantages: (1) it has been adopted by the Federal Energy Regulatory Commission (FERC); (2) it

allocates less demand cost to off-peak time periods and thus supports time-of-use pricing concepts; (3) and it encourages improvement in the system load factor. (Tr. Vol. 23, pp. 82-83). The principal reason for his advocating use of the 12CP method, however, appears to be that the Company has completed construction of its last baseload unit for the foreseeable future and now anticipates constructing predominantly peaking and a few intermediate units while encouraging off-peak usage as a means of holding down costs. (Tr. Vol. 23, pp. 104, 106).

The Commission finds witness Nevil's contentions unpersuasive. First of all, this jurisdiction is twice as large as FERC and South Carolina combined and is not governed by FERC's use of the 12CP method any more than it is governed by South Carolina's use of the summer coincident peak method for CP&L. Secondly, while the 12CP method may support time-of-use pricing concepts, this is fundamentally a rate design and marketing matter for CP&L, as discussed below.

Public Staff witness Lam recommended that production plant be allocated using the SWPA method. In his recommended 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 under this methodology both seasonal peaks are considered in determining the availability of generating units and system capacity requirements. (Tr. Vol. 27, p. 122). Furthermore, when additional capacity is needed, the selection of the type of unit is an economic one based on the kWh requirement or the number of hours a unit must operate each year. If little energy is required, peaking units are justified where the capital cost of a base load unit is not offset by lower fuel costs. Thus, while some of the production plant cost is incurred because of the single or dual one-hour system peak, some plant cost is also incurred because of the energy or hour-use requirement. (Tr. Vol. 27, pp. 121-22).

Witness Lam further explained that the 12CP methodology shifts a $13 million revenue burden to lower load factor customers. (Tr. Vol. 28, p. 64). These low load factor customers, i.e., residential customers, with the increased revenue burden above that which would be produced by the SWPA methodology, are the very ones the 12CP methodology would need to encourage to use more energy off peak and more total energy. The residential customers have the lowest class load factor and are thus the best candidates from whom to obtain increased off-peak sales. Because all of their energy is priced at a uniform per kWh rate, these customers get no signal that tells them that increasing off-peak energy usage decreases the per kWh rate. The only signal given is that the per kWh rate is higher and they should conserve energy across the board so that when the weather is extreme the energy can then be expended for more comfort. This is precisely the opposite of the signal CP&L or anyone would want to give. (Tr. Vol. 27, p. 115).

In response to witness Nevil's position that there is no major generation construction program now as there was in the past, Mr. Lam pointed out that Mayo 2 was not cancelled because its capacity was not required; it was cancelled because CP&L declined to build the unit with scrubbers. The Company replaced a good portion of its capacity with a large purchase power contract from Duke Power Company. (Tr. Vol. 27, p. 115).

Department of Defense witness Lim recommended that the Commission adopt the average and excess demand (AED) cost-of-service methodology for use in the North Carolina retail jurisdiction. Mr. Lim's generic formula showed that the SWPA methodology adopted by the Commission allocated 90.98% of total production costs by energy and only 9.02% by demand. Cross-examination of Mr. Lim by the Public Staff revealed that, when the demand components were substituted for the energy components in the generic formula, 66.32% of total production costs were allocated by demand. (Tr. Vol. 26, pp. 103-104).

CIGFUR-II witness Phillips recommended that the Commission adopt either the summer coincident peak method or the summer/winter coincident peak method for allocating costs. Mr. Phillips testified that the load factor for the North Carolina retail LGS class is 82.47%. (Tr. Vol. 32, p. 11). Mr. Phillips also stated that past reliance on the SWPA methodology by this Commission has played a "significant role" in the cost of power to large industrial customers of CP&L in North Carolina being relatively high for the southeastern region of the United States and that this situation is detrimental to North Carolina's economic development and should be addressed. (Tr. Vol. 32, p. 36).

The Commission is not persuaded that now is the time to change cost-of-service allocation methodologies. Without baseload plants, CP&L would simply not be able to serve its high load factor customers. It is only appropriate that high load factor customers pay their share of the cost of the base load plants built primarily to serve them. The Commission is reluctant to shift the cost of these production facilities to further burden lower load factor customers, thereby reducing their load factors and, ultimately, CP&L's system load factor still further.

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. CIGFUR-II, the Department of Defense, and the Public Staff recommended that the minimum system technique be retained. 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 it is more appropriate to allocate the investment in meters and services on a per customer basis and the remainder of the distribution system on a per kW demand basis. However, such reflection of minimum distribution plant costs in the basic customer charges would result in residential customer charges at least double the current $6.75 per month. The Commission has never approved residential customer charges approaching the levels indicated by the minimum system technique.

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. It is conceptually sound even if the results 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.

Adjustments to Cost Inputs

Based on the Commission's adopting the Public Staff's recommendations in the last general rate case with regard to certain adjustments to the cost inputs in the cost allocation study, the Company filed a cost allocation study in this case which included adjustments to the cost inputs reflecting Power Agency reserve capacity, the effect of generation mix normalization on Power Agency supplemental sales, Power Agency buyback percentages, capacity for standby service to retail customers, Southeastern Power Administration (SEPA), customer growth, weather normalization and Stone Container. The first three of these adjustments are similar to those proposed by the Public Staff and adopted by the Commission in the last rate case. The other adjustments have been proposed for the first time.

None of the adjustments proposed by the Company was opposed conceptually although the value included in several of the adjustments were contested, including the Power Agency buyback percentages, the effect of generation mix normalization on Power Agency supplemental sales, customer growth, and standby service to retail customers. In regard to the uncontested adjustments, the Commission is of the opinion that these adjustments to cost inputs reflecting Power Agency reserve capacity, SEPA, Stone Container, and weather normalization as proposed by the Company should be adopted for cost allocations.

As discussed elsewhere herein, the Commission has concluded that the customer growth adjustment and the generation mix normalization as proposed by the Public Staff were appropriate for use in this proceeding. Therefore, the Commission concludes that the adjustment to cost inputs reflecting the customer growth adjustment and the generation mix normalization as proposed by the Public Staff should be adopted for cost allocations.

The two remaining issues to be addressed are standby service to retail customers and the proper Power Agency buyback percentages. The Company and the Public Staff were in agreement as to the issue of standby service, but DOD witness Lim took issue with this adjustment. Witness Lim contended that each kW of contract demand for standby service does not require a full kW of generating capacity due to diversity of loads. He maintained that the magnitude of the adjustment by the Company was too large and was better suited to firm load.

Company witness Nevil testified on cross-examination that the capacity for standby service to retail customers is directly analogous to the Power Agency reserve capacity, that the adjustment to reflect Power Agency reserve capacity was approved by the Commission in the last rate case, and that the adjustments to reflect standby service and Power Agency reserve capacity were both treated the same way in this proceeding as was found appropriate in the last rate case.

DOD witness Lim also took issue with the Company for failing to make an adjustment to the cost inputs in order to reflect curtailable load. He contended that curtailable load is sufficiently interruptible for peak demands to be reduced using this resource, but he conceded that further study was needed in order to determine the appropriate magnitude of the adjustment.

Company witness Nevil testified that he had already included an adjustment recognizing curtailable loads to the extent they were a part of the system peak loads. He pointed out that the applicable rate schedules call for either 200 or 400 hours per year curtailments, and that the service is firm for the remaining 8,360 hours of the year.

The Commission sees no reason at this point in time to alter the adjustments reflecting standby service to retail customers or curtailable service as suggested by DOD. The concerns expressed by DOD have already been addressed in the adjustments made by the Company. Therefore, the Commission concludes that the adjustment to cost inputs reflecting standby service as proposed by the Company should be adopted for cost allocations.

The remaining issue of the proper Power Agency buyback percentages to be reflected in allocation factor development was addressed by the Company and the Public Staff. The Company up through the close of the hearings argued in support of levelizing the Power Agency buyback percentages and the Public Staff argued that the rate year buyback percentages should be the ones reflected in the allocation factors. Based upon the June 24, 1988, decision of the U.S. Supreme Court as discussed elsewhere in this Order, the Company now takes the position that the Power Agency levelization is unlawful. Therefore, the Company in its proposed order concluded that (1) purchased capacity buyback expense should not be levelized; (2) the deferred costs resulting from levelization of the purchased capacity buyback expense in CP&L's last rate case should be subject to a five-year amortization; and (3) the levelizing of the buyback percentages in the calculation of allocation factors is inappropriate. Since the Commission, as discussed in the Evidence and Conclusions for Finding of Fact No. 13, finds that levelization of the Power Agency buyback purchased capacity costs is appropriate, it thus finds it appropriate to address the evidence on levelizing allocation factors presented by the Company and argued against by the Public Staff.

Company witness Nevil testified that the Company levelized the buyback percentages for the Harris and Mayo Units to determine the Power Agency Supplemental load requirements in the allocation study. Mr. Nevil maintained that this is consistent with the levelization of purchased capacity costs. (Tr. Vol. 23, p.84). Public Staff witness Haywood testified that she, on the other hand, utilized the same weighted-average buyback percentages that will actually be in effect during the last five months of 1988 and the first seven months of 1989. This methodology is consistent with the methodology proposed by the Public Staff and accepted by the Commission in the Company's last general rate case. Witness Haywood referred to the adjustment made by the Company as an averaging of buyback percentages rather than a levelization. She also testified that the Commission explicitly rejected the Company's contentions on this issue in the last case, stating its agreement with the position of the Public Staff:

> 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. (Order issued August 27, 1987, p.25).

Witness Haywood further testified that it would be practically impossible to establish a deferred account which would protect the ratepayers in case the allocation factors fail to increase as predicted by the Company. (Tr. Vol. 29, pp.90-92).

Company witness Nevil testified that as the buyback decreases over its life, the North Carolina retail allocation factor increases. In other words, as Power Agency serves more of its load with its own retained capacity, the allocation percentage for all other jurisdictions, including North Carolina retail, increases. According to witness Nevil, if allocation factors are not levelized, the ratepayers will underpay due to the failure to recognize the increasing North Carolina retail allocation factor. (Tr. Vol. 23, p.101).

Witness Nevil also contended that levelizing allocation factors would present no insurmountable problems. The known and measurable impacts of the buyback changes on the allocation factors could be isolated, while changes caused by other items, such as changes in jurisdictional loads, could be disregarded. Mr. Nevil also testified that it would be relatively simple to maintain a deferred account which would measure the difference between the cost of service in this case, with levelized allocation factors, and the same cost of service with each annual buyback percentage change reflected in the allocation factors. The only variable would be the buyback percentage. (Tr. Vol. 23, pp.102-103).

On cross-examination, witness Nevil conceded that his recommended deferred account would include only the difference between the cost of service adopted in this proceeding using the levelized allocation factors and the same cost of service using the allocation factors produced by each succeeding year's changing buyback percentage. (Tr. Vol. 24, pp.60-62). The deferred amount could be pre-determined, because the annual change in the buyback percentages is known. (Tr. Vol. 24, p.60).

Witness Nevil also conceded on cross-examination that his recommended deferred account would not include a true-up. Thus, he agreed, his deferred

account would not allow the ratepayers to benefit from any other changes in the allocation factor inputs that could tend to decrease the North Carolina retail cost of service. He also agreed that the allocation factors may not actually increase as the buyback declines, inasmuch as other inputs may affect the factors. (Tr. Vol. 24, p.73).

Witness Nevil also stated that in order for a deferred account for allocation factors to include changes related to items other than the buyback percentages (in the way the deferred account for purchased capacity costs includes all changes in purchased capacity costs), it would be necessary to conduct a cost of service study perhaps every year, subject to Commission review and approval. (Tr. Vol. 24, p.74).

The Commission, therefore, concludes that the Public Staff's adjustment to the demand and energy allocation inputs, reflecting the weighted-average buyback percentage for the last five months of 1988 and the first seven months of 1989, is appropriate. Adjusting demand and energy input levels in the cost allocation study in order to match the current Power Agency supplemental load is sound ratemaking practice and has been consistently adhered to by this Commission.

Determining the appropriate allocation factors is a complex process. Not only does one of many cost allocation methodologies have to be chosen, but potential adjustments to the allocation factors derived under that methodology must be considered and evaluated. Moreover, the appropriate cost allocation methodologies and adjustments to the allocation factors, as well as the appropriate application of those factors to the cost of service, may change over time. In short, the appropriate allocation factors are determined by the Commission as an integral part of the ratemaking process.

In establishing a levelization plan for purchased capacity costs, the Commission isolated one segment from the costs subject to the traditional ratemaking process. Having levelized this segment based on future known decreases in the buyback percentages, the Commission believed it was appropriate to establish a deferred account to capture the difference between actual purchased capacity costs and estimated purchased capacity costs. Such a deferral was possible because those actual buyback costs were quantifiable over future periods of time even if no future rate proceedings were to take place. Any future changes in buyback costs between rate cases can be isolated and directly measured in terms of dollars. No such isolation and direct measurement is possible for all of the various costs that impact the allocation factors. Therefore, a deferred account to capture the difference between actual allocation factors and estimated allocation factors is not feasible. The Commission continues to believe that the appropriate buyback percentages to use in determining the allocation factors in this case are those in effect for the year following the rate order. It would be unfair to use an average of future buyback factors to produce estimated higher allocation factors when no protection exists or is feasible to protect the ratepayers in case those higher factors do not materialize.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Company witness Nevil and Public Staff witnesses Lam and Morgan testified regarding the fuel component to be included in base rates in this proceeding.

The Company proposed a base fuel component of 1.261¢/kWh based on test period fuel prices, whereas the Public Staff recommended 1.276¢/kWh using March 1988 nuclear and fossil burn prices.

In his original prefiled testimony, Company witness Nevil had proposed a base fuel component of 1.264¢/kWh using a March 31, 1987, test period. The basic generation and fuel cost assumptions included in this factor were as follows: (1) normalization of Brunswick Units 1 and 2 and Robinson 2 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), and Shearon Harris Unit 1 operating at a 70% capacity factor, as previously adopted by the Commission, resulting in a system nuclear capacity factor of 59.94%; (2) inclusion of nuclear fuel disposal costs; (3) 56-year average conventional hydro generation; (4) pro forma cogeneration and SEPA at zero fuel price; and (5) annualized coal expense of $17.69/MWH based on March 1987 prices. 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 revised customer growth adjustment decreased the proposed factor from 1.264¢/kWh to 1.261¢/kWh (excluding gross receipts tax).

Public Staff witness Lam recommended a base fuel component of 1.288¢/kWh in his revised testimony as updated for a customer growth adjustment by Public Staff witness Turner. Witness Lam's basic generation and fuel cost assumptions were as follows: (1) normalization of nuclear generation to a system capacity factor of 61.93% based upon the 10-year average capacity factors of 62.5% for PWRs (Robinson 2), 57.3% for BWRs as reported in the most recent NERC Equipment Availability Report 1977-1986, and 70% for Harris 1 as previously adopted by the Commission and as recommended by CP&L in this rate case; (2) inclusion of nuclear fuel disposal costs; (3) acceptance of the Company's 56-year average hydro generation; (4) acceptance of the proformed cogeneration and SEPA generation calculated by the Company; and (5) price levels of fossil and nuclear fuels burned in February 1988. Updating February 1988 nuclear and fossil burn prices to March 1988 results in a decrease in the proposed fuel factor from 1.288¢/kWh to 1.276¢/kWh. Witness Lam did not advocate using either the average of lifetime nuclear capacity factors and the NERC 10-year averages pursuant to former Rule R8-55 or the NERC five-year nuclear capacity factors set forth in the Commission's Order of April 27, 1988, adopting amended Rule R8-55. He stated that the nuclear capacity factors are subject to modification by a generation reduction factor to account for any ongoing outages that would extend into the period when the rates are put into effect. He also stated that normal refueling and maintenance outages of approximately two months are not included as generation reduction because they are already included in the NERC 10-year nuclear capacity factors.

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. Whether or not the actual test year level of nuclear generation should be normalized depends on whether or not test year nuclear generation is reasonably representative of the level of nuclear generation that can be reasonably expected to 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 in setting the fuel factor.

It is a well-established fundamental principle of regulation that public utility rates should 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 arises out of the statutory requirement that a test year should be used as the basis for a reasonably accurate estimate of what may be anticipated in the near future. Obviously, to the extent that the test year experience reflects an abnormality, such as an abnormally low level of nuclear generation, then 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 183 (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, 1987, the Company had 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 Commission has taken judicial notice of CP&L's base load power plant performance report for March 1988. This report shows that, during the more recent 12-month period ended March 31, 1988, the Company achieved a system nuclear capacity factor of 65.9%. During that period, Brunswick Unit 1, Brunswick Unit 2, Robinson Unit 2, and Harris Unit 1 achieved nuclear capacity factors of 64.9%, 63.7%, 60.4%, and 73.7%, respectively.

The Commission concluded in Docket No. E-2, Subs 526 and 533, that the system nuclear capacity factor of 76.6% experienced by CP&L during the 12-month period ended March 31, 1987, was abnormally high and not reasonably representative of the system nuclear capacity factor which the Company could reasonably be expected to experience in the near future. In those cases, the Commission adopted a normalized system nuclear capacity factor of 60.07% in setting rates. In this case, the Company proposed the same unit capacity factors; but, because Harris Unit 1 has been downrated from 900 mW to 860 mW,

the normalized system nuclear capacity factor decreased to 59.94%. The Commission concludes that the normalized system nuclear capacity factor proposed by CP&L is inappropriate in this case. There is evidence that CP&L's system nuclear capacity factor for 1987 was over 70%. While it is unreasonable to expect a multi-plant utility to achieve system nuclear capacity factors of over 70% consistently, it is equally unreasonable to expect the utility to fail to achieve system nuclear capacity factors approximating national averages, absent unusual circumstances. No unusual circumstances have been alleged or demonstrated in this case. The Commission, therefore, agrees with and hereby adopts the Public Staff's recommended methodology for the reasons given by the Public Staff. We also note that in the fuel adjustment proceeding in Docket No. E-2, Sub 544, also decided this date, the Attorney General also supported the use of the 10-year NERC average. For the Harris plant, the Commission concludes that a 70% capacity factor is reasonable and appropriate for use in this proceeding. Application of the 1977-1986 NERC 10-year nuclear capacity factors results in normalized nuclear capacity factors as follows: Brunswick Units 1 and 2, 57.3%, and Robinson Unit 2, 62.5%. The resulting normalized system nuclear capacity factor is 61.93%. The Commission concludes that the reasonable and appropriate normalized total system nuclear capacity factor for use in this proceeding is 61.93%.

The Company used a fossil fuel price based on March 1987 burn prices. The Public Staff used March 1988 burn prices to reflect a more current fuel expense. The Commission concludes that the appropriate fossil fuel price to be used is 1.810¢/kWh for coal, as recommended by the Public Staff.

The Company used a nuclear unit fuel price of .511¢/kWh for the month of March 1987 applied uniformly to the Brunswick units and Robinson Unit 2 and an estimated fuel price of .595¢/kWh for the Harris Unit. The Public Staff used a nuclear unit fuel price of .552¢/kWh for the month of March 1988 applied uniformly to the Brunswick units, Robinson Unit 2, and Harris Unit 1.

The Commission concludes that nuclear fuel prices should be established in this proceeding based upon the unit fuel price of .552¢/kWh, including nuclear fuel disposal cost, for the month of March 1988 applied uniformly to the Company's four nuclear units. The Commission notes that the nuclear unit fuel prices proposed by the Company are over one-year old, with no actual fuel price for Harris, whereas the unit price adopted is one year newer and includes an actual price for the Harris unit.

The fuel calculation incorporating these conclusions is shown in the following table:

		MWH Gen.	$/MWH	Fuel Cost (000's)
Coal		21,915,496	18.10	$396,670
IC		0	-	-
Nuclear		16,845,173	5.52	92,985
Hydro		716,812	-	-
Purchases: SEPA/COGEN		1,326,450	-	-
Other		154,121	17.63	2,717
Sales		(1,043,525)	16.13	(16,832)
		39,914,527		475,540
Less:				
PA nuclear	$12,732			
PA coal	$21,533			34,265
				441,275
Plus:				
Harris buyback	$ 2,105			
Mayo buyback	$ 4,051			6,156
Fuel dollars for fuel factor				$447,431
mWh for fuel factor				35,055,610
FUEL FACTOR ¢/kWh				1.276¢/kWh

The final area of disagreement between the Company and the Public Staff is the appropriate allocation factor to be used in determining the North Carolina retail portion of fuel expense. The Company and the Public Staff agree that fuel expense should be allocated to North Carolina retail by use of a factor derived from energy requirements at the generation level (the E1 Factor). The E1 allocation factors used by the Company and the Public Staff differ due to the use of different jurisdictional allocation studies. Company witness Nevil testified that allocation of fuel expense by the E1 Factor is appropriate since fuel expense is incurred at the generation level (Tr. Vol. 23, pp. 92-93). Public Staff witness Morgan testified that allocation of fuel expense by the E1 Factor allows the Company to recover North Carolina retail line losses. Witness Morgan separated the calculation of North Carolina retail fuel expense into two steps. First he calculated "North Carolina retail fuel factor expense" by multiplying the fuel factor recommended by witness Lam by the Public Staff's recommended level of end-of-period North Carolina retail kWh sales. Second, he calculated the "North Carolina retail line loss differential" by subtracting North Carolina retail fuel factor expense from the product of adjusted total system fuel expense multiplied by the E1 Factor. The results of these two steps were summed to produce North Carolina retail fuel expense. Witness Morgan stated that this bifurcation is necessary because the line loss differential should be a component of base rates set in general rate proceedings, not fuel proceedings (Tr. Vol. 30, pp. 31-32).

Based upon the evidence set forth above, the Commission concludes that fuel expense should be allocated to North Carolina retail in this proceeding by use of the E1 allocation factor (energy at generation level).

In its Order in Docket No. E-2, Sub 526, the Commission concluded that the Company and the Public Staff should investigate this matter in the next general rate case. Pursuant to that request, the Public Staff and the Company have presented essentially identical recommendations in this case, which the

Commission accepts as appropriate and reasonable. Furthermore, the Commission agrees with the separation of fuel expense into two components, as recommended by Public Staff witness Morgan.

The first component is calculated by multiplying the system fuel factor by North Carolina retail kWh sales. The system fuel factor is calculated by dividing normalized total system fuel expense by normalized total system sales and, therefore, is comparable to the fuel factor as determined in fuel proceedings held pursuant to G.S. 62-133.2. Thus, the system fuel factor determined in this case is the factor to which an increment or decrement rider should be attached pursuant to G.S. 62-133.2 and is the appropriate factor to use in measuring underrecoveries and overrecoveries of cost which enter into the determination of the Experience Modification Factor (EMF). This component provides a basis for comparison with fuel rates set under G.S. 62-133.2.

The second component, termed the North Carolina retail line loss differential, measures the increment or decrement in costs caused by the difference between North Carolina retail line losses and system average line losses. It is appropriate to recognize this differential in setting rates in a general rate proceeding. However, this differential is not considered in proceedings under G.S. 62-133.2 and should not be included in the fuel factor. It should instead be part of nonfuel base rates.

In accordance with the Evidence and Conclusions for Finding of Fact No. 14 concerning the appropriate jurisdictional cost allocation methodology, the Commission concludes that the appropriate level of North Carolina retail fuel expense for use in this proceeding is $293,533,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence supporting this finding of fact is included in the testimony and exhibits of Company witnesses Bradshaw and Nevil and Public Staff witnesses Morgan and Lam. The amount of total working capital proposed by these witnesses is set forth in the following table:

Item	(000's Omitted) Company	Public Staff	Difference
Materials and supplies:			
Fuel stock inventory:			
Coal	$ 54,320	$ 52,837	$(1,483)
Oil	4,658	4,637	(21)
Other materials and supplies	28,292	28,248	(44)
Total materials and supplies	87,270	85,722	(1,548)
Cash working capital	28,350	28,311	(39)
Total working capital allowance	$115,620	$114,033	$(1,587)

The first area of difference is the proper amount to be included in rate base for materials and supplies. The Company proposed a level of $87,270,000 for this item under its 12CP including levelized buyback percentages methodology, while the Public Staff recommended $85,722,000. The difference of $(1,548,000) 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 Company's use of an

allocation methodology excluding the NCEMPA buyback levelization, as set forth in its proposed order, would result in a Company proposed level of $86,888,000 for this item.

The Public Staff's adjustment to decrease coal inventory by $1,483,000 is due to both differences in the proposed level of coal inventory and the Public Staff's recommended cost allocation study.

Both CP&L and the Public Staff recommended that coal inventory be established at an 80-day supply level. The parties used similar methodologies in calculating their coal inventory values. First, nuclear generation was normalized and then other generation sources, including coal, were adjusted to supply the remaining generation. The difference between the parties is the different generation mixes they used in determining the level of coal generation, and, therefore, the level of coal inventory. As discussed elsewhere herein, the Commission has concluded that normalization of nuclear and coal generation is appropriate for use in this proceeding. It would be inconsistent to normalize nuclear and coal generation in determining fuel expense and not to reflect the effect of such normalization in the level of coal inventory.

To determine the dollar amount of coal inventory from the level of coal generation, an average daily burn rate in tons per day must be developed using a fossil steam heat rate in btu per kWh and a heat value of the coal in btu per ton. Company witness Nevil recommended an $82,435,095 investment allowance for coal inventory on a total system basis, including $54,320,000 for the North Carolina retail jurisdiction. Witness Nevil's recommended 1,845,920-ton coal inventory is based on an average daily burn rate of 23,074 tons, which is determined using data for the test period ending March 1987 for fossil steam heat rate and the heat value of coal.

Witness Lam recommended an $80,539,209 investment allowance for coal inventory on a total system basis, including $52,837,000 for the North Carolina retail jurisdiction. His recommended 1,797,349-ton coal inventory level would provide an 80-day supply based on a 22,467-ton daily burn rate. Witness Lam calculated the 22,467-ton daily burn rate using the same methodology adopted by this Commission in the Company's last two general rate cases in Docket No. E-2, Subs 481 and 526. This method is based on the normalized coal generation utilized by the Public Staff to calculate fuel costs in this proceeding, plus the test year fossil heat rate, the March 1988 cost per ton of coal in inventory, and the actual March 1988 heat value of coal.

DOD witness Larkin testified that the systemwide 13-month average coal inventory for the test period ending March 1987 was $69,447,293, and that the Company maintained an actual average 62.32 days supply of coal during the test period. He pointed out that if the average daily burn during the test period were repriced at the end of period price for coal inventory, the 13-month coal inventory would be $64,413,270. He contended that the 13-month average coal inventory for the period ending January 1988 of $80,668,260 was the maximum which should be allowed, and that the repriced 13-month average inventory for the test period ending March 1987 of $64,413,270 was the minimum which should be allowed. He recommended a systemwide coal inventory of $72,636,213 which is the approximate midpoint between $64,413,270 and $80,668,260.

The Commission is of the opinion that the coal inventory level recommended by the Public Staff should be adopted for this proceeding. Such inventory level would be consistent with the level of coal generation adopted herein and with the methodology for determining coal inventory adopted in the last two rate cases.

The Public Staff's adjustments to decrease oil inventory and other plant materials and supplies are due to the use of an adjusted summer/winter peak and average method for making jurisdictional cost allocations. In accordance with its conclusions elsewhere herein that the summer/winter peak and average cost allocation methodology is appropriate for use in this proceeding, the Commission concludes that the Public Staff's adjustments to reflect the effect of its recommended cost of service study on oil inventory and plant materials and supplies are appropriate. The Commission thus concludes that the Public Staff's recommended level of materials and supplies of $85,722,000 is appropriate.

The final area of disagreement between the Company and the Public Staff concerns the amount to be included in rate base for cash working capital. The Company proposed a level of $28,350,000 for this item, while the Public Staff recommended $28,311,000. The use of an allocation methodology excluding the NCEMPA buyback levelization, as proposed by the Company in its proposed order, would result in a level of $28,343,000 for this item. The difference of $(39,000) relates solely to the adjusted summer/winter peak and average allocation study recommended by the Public Staff. Since the Commission has concluded that the cost-of-service study presented by the Public Staff is appropriate for use in this proceeding, the Commission concludes that the appropriate level of cash working capital is $28,311,000.

In summary, the Commission concludes that the appropriate level of materials and supplies and cash working capital is $114,033,000, as shown in the following chart:

(000's Omitted)

Item	Amount
Materials and supplies inventory:	
Coal	$ 52,837
Oil	4,637
Other	28,248
Total materials and supplies inventory	85,722
Cash working capital	28,311
Total working capital investment	$114,033

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Company witnesses Bradshaw and Nevil and Public Staff witnesses Morgan, Maness, and Lam presented testimony regarding CP&L's reasonable original cost rate base. The following table summarizes the parties' recommendations and reflects the position of the Company using the 12CP allocation methodology which includes levelization of the NCEMPA buyback:

(000's Omitted)

Item	Company	Public Staff	Difference
Electric plant in service	$5,063,728	$4,879,536	$(184,192)
Net nuclear fuel	133,861	133,271	(590)
Accumulated depreciation	(958,561)	(941,000)	17,561
Accumulated deferred income taxes	(523,822)	(572,484)	(48,662)
Allowance for working capital	115,620	114,033	(1,587)
Total original cost rate base	$3,830,826	$3,613,356	$(217,470)

The total difference in electric plant in service is the result of several adjustments proposed by the Public Staff. The following chart summarizes the adjustments:

(000's Omitted)

Item	Amount
Use of Public Staff adjusted summer/winter peak and average cost allocation methodology	$ (25,833)
Disallowance of Harris 1 investment recommended by Canatom Inc.	(158,076)
Harris land-related cost adjustment	107
Adjustment to nonrevenue producing plant	(390)
Total	$(184,192)

As discussed in the Evidence and Conclusions for Finding of Fact No. 14, 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 $(5,618,000) of the $(25,833,000) difference in electric plant in service due to allocation factor changes. Additionally, Public Staff witnesses Haywood and Lam recommended certain adjustments to the summer/winter peak and average cost allocation study. These adjustments account for the remaining difference of $(20,215,000).

Based on the Evidence and Conclusions for Finding of Fact No. 14, wherein the Public Staff's recommended cost-of-service study is found to be appropriate, the Commission finds that the Public Staff's adjustment to electric plant in service of $(25,833,000) shown above is appropriate.

The next item of difference between the parties is the $158,076,000 adjustment to reduce electric plant in service as recommended by Canatom Inc.

This amount reflects the total Canatom recommended disallowance of $290,237,000 for Harris Unit 1, reduced by the amount owned by NCEMPA and then allocated to North Carolina retail operations. The calculation is shown below:

Item	Amount (000's)
Total disallowance recommended by Canatom Inc.	$290,237
Percentage owned by CP&L	83.83%
Net CP&L Canatom Inc. disallowance	243,306
N.C. Retail allocation factor	.64970135
N.C. Retail amount of disallowance recommended by Canatom Inc.	$158,076

Based upon the Evidence and Conclusions as discussed elsewhere herein, the Commission concludes that a $175,829,000 reduction in electric plant in service is appropriate.

The next difference of $107,000 is due to the Public Staff's reflection of its removal of three months of the Harris land AFUDC being included in the Canatom three month delay quantification rather than in its Harris land AFUDC adjustment. Otherwise, the Company and the Public Staff are in agreement on the removal of the Harris-land AFUDC adjustment. The Commission, however, has reached a different conclusion from the parties. When the Commission scheduled its public hearing in this docket by its Order of October 9, 1987, the Commission noted that there was pending in Docket No. E-2, Sub 333, an investigation initiated by the Commission to review CP&L's land requirements and the planned disposal of excess land, if any, at the Shearon Harris nuclear plant site. The Commission consolidated that investigation into the present proceeding and gave public notice that issues relating to the land requirements at the Shearon Harris site would be addressed in this proceeding.

In fact, little evidence was presented with respect to this investigation. Two of CP&L's witnesses testified that they were unaware that the land issues were under consideration at the hearing. Public Staff witness Maness presented testimony regarding the amount of land included by the Company in the Harris project. He testified that CP&L had originally purchased over 23,000 acres of land. The Company originally planned for a 10,000 acre reservoir. This plan was subsequently changed to provide for a 4,000 acre lake and cooling towers. Less land was needed and by 1981 the Company was including only 11,850 acres in the Harris project. The remaining 11,572 acres, which are distributed around all sides of the project, were taken out of the project and held for future use. Mr. Maness also testified that the Company included in Harris costs certain AFUDC related to land which had been transferred from the Harris project. He recommended that Harris costs be reduced by this amount, and Company witness Bradshaw, in his additional direct testimony, accepted the Public Staff's exclusion of the nonHarris project land AFUDC. The Public Staff took no other position with respect to the Harris land.

Pursuant to questions from Commissioner Hipp, CP&L Rebuttal Panel II testified that in response to requirements in 10 CFR Part 100, the Shearon Harris plant has an exclusion radius of 7,000 feet and a low population zone radius of three miles. Witness Howe testified that CP&L has to have some arrangements for controlling activities within the exclusion radius, but that

CP&L is not required to control activities within the three mile radius. The Panel testified that they did not know of the zoning within the three mile radius. The Panel testified that the utility would be interested in relicensing the Shearon Harris plant at the end of its present operating license period, and that the plant would be reviewed for the standards of the original license. The Panel testified that it believes that the inherent safety of the plant and its emergency procedures cover that concern and that the utility does not plan to acquire additional land within the three mile zone in order to maintain a low population. The Panel testified that the NRC examined the population density around plants as part of the licensing process, recognizing the potential for evacuations. However, the NRC has yet to establish a definition of "metropolitan siting." The Panel recognized that the Seabrook nuclear plant has been unable to get a license because of high population nearby and problems with evacuation plans. However, the Panel testified that the population density around the Harris plant could go up many orders of magnitude and still be significantly less than that around other plants in the United States. The Panel testified that they were not aware of any plans to sell any of the land at the site, that the land was being carried on CP&L's books as land held for future use, and that the land has an excellent position with respect to CP&L's transmission system and is a good possibility for a fossil-fired plant.

Issues with respect to the land requirements and land disposal at the Harris site were not developed as fully as the Commission had hoped when the investigation in Docket No. E-2, Sub 333, was consolidated with this hearing. Most of the evidence that was presented had to be elicited by the Commission itself. That evidence tends to show an interest on the part of the NRC in maintaining a low population zone around nuclear power plants. Furthermore, the evidence tends to show that the land in question, the 11,572 acres taken out of the Harris project, might provide a good site for future generating capacity. The area has been thoroughly examined from an environmental standpoint, and the area is well situated with respect to CP&L's transmission system. On the other hand, if all of the land is not needed for utility purposes, a question arises as to how the excess land, which was purchased for public utility use, should be disposed of. Should such disposal, if allowed, be conducted in a way that would give ratepayers some benefit from any appreciation in land values? The Commission believes that insufficient evidence has been presented to justify closing out the Commission's investigation into the Harris land requirements and disposal. To that end, the Commission orders that this investigation be continued and that the Company, the Public Staff, and the Attorney General specifically address issues with respect to the regulations and requirements of the NRC bearing on this land, the inclusion of this land in CP&L's rate base as "used and useful" utility property, the future need for this land in the context of CP&L's continuing obligation to provide public utility service, and if disposal of some excess land is deemed appropriate, whether ratepayers should share in any appreciation in land values. These issues are to be addressed in connection with CP&L's next general rate case.

In the interim, the Commission finds good cause, as a means of preserving the integrity of its investigation, to order that CP&L not dispose or make any new use of the land in question without seeking and obtaining specific Commission approval. Recognizing the restriction hereby placed on CP&L, the Commission finds it appropriate to include all of the land originally purchased

for the Shearon Harris project in rate base on an interim basis pending the resolution of our investigation. The Form E-1 filed by the Company for purposes of this rate case reflects the value of this land as $5,376,161. See E-1, Item 7 (a-f), page 1 of 4. The testimony and exhibits of Public Staff witness Maness and Company witness Nevil reflect AFUDC of $8,642,008 on this land. These are systemwide numbers and must be reduced in order to reflect North Carolina retail system rate base. The resulting jurisdictional amount of $7,635,000 is to be included in CP&L's rate base in this case.

The last item of difference between the parties relating to electric plant in service is the $(390,000) adjustment to nonrevenue producing plant. Witness Morgan stated that his adjustment was necessary to reflect the actual completed cost of two projects which were placed in service after the end of the test year instead of the estimated cost reflected in the Company's filing. (Tr. Vol. 30, p. 12). On cross-examination witness Morgan agreed that it would also be appropriate to recognize any changes in the actual costs of other projects if they differed from the level reflected in the Company's filing. (Tr. Vol. 30, p. 82). However, the Company presented no evidence of any such change in costs.

The Commission finds that the adjustment of $(390,000) proposed by witness Morgan is proper because it results in the inclusion of the actual cost of the projects in rate base. Since no evidence has been presented concerning possible increased costs of the other projects, the Commission finds no grounds to offset or negate the Public Staff's adjustment.

The Commission, therefore, concludes that the appropriate level of electric plant in service is $4,869,311,000 rather than $5,043,704,000 proposed by the Company in its proposed order which uses an allocation methodology excluding the NCEMPA buyback levelization.

The difference in net nuclear fuel of $(590,000) is due to the Public Staff's recommendation of certain adjustments to the summer/winter peak and average allocation study. Based on the Evidence and Conclusions for Finding of Fact No. 14, the Commission concludes that the Public Staff's adjustment is proper and that the appropriate level of net nuclear fuel is $133,271,000.

The differences between the parties relating to accumulated depreciation are summarized as follows:

(000's Omitted)

Item	Amount
Use of Public Staff adjusted summer/winter peak and average cost allocation methodology	$ 4,437
Disallowance of Harris 1 investment recommended by Canatom Inc.	4,143
Harris land-related cost adjustment	(13)
Effects of depreciation rate change	8,994
Total	$17,561

The difference of $4,437,000 resulting from use of the Public Staff adjusted summer/winter peak and average cost allocation methodology has been discussed in the Evidence and Conclusions for Finding of Fact No. 14. For the reasons stated therein, this adjustment is appropriate.

The next adjustment of $4,143,000 is the effect of the Public Staff's plant disallowance on the level of accumulated depreciation. In this regard the Commission has found a different disallowance in electric plant in service than the Public Staff and has adopted the Harris depreciation rate proposed by the Company as discussed elsewhere herein. The Commission, therefore, concludes that an adjustment of $5,012,000 is appropriate for this item.

Regarding the $(13,000) difference in accumulated depreciation associated with Harris land-related costs, the Commission finds the adjustment proposed by the Public Staff to be appropriate. However, as hereinbefore set forth, the Commission has concluded that all of the land originally purchased for the Harris project should be included in rate base on an interim basis and, therefore, an additional adjustment to accumulated depreciation of $(121,000) is appropriate resulting in a total adjustment of $(134,000).

The final area of difference relating to accumulated depreciation is the effect of changes in the depreciation rate for the Company's nuclear units. As discussed in the Evidence and Conclusions for Finding of Fact No. 20, the Commission has adopted the depreciation rate for nuclear units as proposed by the Company. Having adopted the Company's recommendation, the Commission concludes that the Public Staff's adjustments to Harris Unit 1 accumulated depreciation of $4,128,000 and year-end accumulated depreciation of $5,015,000 (related to CP&L's other nuclear plants) are inappropriate and no adjustment should be made for these items. The remaining $(149,000) difference also results from the change in the depreciation rate. This amount relates to the Robinson Unit 2 Volume Reduction Solidification Project. The Public Staff and the Company agree that this project should not be included in rate base. The Company, in its revised cost of service, removed the related accumulated depreciation. However, a difference results when the Public Staff's recommended depreciation rate is applied. The Commission, having rejected the Public Staff's depreciation rates, finds that the $(149,000) adjustment proposed by the Public Staff is inappropriate.

One further adjustment must be made concerning the level of accumulated depreciation which relates to decommissioning expense. The Company has included in its cost of service an annualized level of decommissioning expense in the amount of $22,231,335 on a system basis. However, due to the use of the capital structure and cost rates approved elsewhere in this Order, the Commission concludes that the appropriate level of decommissioning expense is $22,487,109 on a system basis which requires an adjustment to this item of $255,774 on a system basis and $166,000 on a North Carolina retail basis using the allocation methodology found appropriate elsewhere herein with a corresponding adjustment to accumulated depreciation.

The aforesaid adjustment to decommissioning expense and other related adjustments are based in part upon ministerial computations supplied by CP&L pursuant to Commission Order. On July 22, 1988, the Commission issued an Order Requiring Filing of Data requesting CP&L and the Public Staff to provide certain ministerial computations necessary for the Commission to set forth its findings of fact in this Order. Among other computations, we requested CP&L to calculate the appropriate level of nuclear decommissioning expense using an 8.75% cost rate for preferred stock. Following the filing of the computations, the Public Staff filed comments on August 2, 1988, pointing out that CP&L had used a 7.75% cost rate for preferred stock instead of the 8.75% requested by

the Commission. Examination of CP&L's workpapers confirmed this. CP&L filed a response with the Commission on August 3, 1988, conceding that it had used the incorrect cost rate for its computation and that this resulted in an error of approximately $189,000 in their computation of nuclear decommissioning expense on a North Carolina retail basis. The Company agreed to correct the cost rate in a future filing and to reflect the higher expense level in its reserve balance. For purposes of this proceeding, the Commission will use the Company's calculation, recognizing that the funds for decommissioning are being placed in a deferred account which will be further adjusted in the future. Further, the Commission concludes that given the de minimis level of impact this miscalculation has on decommissioning costs, no intergenerational inequity will result. The Commission finds that CP&L should accrue funds for decommissioning based upon the methodology and the level of costs actually included in the test year cost of service by the Commission for this purpose.

Based on the conclusions set forth above, the Commission concludes that the appropriate level of accumulated depreciation is $949,412,000 rather than $955,120,000 proposed by the Company in its proposed order which uses an allocation methodology excluding the NCEMPA buyback levelization.

The $(1,587,000) difference in total working capital allowance between the Company and the Public Staff is discussed in the Evidence and Conclusions for Finding of Fact No. 16. The Commission has concluded that the appropriate total allowance for working capital for use in this proceeding is $114,033,000.

The $(48,662,000) difference in accumulated deferred income taxes (ADIT) is composed of the following adjustments proposed by the Public Staff:

(000's Omitted)

Item	Amount
Use of Public Staff adjusted summer/winter peak and average cost allocation methodology	$ 2,153
ADIT related to Power Agency sale	(39,916)
Reversal of Company TRA86 adjustment to ADIT	(14,027)
Adjustment to Harris 1 ADIT	3,128
Total	$(48,662)

As discussed in the Evidence and Conclusions for Finding of Fact No. 14, 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 $434,000 of the $2,153,000 difference in ADIT. The adjustments to the cost allocation study proposed by Public Staff witnesses Haywood and Lam account for the remaining $1,719,000 difference. Since the Commission has found that the Public Staff's recommended cost-of-service study is appropriate, the Commission concludes that it is appropriate to adjust ADIT by $2,153,000.

The next adjustment to ADIT, in the amount of $(39,916,000), relates to accumulated deferred income taxes associated with the Company's sale of assets to the Power Agency. As discussed in the testimony of Public Staff witness Morgan, this adjustment is the same as has been proposed by the Public Staff and accepted by the Commission in CP&L's last three general rate cases. These accumulated deferred income taxes are funds which CP&L has received from the

Power Agency for tax liabilities which will not be paid until sometime in the future. Witness Morgan stated that the North Carolina retail ratepayers should not be required to pay a return on these funds, which are cost-free to the Company. (Tr. Vol. 30, pp.84-85). Company witness Bradshaw, during cross-examination, agreed that the adjustment was consistent with that made by the Public Staff and accepted by the Commission in CP&L's last three general rate cases, but stated that he disagreed with it. (Tr. Vol. 21, pp.179-180).

The Commission concluded in Docket No. E-2, Sub 461, Sub 481 and Sub 526 that it is appropriate to deduct these ADIT from rate base. The Commission continues to believe that this adjustment is appropriate for ratemaking purposes. These accumulated deferred income 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 accumulated deferred income taxes are not deducted from rate base, rates will be set to pay capital costs to cover interest expense and preferred dividends and provide a common equity return on capital that has no cost to CP&L. Thus, the ratepayers will be required to pay rates to cover capital costs which do not exist. The Commission concludes, therefore, that these accumulated deferred income taxes should be treated as other cost-free capital to the Company and deducted from rate base.

The next difference is witness Morgan's adjustment in the amount of $(14,027,000) to reverse the Company's adjustment to ADIT for the Tax Reform Act of 1986 (TRA86). The Company's adjustment reduced the actual balance of ADIT at the end of the test period to reflect the level of ADIT that would have been on the books at the end of the test year if the Federal income tax rate had been 34% for the entire test year instead of 46% for nine months and 40% for three months.

Public Staff witness Morgan disagreed with this adjustment, stating that the 34% Federal income tax rate would result in the ADIT balance increasing at a lower rate in the future. He further stated that the actual ADIT balance at the end of the test year will not be reduced in any way due to a lowering of the Federal income tax rate thereafter. (Tr. Vol. 30, p.13).

The Commission notes that this adjustment is similar to the adjustment proposed by the Public Staff in CP&L's last rate case, Docket No. E-2, Sub 526. In the Final Order, this Commission agreed with the Public Staff's position. The Commission stated 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 Company maintained that the Public Staff's position could possibly violate tax normalization rules. Subsequent to the release of the Final Order in Docket No. E-2, Sub 526, the Company sought an Internal Revenue Service Private Letter Ruling on this question. On June 15, 1988, the Internal Revenue Service issued its ruling which stated that:

" We believe that Taxpayer's [CP&L] concerns are unwarranted. [The] Commission's treatment is appropriate and would, in no way, violate the normalization requirements of section 168(i)(9) of the Code, section 1.167(l)-1(h)(6)(i) of the regulations, or any other section of the regulations."

The ruling further stated, in response to CP&L's specific request, that:

" [The] Commission's contemplated treatment, in Docket Z [E-2, Sub 526], of establishing cost of service using a 40 percent tax rate while reducing rate base with corresponding ADIT's computed at 46 percent will not violate the normalization requirements of section 168(i)(9) of the Code."

In light of this IRS ruling, the Company in its proposed order concurred that the Public Staff's recommendation in this regard is appropriate. Therefore, the Commission finds that the adjustment proposed by the Public Staff is appropriate.

The last adjustment to ADIT of $3,128,000 results from the deferred tax effects of the following three Public Staff recommendations:

(1) Adjustment of Harris 1 Basis Differences ADIT to actual amount at June 30, 1987.
(2) Reduction in Harris 1 depreciation rate.
(3) Reflection of Canatom, Inc., recommended disallowance.

The Company, in its proposed order, has stated that the Public Staff's methodology relating to item (1) above is appropriate and it is therefore adopted by the Commission. As discussed elsewhere in this Order, the Commission has found that the use of the Company's Harris depreciation rate is appropriate and has concluded that a reduction in electric plant in service of $175,829,000 relating to Harris is appropriate. Therefore, the Commission concludes that an adjustment to ADIT of $5,483,000 is appropriate.

One further adjustment must be made to ADIT to reflect the effect of the Commission's adjustment to decommissioning expense as discussed above. Having made an adjustment to decommissioning expense, the Commission concludes that a corollary adjustment to ADIT of $64,000 is appropriate.

The final adjustment by the Commission to ADIT is the result of the effect on ADIT due to the Commission's adoption of a "Rate Moderation Plan" as discussed elsewhere in this Order. Accordingly, the Commission concludes that an adjustment of $80,087,000 is appropriate.

Based on the conclusions set forth above, the Commission concludes that the appropriate level of accumulated deferred income taxes is $489,978,000 rather than $537,146,000 as recommended by the Company using the 12CP allocation methodology excluding the NCEMPA buyback levelization.

The Commission, therefore, concludes that the appropriate original cost rate base is $3,677,225,000, calculated as follows:

(000's Omitted)

Item	Amount
Electric plant in service	$4,869,311
Net nuclear fuel	133,271
Accumulated depreciation	(949,412)
Accumulated deferred income taxes	(489,978)
Allowance for working capital	114,033
Total original cost rate base	$3,677,225

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence on the adjustments to revenues and kWh sales is found in the testimonies of Company witness Nevil and Public Staff witnesses Turner and Morgan.

The Company in its application proposed $1,480,313,000 as the level of gross revenues under present rates and after accounting and pro forma adjustments. In the revised exhibits of Company witness Nevil, the Company's revised level of revenues is $1,480,323,000, whereas the Public Staff proposed $1,482,299,000, an increase of $1,976,000. The use by the Company of unlevelized allocation factors, as set forth in its proposed order, would result in a level of revenues of $1,480,313,000.

The difference of $1,976,000 is composed of the $1,988,000 adjustment for customer growth proposed by witness Turner and a $(12,000) adjustment resulting from the Public Staff's use of an adjusted summer/winter peak and average method of jurisdictional cost allocation.

The Company and the Public Staff used different methods to calculate an adjustment to kWh sales and revenues related to customer growth. Essentially, the difference lies in the determination of an end-of-period level of customer billings for the residential, small general service, large general service, traffic signal service, and street lighting rate classes.

In calculating annualized revenues related to end of period customer billings, the Public Staff takes into consideration the historical number of monthly billings as well as the number of monthly billings since the end of the test period, April 1987 through December 1987. The Company's analysis is based on the number of actual billings during March 1987, the last month of the test period. The Public Staff uses a least squares regression which fits a number of curves to billing data over a three-year period beginning January 1985 and

ending December 1987. Using the best fitting of these curves, based on the value of r square, a representative end-of-period billing level is computed for March 1987.

The Commission is persuaded that it is appropriate to use some sort of trend analysis such as regression analysis in order to determine an end of period level of billings representative of the test period. Although the details of the trend analysis technique have varied from case to case as use of the technique has evolved, the basic concept of the technique has been adopted in many rate cases over the past six years. The Commission, therefore, concludes that the appropriate level of kWh sales and revenues as presented by the Public Staff is appropriate. The Public Staff's computation of the adjustment to kWh sales and revenues due to customer growth and usage is shown below and results in a revenue increase of $1,988,000:

	kWh	$
N.C. Retail		
Customer growth	401,269,352	$25,336,167
Customer usage	18,304,211	94,682
Total	419,573,563	25,430,849
S.C. Retail		
Customer growth	62,838,947	3,372,176
Customer usage	95,010,851	4,663,426
Total	157,849,798	8,035,602
Wholesale	140,741,049	6,585,166
NCEMPA	110,285,981	2,331,446
TOTAL	828,450,391	$42,383,063

Based on the above, and the Commission's determination elsewhere herein that the summer/winter peak and average method of cost allocation is appropriate for purposes of this proceeding, the Commission concludes that the appropriate level of gross revenues for use in this proceeding is $1,482,299,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The evidence for this Finding of Fact is found in the testimony and exhibits of Company witnesses Bradshaw and Nevil; Public Staff witnesses Morgan, Haywood, Maness, Turner, and Lam; and Department of Defense witness Larkin.

The following schedule sets forth the levels of operating revenue deductions proposed by the Company and the Public Staff at the close of the hearings:

(000's Omitted)

Item	Company	Public Staff	Difference
Fuel and purchased power	$ 291,572	$ 287,584*	$ (3,988)
Other O&M expenses	515,256	501,725	(13,531)
Depreciation	182,391	168,359	(14,032)
Taxes other than income	82,489	81,598	(891)
Income taxes	93,966	107,498*	13,532
Total electric operating expenses	1,165,674	1,146,764	(18,910)
Interest on customer deposits	577	577	-
Harris deferred costs	20,495	16,544	(3,951)
Total operating revenue deductions	$1,186,746	$1,163,885	$(22,861)

* Amounts reflect incorporation of fuel factor of 1.276¢/kWh reflected in late filed exhibit of Public Staff witness Lam.

As the schedule indicates, the parties disagree on all the items of operating revenue deductions except interest on customer deposits. Since the parties are in agreement with respect to interest on customer deposits, the Commission concludes that $577,000 is the appropriate level of interest on customer deposits for use in this proceeding.

As has been discussed previously, some of the differences between the parties 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 adjustments to each category of operating revenue deductions that are due to the Public Staff's cost allocation method in comparison to the Company's 12-month coincident peaks (12CP) allocation methodology reflecting Power Agency levelized allocation factors:

(000's Omitted)

	Public Staff Adjustments Due to Use of SWPA	Public Staff Adjustments To SWPA
Fuel and purchased power	$ -	$(1,287)
Other O&M expenses	(354)	(1,437)
Depreciation	(200)	(708)
Taxes other than income	(33)	(126)
Income taxes	304	1,510
Total electric operating expenses	$ (283)	$(2,048)

Further, the Company in its proposed order revised its position to reflect its jurisdictional allocations on the basis of the 12CP demand allocation methodology _excluding_ levelized Power Agency buyback percentages rather than including levelized Power Agency buyback percentages. This change, as discussed previously, has caused the Company's operating revenue deductions to be additionally adjusted by the following amounts:

Item	CP&L Adjustments To Reflect Change To 12CP Excluding Levelization
	(000's)
Fuel and purchased power	$(1,705)
Other O&M expenses	(1,568)
Depreciation	(703)
Taxes other than income	(127)
Income taxes	1,736
CP&L's net decrease in its total electric operating expenses	$(2,367)

The Commission, having previously determined that the Public Staff's proposed cost-of-service study is appropriate, concludes that the above Public Staff adjustments to operating revenue deductions in this regard are appropriate.

The first of the remaining areas of difference between the parties relates to the appropriate level of fuel and purchased power expense. As previously discussed the Commission adopts the Public Staff's recommendation on fuel and purchased power expense and thus finds that the appropriate level of fuel and purchased power expense is $293,533,000. The difference between the Commission's $293,533,000 and the Public Staff's $287,584,000 is $5,949,000 relating to Power Agency calculations which the Public Staff concluded in its proposed order should more properly be shown under other operation and maintenance expenses rather than included in fuel and purchased power expenses. After taking this into account, the Public Staff's fuel and purchased power expense would be $293,533,000.

The $5,949,000 Public Staff adjustment has been discussed in the Evidence and Conclusions for Finding of Fact No. 13, wherein the Commission concluded that the appropriate level of Harris and Mayo purchased capacity and nonfuel energy expenses is $20,772,000. The Commission further found that it is appropriate to include this amount in the calculation of other operation and maintenance expense (O&M).

The next area of difference between the Company and the Public Staff is other O&M expenses. The Company recommended a level of $515,256,000 for other O&M expenses, while the Public Staff recommended a level of $501,725,000 at the time witness Morgan's final Exhibit I was filed, resulting in a difference of $(13,531,000). As previously noted, $(1,791,000) of the difference results

from the use of different cost allocation methodologies. The remaining difference of $(11,740,000) results from the following adjustments recommended by the Public Staff:

(000's Omitted)

Item	Amount
Harris O&M and A&G expenses	$ (4,946)
Mayo 2 abandonment	(1,473)
EEI dues	(82)
MCF payment	(71)
Officers salaries	(369)
Advertising expenses	(149)
Variable nonfuel O&M	89
Variable O&M displacement	(4,739)
Total	$(11,740)

The first adjustment of $(4,946,000) is to Harris O&M expenses and administrative and general expenses (A&G). Public Staff witness Morgan stated that this adjustment, which annualizes Harris O&M and A&G expenses on the basis of actual operating expenses incurred May 1987 through March 1988, reflects a more accurate measure of the Company's experience than the Company's adjustment, which annualized April 1987 through December 1987 budgeted amounts. One further difference exists due to witness Morgan's allocation of Harris O&M and A&G expenses by both the demand and energy allocation factors, rather than by the demand factor only, as proposed by the Company. (Tr. Vol. 30, pp.38-39). However, upon cross-examination witness Bradshaw conceded that a portion of the expense was, in fact, energy related. In the Company's proposed order it has restated its Harris O&M and A&G expenses by using both the demand and energy allocation factors. The Company's restated jurisdictional amount of demand related Harris O&M expense is $32,242,234 and the energy-related Harris O&M expense is $9,763,011 based upon the Company's change to unlevelized Power Agency buyback allocation inputs.

Company witness Bradshaw testified at the hearing that the Company used the 1987 budgeted amounts because they were the best data available when the rate case was filed. Witness Bradshaw further stated that he would have no objections to using the 1988 budgeted amounts. (Tr. Vol. 21, pp.188-190). On cross-examination, witness Bradshaw stated that when a new plant goes commercial, a portion of the costs continue to be capitalized and that actual costs after the first year or so of operation become more representative of the on-going level of expense.

The Commission finds that the Public Staff's calculation based on the use of actual expenses is appropriate for use in this proceeding. The actual amounts reflect the Company's actual operating experience whereas the 1987 budgeted amounts reflect anticipated expenses before any actual operating experience was incurred. The actual operating expenses of the plant were lower than had been budgeted. Furthermore, the 1988 O&M and A&G budgeted expenses for Harris Unit 1 are lower than both the 1987 actual expenses and the 1987 budgeted amounts; therefore, the Commission finds no basis for using the 1987 budgeted amounts in this proceeding.

With regard to the allocation of the O&M and A&G expenses, the Commission finds that there is uncontradicted evidence that these costs are composed of

energy-related and demand-related expenses. The allocation of costs should consider all factors involved so that each jurisdiction and customer class is assigned its proper share of the costs. The Commission, therefore, concludes that the Public Staff's proposal to allocate these costs by both the demand and energy factors is proper.

The next difference of $(1,473,000) between the Company and the Public Staff is due to the amortization of the Mayo Unit 2 abandonment. The Commission, as discussed previously has found that it is appropriate to write off the cost of Mayo Unit 2 over a 10-year amortization period as proposed by the Public Staff.

The next adjustment to other O&M expenses is an adjustment in the amount of $(82,000) to disallow 40% of the Company's Edison Electric Institute (EEI) dues. Witness Morgan testified:

> "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." (Tr. Vol. 30, p. 23).

Witness Morgan 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 EEI on CP&L's behalf." (Tr. Vol. 30, p. 23).

As to the possibility that some lobbying performed by EEI could benefit ratepayers, witness Morgan pointed out on cross-examination that EEI would most likely lobby for the concerns of electric utilities rather than ratepayers. He stated that ratepayers should not be forced to support lobbying activities by a separate body after already paying taxes to maintain representation in Congress. (Tr. Vol. 30, pp. 87-88).

The Commission concludes, therefore, that the $(82,000) adjustment proposed by the Public Staff is appropriate. The Commission notes that in CP&L's last rate case in Docket No. E-2, Sub 526, and in a Duke Power Company general rate case, Docket No. E-7, Sub 391, adjustments to disallow 40% of EEI dues were also approved. EEI is an industry organization, and its lobbying focuses on issues that are beneficial to electric utilities and their shareholders. While it is true that ratepayers may occasionally benefit as a by-product of such lobbying, such costs should still be removed from the cost of service. Customers should have the right to hire their own lobbyists or not to hire any lobbyists at all.

The next adjustment to other O&M expenses is an adjustment in the amount of $(71,000) to disallow 50% of the Company's payment to EEI's Media Communications Fund (MCF). Witness Morgan filed as Appendix II to his testimony copies of certain advertisements sponsored by EEI. Mr. Morgan testified that his disallowance was reasonable in light of the nature of many of the advertisements. (Tr. Vol. 30, p. 24). Based on a review of these advertisements the Commission concludes that the Public Staff's $(71,000) adjustment to other O&M expenses is appropriate. The Commission also notes

that in CP&L's last general rate case, Docket No. E-2, Sub 526, a similar adjustment was proposed by the Public Staff and accepted by this Commission.

The next adjustment to other O&M expenses, in the amount of $(369,000), excludes 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 Morgan pointed out, similar adjustments have been proposed and approved in CP&L's last four general rate cases. (Tr. Vol. 30, p. 26).

After careful consideration, the Commission concludes that this adjustment to exclude 50% of the salaries and deferred compensation of the four officers is 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 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.

The next area of difference concerns an adjustment to decrease advertising expenses by $149,000. Public Staff witness Morgan testified that he reviewed all test year advertising by the Company and that he removed costs related to political advertising since this type of advertising is not beneficial to ratepayers. (Tr. Vol. 30, pp. 27-29). The Company presented no evidence to contest this adjustment. The Commission concludes that this adjustment is proper and consistent with the Commission's policy concerning utility advertising.

The next difference between the parties is the Public Staff's adjustment of $89,000 to variable nonfuel O&M expenses. The adjustment, as presented in the exhibit of witness Morgan, incorporates the customer growth and usage recommendations of Public Staff witness Turner. Witness Morgan also reduced the South Carolina Large General Service (SCLGS) kWh's to reflect the removal of the kWh's used by Stone Container, a large customer in South Carolina which has become a cogenerator. (Tr. Vol. 30, p. 22).

Company witness Nevil, in his additional direct testimony, stated that the Company would accept witness Morgan's recommendation that the loss of Stone Container's load be reflected in the variable nonfuel O&M adjustment. (Tr. Vol. 23, p. 99).

During cross-examination of Mr. Morgan, the Company asked if his adjustment resulted in removing the effects of Stone Container twice, since Public Staff witness Turner also removed Stone Container in his adjustment. Witness Morgan stated that the intent of the adjustment was not to "double dip" the Company, and that the adjustment would be reevaluated. (Tr. Vol. 30, p.102). Public Staff witness Turner Late Filed Exhibit BRT-1 shows that the SCLGS end-of-period customer level of 66 does not change if Stone Container is reflected as a customer through December, 1987. Therefore, the Public Staff maintains that there is no "double dip" and that the adjustment proposed by witness Morgan is appropriate.

Since the Commission has previously accepted the Public Staff's customer growth adjustment, it is also appropriate to use it in the variable nonfuel O&M

adjustment. The Commission also finds that the Public Staff's adjustment to separately remove Stone Container's load is appropriate. The removal of Stone Container did not affect the trended SCLGS end-of-period number of customers in witness Turner's analysis, and thus did not change his customer growth recommendation. Therefore, the removal of Stone Container by witness Morgan does not constitute a "double dip". However, Stone Container, although only one customer, consumed a much higher than average level of energy during the test year. Due to the extremely large reduction in load caused by Stone Container's departure after the test period, it is appropriate to make a separate adjustment, as witness Morgan has done. Therefore the Public Staff's adjustment to variable nonfuel O&M of $89,000 is appropriate.

The final difference in the area of other O&M expenses relates to the Public Staff's variable nonfuel O&M displacement adjustment (hereinafter referred to as the "displacement adjustment") in the amount of $(4,739,000). Public Staff witness Morgan testified that the purpose of the displacement adjustment is to prevent the inclusion of more than an annual level of variable expenses in the cost of service. According to witness Morgan, the potential for this situation is created in this case because of the inclusion of Harris 1 nonfuel O&M costs in the cost of service after already annualizing similar test year expenses to an end-of-period level.

Witness Morgan testified that in this case, the Company made its normal adjustment to annualize nonfuel variable O&M expenses. This adjustment brings variable expenses forward to an end-of-period basis by utilizing the adjustments made to test year kWh sales resulting from customer growth and weather normalization. The adjustment is designed to result in the level of variable O&M expenses reflecting the number of customers and level of service as of the end of the test year. The Public Staff does not oppose that adjustment in theory. Witness Morgan testified, however, that the Company's Harris 1 O&M expense adjustment contains the same types of expenses as those annualized in the nonfuel variable O&M adjustment, expenses that have thus already been reflected at an end-of-period level. It is the opinion of witness Morgan that inclusion of both the annualized nonfuel costs and a full year of the similar Harris 1 O&M costs would result in a level of expense higher than the cost necessary to serve the end-of-period level of customers. Witness Morgan further testified that to correct this situation, he used a methodology similar to the one used to make adjustments to fuel expense. While including a full year of Harris 1 variable O&M expenses in the cost of service, he removed, based on an average cost per kWh, certain variable O&M costs related to the generation displaced by the generation of Harris Unit 1. Since Harris Unit 1 did not begin commercial operation until after the end of the test year, inclusion of its generation and the related costs in this proceeding displaces certain test year generation and costs (Tr. Vol. 30, pp.33-35).

Company witness Nevil testified under cross-examination that the energy requirements of CP&L's customers, including Power Agency's total requirements, do not depend on the presence or absence of particular generating resources. For example, when the Harris plant began commercial operation, the Company's total available generating resources, but not customer requirements, were affected. (Tr. Vol. 24, p.29). In discussing the level of end-of-period generation reflective of customer growth adjustments made in the rate case, Mr. Nevil testified that making an adjustment to include Harris 1 in the rate case does not affect the end-of-period generation level. (Tr. Vol. 24, p.37).

In discussing the Company's nonfuel variable O&M adjustment (the "NFV adjustment") during cross-examination, Mr. Nevil testified that the breakdown of costs into demand and energy components as described in the cost allocation procedures is used as a starting point for the adjustment. Mr. Nevil testified that the Company's cost allocation procedures, filed as part of the NCUC E-1 filing, define energy-related costs as costs which vary with the number of kWh's generated, including boiler and turbine generator maintenance expenses. (Tr. Vol. 24, pp.30-31). Witness Nevil further testified that one of the purposes of the NFV adjustment is to annualize variable nonfuel expenses to an end-of-period level. The variable expenses for the NFV adjustment are derived from the energy-related expenses identified during the Company's cost allocation process. Witness Nevil testified that this method is a proxy for the specific changes in cost which result from changes in the level of generation. However, he agreed that the NFV adjustment treats certain expenses as being directly variable in relation to the level of generation, that making the NFV adjustment depends on the premise that certain costs vary with the level of generation, and that the level of the nonfuel variable O&M expenses included in the NFV adjustment depends on the adjusted level of end-of-period generation. (Tr. Vol. 24, pp.31-33).

Witness Nevil did not agree, however, with Public Staff witness Morgan's position that the concepts underlying the Company's NFV adjustment should be used to measure the effects on cost of service of adding the Harris plant to the Company's operations. He testified that the displacement of other generation by the addition of Harris 1 would not result in a linear reduction in energy-related costs associated with that generation. According to witness Nevil, the change in the nature of certain plants' operation from base load to cycling may cause the variable costs associated with those units to increase, although they may not generate as many kWhs. Witness Nevil testified that discussions with Company personnel involved in fossil operations indicated that maintenance expense would actually increase as a result of the Harris unit being added to the dispatch order. The fossil units which were previously running in a base load manner would be relegated to cycling units. The cycling of these units will increase maintenance expense as a result of the wear and tear of the continual starting and stopping of the units. Witness Nevil also pointed out that the Company has used the same method for calculating variable O&M expense in its previous five or six cases and the Public Staff has not attempted to reflect such an adjustment when other generation, such as the Mayo unit, has been added to the system.

In contrast, Mr. Morgan testified that the Company's fossil steam maintenance expense decreased approximately 7% for the 12-months ended March 31, 1988, as compared to the 12-months ended March 31, 1987. (Tr. Vol. 30, p.95). Mr. Morgan also testified that he utilized essentially the same cost per kWh in the displacement adjustment as the Company used in the NFV adjustment and that the Company used this cost rate for all costs in the aggregate. No distinction was made between costs related to base load plants and costs related to cycling plants. Witness Morgan stated that he had basically used the Company's NFV methodology to make the displacement adjustment. (Tr. Vol. 30, pp.99-100).

The Commission is not convinced by either party as to which viewpoint is completely correct. The Commission is not completely persuaded by the Public Staff's argument that the addition of a base load unit would necessarily result

in a displacement of variable nonfuel O&M expense on a linear basis. Nor can the Commission dispute the Company's argument that units may be subjected to more stress as they become cycling in nature and that their efficiency may be impaired. However, higher cost rates due to lost efficiency do not necessarily translate into higher costs overall. The Commission based upon the evidence presented believes that an equitable treatment would be to allow only 50% of the Public Staff's adjustment resulting in an increase in variable nonfuel O&M expense of $2,369,000 over the level proposed by the Public Staff. The Commission believes that some adjustment is necessary to more reasonably match end-of-period costs to end-of-period generation.

One other area of disagreement in the area of other O&M expenses was addressed by Department of Defense (DOD) witness Larkin who testified that the Company was overstating payroll expense by calculating an annualized payroll level based upon the month of March 1987. He contended that the overtime for the month of March 1987 represents an above-normal amount; therefore, annualization of the total payroll for March 1987 did not result in a representative, going-forward level for payroll expense. He proposed to include overtime expenses at the actual test period level. Witness Larkin also proposed a reduction in payroll expense to reflect the Company's work force reduction.

The Company contended that its method of annualizing year-end payroll is appropriate and has been consistently accepted by this Commission in prior rate cases. Company witness Bradshaw pointed out that overtime could have been higher because of unfilled positions or other reasons. The Company's position is that the wage level must be calculated on the total payroll and not by individual adjustments such as for overtime. Witness Bradshaw also testified that the actual payroll for the 12-months ended March 31, 1988, was higher than the Company's proposed annualized amount based on March 1987, and also that if the payroll for the month of March 1988 was annualized, an even higher payroll level would be obtained.

Upon review, the Commission finds the level of payroll expenses determined by annualizing the March 1987 level to be both representative and reasonable for use in this proceeding and consistent with Commission findings in prior rate cases.

In addition to the payroll adjustments discussed above, DOD witness Larkin proposed adjustments to reduce, in the year-end payroll adjustment, certain fringe benefits which he contends are not driven by payroll. The witness recommended removing that portion of the Company's pension expense calculated based on overtime. He contended that overtime should not be included in the calculation since overtime is not normally used in the calculation of retirement benefits. He also recommended removing the Company's employee medical benefits from the calculation of the year-end payroll adjustment. He argued that medical expenses are not based on wages and, therefore, medical expense should not be increased at year-end merely because payroll increases.

As stated earlier, Mr. Bradshaw testified that annualization of the March 1988 payroll expense would result in a value larger than the Company's proposed adjustment. The Commission, therefore, concludes that it is unnecessary to adjust the individual components of the year-end payroll

adjustment. Therefore, the adjustments proposed by witness Larkin are inappropriate.

Witness Larkin also proposed an adjustment to the Company's pension expense to reflect the options available under Statement of Financial Accounting Standards Board No. 87 (SFAS No. 87). The Company and witness Larkin calculated the pension costs in conformity with SFAS No. 87. The Company chose the option, under SFAS No. 87, of calculating pension costs based on a market-related asset to calculate gains and losses on plan assets. Witness Larkin advocated using the fair value of assets in determining pension costs in order to minimize pension costs in this proceeding. However, in his filed testimony, witness Larkin testified that the option chosen by the Company"...could have the effect of smoothing the impact of volatile market fluctuations on plan assets."

The Commission believes that the option chosen by the Company is the more appropriate option to use in providing more stability in rates over a period of time. Therefore, the adjustment proposed by witness Larkin is rejected.

In accordance with the Commission's decision to amortize the $180,558,000 system cancellation costs relating to Harris 2, 3, and 4 over 10 years as discussed previously, the Commission concludes that operation and maintenance expenses should be increased by $9,834,000 on a North Carolina jurisdictional basis to reflect the effect of such treatment. Based upon the foregoing, the Commission concludes that the appropriate level of other operation and maintenance expenses is $509,611,000.

The next area of difference between the Company and the Public Staff is depreciation expense. The Company recommended a level of $182,391,000 for depreciation expense while the Public Staff recommended a level of $168,359,000, for a difference of $(14,032,000). As previously noted, $(908,000) of the difference results from the use of different cost allocation methodologies (SWPA versus 12CP including Power Agency levelization) and then the Company further reduced its depreciation expense level by another $703,000 to reflect its change to its 12CP methodology excluding Power Agency levelization. The remaining difference of $(13,124,000) results from the following adjustments recommended by Public Staff witness Morgan:

(000's Omitted)

Item	Amount
Adjustment to reflect change in depreciation rates for nuclear units	$ (8,994)
Disallowance of Harris 1 investment recommended by Canatom Inc. and Harris land-related cost adjustment	(4,130)
Total	$(13,124)

The $(8,994,000) difference relating to the change in the depreciation rates for nuclear units is composed of $(4,128,000) for the Harris plant, $(5,015,000) for other nuclear units, and an adjustment of $149,000 to depreciation expenses relating to the Robinson 2 Volume Reduction Solidification Project. As stated in the Evidence and Conclusions for Finding of Fact No. 17, the difference between the Public Staff and the Company is the result of witness Turner's recommended change to the Company's nuclear units

depreciation rates. Based upon the Evidence and Conclusions for Finding of Fact No. 20, the Commission finds the adjustment of $(8,994,000) proposed by the Public Staff to be inappropriate since it agrees with the Company's depreciation rates.

The difference of $(4,130,000) results from the disallowance recommended by Canatom Inc., and the Harris land-related cost adjustment recommended by Public Staff witness Maness.

With respect to these adjustments, the Commission has previously discussed its conclusions on disallowance and the treatment of Harris land-related costs. Based upon these decisions the Commission finds that its adjustment to decrease depreciation expense to reflect plant disallowances would be $5,012,000 and due to its inclusion of Harris land-related costs (AFUDC) depreciation expense would be increased $134,000.

One further adjustment is necessary to reflect the change in depreciation expense due to the change in decommissioning expense which has been previously discussed in the Evidence and Conclusions for Finding of Fact No. 17. The change in decommissioning results in an increase in depreciation expense of $166,000.

Based upon the foregoing, the Commission concludes that the appropriate level of depreciation expense for inclusion in this proceeding is $176,771,000.

The next area of difference in operating revenue deductions is taxes other than income. The Company recommended a level of $82,489,000 under its 12CP including Power Agency levelization methodology for taxes other than income while the Public Staff recommended a level of $81,598,000, for a difference of $(891,000). As previously noted, $(159,000) of the $(891,000) difference results from the use of different cost allocation methodologies (SWPA versus 12CP including Power Agency levelization). The remaining difference of $(732,000) results from the following adjustments recommended by Public Staff witness Morgan:

(000's Omitted)

Item	Amount
Exclude payroll taxes which Company computed on its fringe benefits adjustment	$ (66)
Exclude property tax associated with disallowance of Harris 1 costs	(730)
Include gross receipts taxes associated with Public Staff's adjustment to revenues	64
Total	$(732)

Public Staff witness Morgan testified that he had made an adjustment of $(66,000) to exclude payroll taxes calculated on the Company's fringe benefits adjustment, since the Company does not incur payroll taxes on fringe benefits. (Tr. Vol. 30, p. 27). The Company accepted this adjustment in its proposed order. The Commission, therefore, agrees that witness Morgan's adjustment of $(66,000) is proper.

The next Public Staff adjustment is the exclusion of $730,000 of property taxes associated with the disallowed costs of Harris Unit 1 (both the Canatom disallowance and the land-related cost adjustment). Based on the conclusions discussed elsewhere in this Order, the Commission finds that the appropriate adjustment to decrease property taxes is $789,000 to reflect the removal of property taxes associated with disallowed plant costs to which the property tax rate is applied. Further, since the Commission has previously concluded that it is appropriate to include in rate base the Harris land and related AFUDC, it is likewise appropriate to increase property taxes by $34,000.

The Public Staff and the Company presented different levels of gross receipts taxes due to different levels of proposed end-of-period revenues. The Public Staff recommended a level of gross receipts taxes which is $64,000 higher than the level recommended by CP&L. Since the Commission has adopted the end-of-period level of revenues recommended by the Public Staff, we conclude that the Public Staff's adjustment increasing gross receipts taxes by $64,000 is also appropriate.

Based on the conclusions reached herein by the Commission, the Commission concludes that the appropriate level of taxes other than income is $81,552,000.

The next area of difference between the parties is the proper level of income taxes. The Company recommended a level of $93,966,000 under its 12CP including Power Agency levelization methodology for income taxes while the Public Staff recommended a level of $107,498,000, for a difference of $13,532,000. As previously noted, $1,814,000 of the difference results from the use of different cost allocation methodologies (SWPA versus 12CP including Power Agency levelization). The remaining difference of $11,718,000 results from the following adjustments recommended by Public Staff witness Morgan:

(000's Omitted)

Item	Amount
Adjustment of Harris 1 Basis Differences ADIT to actual amount at June 30, 1987	$ (28)
Adjustment to reflect reduction in Harris 1 depreciation rate	1,501
Adjustment to reflect Canatom Inc., disallowance and land-related cost adjustment	1,117
Effect of remaining Public Staff adjustments	9,128
Total	$11,718

The first adjustment of $(28,000) results from the Public Staff position that ADIT related to Harris basis differences should be initially stated at their actual balance as of June 30, 1987. As shown under Tab 64 of Item 10 of the Company's E-1 filing, the Company calculated and used a theoretical basis differences ADIT balance, applying the 34% Federal tax rate to basis differences accrued between June 30, 1986, and June 30, 1987. Public Staff witness Morgan, as shown on his Exhibit I, Schedule 3-1(h)(1), calculated basis differences ADIT by using the actual Federal tax rate in effect at the time the basis differences were accrued. The Company agreed in its proposed order that the Public Staff's methodology in this regard was appropriate.

The Commission, therefore, concludes that the Public Staff approach is appropriate. The ADIT balance related to basis differences considered herein

was determined prior to the effective date of the 34% Federal income tax rate, based on the tax rates in effect when the basis differences were incurred. These ADIT will be amortized over the depreciable life of the plant, regardless of the change to the 34% Federal tax rate. Therefore, it is neither appropriate nor necessary to utilize a hypothetical ADIT balance that reflects the 34% Federal tax rate for a period in which the actual Federal tax rate was 46% or 40%. It is instead appropriate that the basis differences ADIT balance be based on the actual Federal tax rates in effect at the time the ADIT were accrued.

This treatment of the basis differences ADIT amortization is a separate matter from the reversal of the Company's TRA86 adjustment to ADIT discussed in the Evidence and Conclusions for Finding of Fact No. 17. The amortization of these ADIT is based on the appropriate rate of depreciation for Harris 1, not on the Federal income tax rate used in this proceeding.

The second Public Staff adjustment of $1,501,000 reflects the effect on income taxes of the Public Staff's recommended reduction in the depreciation rate applied to Harris 1. This depreciation rate reduction impacts income taxes in two ways. First, it reduces the annual credit amortization of Harris Basis Differences ADIT and Harris Job Development Investment Tax Credits (JDITC). Second, it increases income tax expense because of the reduced level of depreciation expense. Since the Commission has not accepted the depreciation rates recommended by the Public Staff, as discussed in the Evidence and Conclusions for Finding of Fact No. 20, the Commission concludes that the Public Staff's adjustment is inappropriate.

The third Public Staff adjustment reflects the $1,117,000 effect on income taxes of the Public Staff's recommended prudence and land-related cost disallowances. As shown on his Exhibit I, Schedule 3-1(h)(3), Public Staff witness Morgan divided the non-AFUDC portion of the Canatom disallowance into tax basis and basis difference portions. The reduction in tax basis increases income taxes due to the reduction in depreciation resulting therefrom. Additionally, the reduction in tax basis leads to a reduction in the credit amortization of JDITC. The reduction in basis differences likewise leads to a reduction in the credit amortization of basis differences ADIT. Finally, the decrease in property tax expense due to the prudence and land-related adjustments leads to a corresponding increase in income taxes. Since the Commission has not accepted either the Public Staff recommended disallowance or the Harris land-related disallowance amounts the Commission must make its own calculations to reflect its conclusions in this regard.

Based upon the Commission's determinations regarding the appropriate jurisdictional allocation method, the appropriate levels of rate base, revenues, and operating revenue deductions, and the appropriate capital structure and cost rates, the Commission hereby concludes that the appropriate level of income tax expense for use in this proceeding is $99,362,000 including deferred investment tax credits of $18,224,000 and deferred income taxes of $58,396,000.

The final deduction in determining net operating income for return is the amortization of the Harris deferred costs. The Company recommended a level of $20,495,000 for Harris deferred costs while the Public Staff recommended a level of $16,544,000 for a difference of $(3,951,000). The difference of $(3,951,000) between the Company and the Public Staff results from the following Public Staff adjustments:

1) Reflection of the Harris cost disallowance recommended by Canatom Inc;
2) Reflection of the Harris land-related cost adjustment;
3) Reflection of the depreciation rate proposed by Public Staff witness Turner;
4) Reflection of the overall rate of return (net-of-taxes) and capital structure recommended by Public Staff witness Sessoms;
5) Allocation of costs, beginning August, 1987, using the factor approved in Docket No. E-2, Sub 526.

With regard to the first four differences, witness Bradshaw stated at the hearing that it would be appropriate for the Commission to incorporate whatever positions it adopted relative to those issues in the calculation of Harris 1 deferred costs. (Tr. Vol. 21, pp. 197-198). Based upon the Evidence and Conclusions for Finding of Fact Nos. 8 through 11, 17, 20, 22 and 23, the Commission finds that it is appropriate to reflect its related adjustments in the calculation of Harris 1 deferred costs.

The remaining difference was discussed in the testimony of Public Staff witness Morgan. Witness Morgan testified that in the deferred cost calculation as filed by the Company, plant in service was allocated by the allocation factor approved in Docket No. E-2, Sub 481. Witness Morgan stated that he adjusted the deferred cost calculation to properly reflect the factor approved in Docket No. E-2, Sub 526. (Tr. Vol. 30, p. 39).

The allocation factor approved in Docket No. E-2, Sub 526, became effective in August, 1987. Any allocation to North Carolina retail operations beginning in August, 1987 should use the factors resulting from that proceeding. The Commission, therefore, finds that it is proper to use the allocation factor approved in Docket No. E-2, Sub 526, to allocate electric plant in service to North Carolina retail operations for use in the deferred costs calculation.

Regarding the deferred fuel savings associated with Harris 1 pre- and post-commercial operations, Public Staff witness Lam recommended that these fuel savings be flowed back to CP&L's customers in a 12-month rider to base rates. (Tr. Vol. 27, p. 121). Company witness Nevil agreed that these fuel savings should be given back to the ratepayers as a decrement in the rates. He furthermore agreed that it "flows" that interest should be accrued on these fuel savings. (Tr. Vol. 24, p. 23-24). Based on this testimony, the Commission concludes that these fuel savings should be excluded from the Harris deferred costs calculation and that these savings should be flowed back to the ratepayers with interest in a 12-month rider to base rates. The Commission calculates the fuel savings and interest to be $15,324,000 excluding gross receipts taxes based on CP&L's latest fuel report filing.

The Commission, therefore, concludes that the appropriate annual level of Harris deferred costs to be recovered is $16,825,000, and that the deferred fuel savings associated with Harris 1 are to be flowed back to ratepayers with interest in a 12-month rider to base rates.

The Commission concludes that the appropriate level of total operating revenue deductions is $1,178,231,000, calculated as follows:

(000's Omitted)

Item	Amount
Fuel and purchased power	$ 293,533
Other O&M expenses	509,611
Depreciation	176,771
Taxes other than income	81,552
Income taxes	99,362
Total electric operating expenses	1,160,829
Interest on customer deposits	577
Harris deferred costs	16,825
Total operating revenue deductions	$1,178,231

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence on the depreciation rate for CP&L's nuclear plants is found in the testimony of Company witness Bradshaw, Public Staff witness Turner, and Department of Defense witness Lim.

Company witness Bradshaw presented testimony and exhibits supporting a change in CP&L's depreciation rates. The recommended change in depreciation rates is summarized below:

	Current Rates %	Proposed Rates %
Production		
Steam	3.689	3.428
Nuclear	4.016	3.195
Hydro	1.170	1.414
Other	4.062	3.759
Transmission	2.376	2.699
Distribution	3.273	3.725
General	5.178	4.951

Company witness Bradshaw testified that the proposed depreciation rates include a component for removal cost and salvage. The life of the property for depreciation purposes was based on an actuarial methodology for Nonproduction properties, consisting of Transmission, Distribution, and General properties. Life estimates utilizing industry averages were used for Hydro property and Internal Combustion Turbines. The life span methodology was used for Production properties, consisting of Fossil Steam and Nuclear. Mr. Bradshaw stated that the life span methodology allows for the evaluation of all factors affecting capital recovery by site location rather than by account. The life span methodology incorporated ten years of interim activity. Mr. Bradshaw explained that the items analyzed for each plant/unit were current plant investment, current accumulated depreciation, and projected additions,

retirements, and replacements. Fossil Steam property was grouped into one of three categories in order to establish remaining lives as a group. These three categories were based on capacity factors that incorporate future operating plans for the Fossil Steam units when establishing an estimated remaining service life for each unit.

The life of Nuclear Production property was also based on the life span methodology. Witness Bradshaw testified that the trend in the electric utility industry is to utilize the Nuclear Operating License when establishing operating lives for capital recovery purposes. Therefore, the Company's basis for establishing a remaining life for each nuclear unit was each unit's license expiration date as adjusted to reflect the Company's request for revised operating licenses for Brunswick Units 1 and 2 and Robinson Unit 2. For Harris 1 the current operating license expires October 24, 2026. For Robinson 2, Brunswick 1, and Brunswick 2, the request for revised operating licenses expire July 31, 2010, September 8, 2016, and December 27, 2014, respectively. Mr. Bradshaw testified that, due to the uncertainty of future regulations and infancy of the nuclear industry, he was recommending that Nuclear Production property depreciation rates be set such that 95% of the depreciable investment be recovered approximately five years prior to the expiration of the Nuclear Operating License. He further testified that as each unit approaches the license expiration date, an economic analysis would be performed to determine the cost/benefit of additional investment for continued operation as compared to the cost of shutting down the plant.

There was no disagreement on the proposed depreciation rates between the parties for Nonproduction property, Hydro Production property, Internal Combustion Turbines, and Fossil Steam Production property; therefore, the Commission is of the opinion that the Company's proposed depreciation rates for these properties should be approved.

Public Staff witness Turner and Department of Defense witness Lim disagreed with the Company on the proper depreciation rate for Nuclear Production property. Public Staff witness Turner and Department of Defense witness Lim testified that the proper depreciation rate for Nuclear Production property should be 2.85301%. Witness Turner testified that the Nuclear Production depreciation rate should be based on 100% of each unit's investment and 100% of the remaining life of each unit. He stated that the Company's proposed rate front loads the depreciation account and results in the customers today paying higher rates over all but the last five years of the plant's life. Witness Turner stated that if normal factors govern the retirements of nuclear plants as opposed to regulation, then he felt that the units will continue to be operated as long as it is possible both technically and economically.

Company witness Bradshaw stated on cross-examination that the currently approved Nuclear Production depreciation rate reflects a 10-year decision period at the end of capital recovery, and in the Company's proposed depreciation rate the decision period has been shortened to three years. Witness Bradshaw further stated that the Company intends to revise depreciation rates in the future on a continuing basis.

Based on the evidence presented in this case, the Commission agrees that if normal factors govern the retirements of nuclear plants, the Company will continue to operate the units as long as possible technically and economically.

This is evidenced by the Company shortening the decision period from 10 to three years; in other words, the Commission has previously approved a 25-year average service life for Nuclear Production properties, and the Company is now requesting a 37-year average service life. Therefore, for purposes of this proceeding, the Commission finds that the proper composite depreciation rate for Nuclear Production property is 3.1949% composed of Robinson 2 at 5.5489%, Brunswick 1 at 3.3840%, Brunswick 2 at 3.4859%, and Harris 1 at 2.8503%. Appendix B attached to this Order sets forth the approved depreciation rates by component.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence related to this Finding of Fact is found in the testimony of CP&L witnesses Bradshaw and LaGuardia, Department of Defense witness Lim, and Public Staff witness Turner.

Witness Bradshaw prefiled a company study of the depreciation and capital recovery requirements for decommissioning CP&L's four nuclear generating units. The depreciation provision was based on decommissioning cost estimates made by TLG Engineering, Inc., and presented in the company-sponsored testimony of Mr. LaGuardia. CP&L proposed to use the 30-Year Entombment process because this methodology is less expensive, allows the Company an opportunity to learn from the decommissioning experience of other units during the 30-year dormancy period, and results in lower radioactivity levels and less worker exposure. CP&L also chose to invest decommissioning revenue internally during the service life of the nuclear units and to credit the fund with earnings based on the Company's overall rate of return. The annual depreciation provision for decommissioning each nuclear unit was calculated using the Internal Modified Sinking Fund Depreciation method of capital recovery. Using Mr. LaGuardia's estimated $915,238,000 cost for 30-Year Entombment of the four nuclear units and assuming 5% annual inflation in decommissioning cost, the Company estimated that the total retail depreciation expense would amount to $3,214,854,206 at the end of the service life of these units. Assuming the 10.44665% weighted rate of return allowed in Docket No. E-2, Sub 526, the Company calculated that annual revenue requirements of $15,764,262 would total $458,360,541 over the service life of all units. This revenue compounded at the Company's allowed rate of return would provide the required $3.2 billion necessary at the end of the service life of these units. The Company proposes that the $3.2 billion available at the end of the unit's service life be invested externally for the 30 years of dormancy and estimates that earnings compounded at the annual rate of 6.5% would increase the fund to the required inflated cost of decommissioning of $14.7 billion.

On cross-examination by the Public Staff, Mr. Bradshaw indicated that the decommissioning revenues collected each year are not deposited in a separate bank account or investment fund but are treated as any other source of company capital. He explained that the Company was not opposed to placing the decommissioning revenues in an external fund, but the return on government securities is very low compared to the return on funds invested internally. At the end of a nuclear plant's service life, the Company proposes to issue securities, and the proceeds would be invested in the decommissioning fund. It was further brought out that external funding is now employed by VEPCO as well as by a number of other utilities, and that the NRC is considering such a requirement in a pending final rule.

On further cross-examination by the Public Staff regarding the method of decommissioning, it was pointed out that Duke, Vepco, and 90 other operating units in the United States have chosen Prompt Dismantlement in contrast to the Company's proposed 30-Year Entombment. Mr. Bradshaw responded that 30-Year Entombment is less expensive, affords an opportunity to learn from the decommissioning experience of other units during the 30-year dormancy period, and results in lower radioactivity levels and less worker exposure. Mr. Bradshaw stated that he was not opposed to the Public Staff's proposed generic hearing on decommissioning.

Company-sponsored witness LaGuardia in his direct testimony estimated the total cost of decommissioning the four CP&L nuclear units using 30-Year Entombment, in 1987 dollars, would be:

	Project Cost	30-Year Entombment Contingency	Total Cost
Robinson 2	$133,710,000	$ 32,495,000	$166,205,000
Brunswick 1	191,673,000	46,889,000	238,562,000
Brunswick 2	218,540,000	53,605,000	272,145,000
Harris 1	192,418,000	45,908,000	238,326,000
	$736,341,000	$178,897,000	$915,238,000

The $915,238,000 total cost of decommissioning includes a contingency which is approximately 25% of the project cost or equivalent to 20% of the total cost of decommissioning. Mr. LaGuardia also estimated the total cost for decommissioning CP&L's four nuclear units using Prompt Dismantlement rather than 30-Year Entombment would be $797,013,000 in 1987 dollars. While the Prompt Dismantlement method of decommissioning would be less costly than 30-Year Entombment based on 1987 dollars required, the Company estimated that 30-Year Entombment would result in a lower annual revenue requirement due to the investment income the Company would earn on the decommissioning funds during the 30-year entombment period prior to dismantlement. The Company estimated that the annual revenue requirement for decommissioning CP&L's four nuclear plants using 30-Year Entombment would be $15,764,262 which is $575,197 less per year than using Prompt Dismantlement.

On cross-examination by CUCA, Mr. LaGuardia stated that under the proposed rules of the Nuclear Regulatory Commission (NRC) three methods of decommissioning are permissible: Prompt Removal/Dismantlement, Entombment, and Mothballing. A constraint on Entombment would be that no plant is to be entombed for more than 100 years prior to dismantlement and removal. He also stated that in NRC's final rules Mothballing may be constrained to 60 years before dismantlement is required.

Under cross-examination by the Department of Defense, Mr. LaGuardia acknowledged that an Edison Electric Institute study of nuclear decommissioning indicated that 25 companies representing 58 nuclear units have chosen Prompt Dismantlement while only CP&L and one other company have chosen the entombment procedure.

Under cross-examination by the Public Staff, Mr. LaGuardia agreed that the great majority of the companies have chosen Prompt Dismantlement, but that Entombment with delayed dismantlement is acceptable to the NRC, is technically sound, and has some cost benefits to the ratepayer. Mr. LaGuardia also

indicated that, if the cost differences were relatively insignificant, he would favor Prompt Dismantlement as he has recommended to many other clients (Tr. Vol. 23, p. 20). Mr. LaGuardia testified that he was not requested by CP&L to furnish cost estimates for the mothballing method of decommissioning CP&L's plants, but he had previously prepared mothballing estimates for the Duke and VEPCO units. He cited three NRC variations of the mothballing methodology: Custodial SAFSTOR, Hardened SAFSTOR, and Passive SAFSTOR. He characterized the entombment method of CP&L plants as being closer to Hardened SAFSTOR, and the mothballing alternatives for Duke and VEPCO as Custodial SAFSTOR. Custodial SAFSTOR would require full-time security forces, radiological surveillance, and the maintenance of ventilation and electrical systems; whereas Passive SAFSTOR would permit deactivation of the ventilation system and the use of electronic security measures. Mr. LaGuardia has never estimated the cost of Passive SAFSTOR for any client. With respect to the Brunswick units which licenses expire within 20 months of each other, Mr. LaGuardia indicated it would be preferable to wait for the later unit to shut down and decommission the units together, a procedure which he had previously recommended for the San Onofre units in California. Though future technology improvements were not considered in the analysis he performed for CP&L, Mr. LaGuardia believes certain remote tools may reduce worker exposure. He testified, however, that these tools, because of their high cost, would not reduce the percentage of labor cost required for decommissioning.

Department of Defense witness Lim in prefiled testimony questioned the necessity of Mr. LaGuardia's contingency allowance which Mr. Lim calculated at 19.55% of total estimated decommissioning cost of all CP&L nuclear units. He contended that the contingency allowance placed an unreasonable burden on the ratepayer, that the allowance assumes an unknown "worst case scenario" rather than expected costs, that the study is inconsistent in that it makes no offsetting allowance for potential cost savings that may arise from future technological advances, and that any future unforeseen changes in decommissioning costs can be made up by future rate adjustments. He recommended that the contingency allowance included in the decommissioning cost on which the rates are based should be rejected.

Public Staff witness Turner testified that the methodology for determining revenue to cover future decommissioning costs is complex, requires a determination of not only whether to dismantle the plants promptly at the end of service, to mothball or to entomb, but also whether to invest the decommissioning revenues within the company or in an external trust fund. He noted that decommissioning is a problem that faces all three major electric utilities in North Carolina and that new rules and regulations have recently been issued or are pending. For example, the tax guidelines for external trust funds were only published by the Internal Revenue Service on March 3, 1988, and the final rules of the NRC on decommissioning had not been issued by as late as May 11, 1988. Rather than deciding this very complex issue on the basis of only one electric utility's testimony, Mr. Turner testified that a more thorough discussion and investigation could be achieved with the input of all three utilities. Mr. Turner, therefore, recommended that the Commission address this issue in a generic proceeding with the objective of formulating a uniform statewide policy on decommissioning funding. In the present case, the Public Staff recommended that the Commission accept CP&L's methodology and costs subject to full review and modification in a generic proceeding.

On cross-examination, counsel for CUCA questioned Mr. Turner about approving the Company's requested decommissioning expenses prior to the generic proceeding. Mr. Turner responded that decommissioning costs should be considered in this general rate case since the Harris plant was now on line. While other decommissioning methods and external funding may increase revenue requirements, more information and other participants would be available in a later generic proceeding.

In view of the decommissioning testimony presented, the Commission notes that the 30-Year Entombment method for decommissioning nuclear plants proposed by CP&L, while acceptable to the NRC, is not the method chosen by the great majority of utilities in the country, nor is it the method its own consultant has recommended to other clients. With respect to the method of funding the decommissioning revenues collected, the Commission is concerned on the one hand about the lesser financial security that CP&L's internal funding method provides but on the other about the higher revenue that external funding would require. Clearly, these questions pertaining to decommissioning costs are quite complex. While the Commission takes judicial notice of the recently published federal regulations bearing on these questions, including publication of the NRC's final rule of General Requirements for Decommissioning Nuclear Facilities in the Federal Register on June 27, 1988, it is aware of the fact that the final NRC regulations had still not been published when witnesses on decommissioning prepared written testimony and presented oral testimony in this case. We also note that no party in this proceeding objected to a generic proceeding on decommissioning. While decommissioning costs for the Harris plant are proper charges to be considered in this case, the technical and financial questions raised are germane as well to the decommissioning of other nuclear units of CP&L as well as to those of the other major electric utilities under this Commission's jurisdiction. Therefore, based upon the foregoing and all other evidence of record, the Commission finds and concludes that CP&L's proposed decommissioning charges should be approved at this time; provided, however, that such matters shall be subject to full review and modification during the course of future proceedings to be held in this regard. It is noted that the Public Staff has filed with the Commission a Petition in Docket No. E-100, Sub 56, requesting a generic hearing on nuclear decommissioning costs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

Three witnesses testified on the issues of the appropriate capital structure to employ for ratemaking purposes, the embedded cost rates of long-term debt and preferred stock, and the cost of common equity. The Company presented the testimony of Dr. James H. Vander Weide. The Department of Defense (DOD) sponsored the testimony and exhibits of Dr. John Legler. The Public Staff presented the testimony and exhibits of George T. Sessoms, Jr., Director of the Economic Research Division of the Public Staff.

The following table presents the final positions of each party which presented testimony on the capital structure issue.

	CP&L	DOD	Public Staff
Long-Term Debt	47.00%	47.47%	48.57%
Preferred Stock	8.00%	7.91%	7.43%
Common Equity	45.00%	44.62%	44.00%
TOTAL	100.00%	100.00%	100.00%

Company witness Vander Weide adopted the capital structure and embedded cost rates found in the pre-filed testimony of Company witness Bradshaw. According to the testimony of witness Bradshaw, the Company requested the Commission to employ a pro forma capital structure. The pro forma capital structure was estimated by adjusting the Company's actual capital structure at June 30, 1987, for changes anticipated to occur through March 1988. The embedded cost rates of debt and preferred stock, which were developed in the same way as the capital structure ratios, were estimated to be 8.62% and 8.72%, respectively.

DOD witness Legler testified that he was opposed to the use of a hypothetical or normalized capital structure without good reason for departing from the Company's actual capital structure. He pointed out that it makes little sense to calculate the embedded cost rates to second decimal place accuracy, and then apply these rates to a grossly rounded capital structure. He observed that any differential between the postulated and actual costs of debt and preferred stock would flow to common equity thereby effectively raising or lowering the return on equity.

In his pre-filed testimony Dr. Legler used the pro forma capital structure developed by CP&L (without rounding the ratios). He testified that it could be updated when the actual capital structure was known. However, Dr. Legler did not actually update the capital structure.

Witness Legler estimated the embedded cost rates of CP&L's debt and preferred stock to be 8.61% and 8.52%, respectively. As with the capital structure, he recommended that the embedded cost rates be updated, but did not perform the update.

In its brief filed on July 13, 1988, the DOD takes the position that the Company's actual capital structure and its actual embedded cost rates for long-term debt and preferred stock at March 31, 1988, are the appropriate capital structure and cost rates to be used for purposes of this proceeding.

Public Staff witness Sessoms recommended that the Commission employ the actual capital structure and embedded cost rates for long-term debt and preferred stock at March 31, 1988. He testified that this was the latest known and actual quarter ending capital structure and was calculated from the balance sheet of CP&L as reported to the financial community.

During cross-examination, witness Sessoms further testified that the actual capital structure which he recommended included $48,248,000 of pollution control bonds held by a trustee. Mr. Sessoms noted that as of January 1, 1987, CP&L began including this debt as part of its long-term debt on the balance sheet for financial reporting purposes in compliance with a recommendation

arising from a FERC compliance audit. The actual capital structure also included the effect of FASB #90 which resulted in a retained earnings write-down of $31,815,000 at March 31, 1988. It was the opinion of witness Sessoms that both the pollution control bonds held by a trustee and the effect of FASB #90, which are included on the Company's published financial statements, affect the investor's perception of financial risk and the cost of capital. Therefore, he maintained that the actual capital structure was appropriate to employ for ratemaking purposes.

The actual embedded cost rates at March 31, 1988, for debt and preferred stock were 8.62% and 8.75%, respectively, according to his testimony.

Based upon the foregoing and all other evidence of record presented in this regard, the Commission concludes that the appropriate capital structure and the appropriate embedded cost rates for use in this proceeding are as follows:

Item	(000's Omitted)	Ratios (%)	Embedded Cost Rate (%)
Long-Term Debt	2,646,504	48.57	8.62
Preferred Stock	405,118	7.43	8.75
Common Equity	2,397,683	44.00	-
TOTAL	5,449,305	100.00	-

This is the actual capital structure of CP&L at March 31, 1988. As such, it reflects the actual debt and equity capital cost of CP&L and is a reasonable capital structure for an electric utility such as CP&L at this point in time. To allow CP&L its requested capital structure would provide higher revenues than are required, which as stated by Dr. Legler, would ultimately flow to common equity investors thereby effectively increasing the return on common equity. Finally, the Commission notes that the basis of CP&L's requested capital structure was the Company's estimate of its capital structure at March 31, 1988. The embedded cost rates approved in this proceeding are the Company's actual rates as of March 31, 1988.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witness Vander Weide, DOD witness Legler, and Public Staff witness Sessoms.

To determine his recommended cost of common equity of 13.5%, Company witness Vander Weide relied upon the results of the discounted cash flow (DCF) method, the risk premium method, and his study of economic conditions.

It was the opinion of Dr. Vander Weide that the DCF was the single best method for use in determining the required return on common equity. His DCF method resulted in a cost of common equity of 12.0% when applied to CP&L. Dr. Vander Weide also employed the DCF method to obtain a cost of equity for a group of comparable risk electric utilities. His DCF estimate for the group of comparable companies was 13.2%. The risk premium method employed by Dr. Vander Weide resulted in a cost of equity estimate within the range of 14.0% to 15.0%.

Dr. Vander Weide employed a quarterly version of the DCF model. To determine the dividend in the dividend yield component of this DCF model, the quarterly dividend in the S&P Stock Guide of March 1988 was compounded as assumed in his model. The resulting dividend was then divided by the average of the high and low stock prices each month for the three-months ending April 1988 and adjusted downward by 5% to account for flotation costs. The growth component was taken directly from the I/B/E/S report of April 1988 which is a summary of analysts' projections. The adjusted dividend yield was then added to the growth rate to arrive at a cost of equity estimate of 12.0% for CP&L and 13.2% for the comparable group.

Dr. Vander Weide was asked several questions on cross-examination about the quarterly compounding adjustment and the flotation cost adjustment included in his DCF model.

Concerning the quarterly compounding adjustment, Dr. Vander Weide testified that the basis for employing the quarterly DCF model is that investors receiving quarterly dividends can reinvest those dividends and thereby increase their investment returns. However, he agreed that a current investor of CP&L can reinvest the quarterly dividend received from C&PL in an alternative investment. Further, he stated that if investors of CP&L do reinvest in the Company they are providing CP&L with additional equity which the Company is able to use to finance additional utility plant. However, it was the opinion of Dr. Vander Weide that the Company could not earn the rate of return on this new plant until the Company's next rate case. Dr. Vander Weide agreed that his version of the quarterly DCF model causes the result to be approximately 30 basis points (.30%) higher than an annual DCF model.

The flotation cost adjustment employed by Dr. Vander Weide in the DCF model consisted of a 5% downward adjustment to the average market price. He testified that the 5% adjustment was for two types of costs incurred when issuing new shares of common equity. First, CP&L incurs issuance expenses such as underwriter fees, legal, printing, and registration expenses equal to approximately 3% of the equity issued. Second, he opined that for large equity issues there is likely to be a decline in the market price which he termed market pressure. For market pressure, he assumed a 2% adjustment.

Under cross-examination, Dr. Vander Weide explained that the 3% adjustment for issuance expenses was made to allow the Company the current carrying cost of issuance expenses which he contended have never been recovered. Dr. Vander Weide however could provide nothing more than his opinion to support his contention that CP&L has never been allowed the opportunity to recover these expenses in the allowed return. With respect to market pressure, Dr. Vander Weide could not say over what period of time the market price of a stock would drop due to market pressure. He testified that he did not study market pressure specifically for CP&L. Yet, he agreed that the effect of his market pressure adjustment alone in his DCF calculation would cause a $5.1 million annual increase in CP&L's North Carolina retail revenue requirement. It was the opinion of Dr. Vander Weide that allowing a current carrying cost on flotation expenses, which he contended had been unrecovered beginning in 1947, would not constitute retroactive ratemaking.

Although Dr. Vander Weide testified that it was necessary to adjust the DCF model to account for quarterly compounding and flotation costs, he could

not identify what portion of his final recommendation of 13.5% was necessary to account for these two adjustments.

Dr. Vander Weide's risk premium result of 14.0% to 15.0% was determined by adding a four to five percentage point risk premium to a 10.0% expected yield on CP&L's debt issues. The risk premium, or difference between the return on equity vs. the return on bonds, was determined by Dr. Vander Weide's own studies of historical stock vs. bonds returns combined with the analyses of other studies. In response to cross-examination, Dr. Vander Weide read an excerpt from FERC Order No. 489 (as contained in the Federal Register, Volume 53, Number 24, page 3355) which identified several problems with employing the risk premium approach. The FERC Order specifically addressed three problems. First, the relationship between utility bonds and all industry bonds has probably changed due to events such as OPEC, Three Mile Island, and Chernobyl. Second, the historical relationship between debt and equity securities changed in 1979 when the Federal Reserve Board changed its policies. Third, common stock and bond returns comprise a variety of components such as anticipated and unanticipated inflation, default risk, duration rate risk, business risk, call protection, liquidity risk and purchasing power risk, and as economic conditions change, so does the impact of different risk components. Dr. Vander Weide also acknowledged that several of the risk premium studies which he used as support defined risk premium as the difference between equity returns and government securities. Dr. Vander Weide's risk premium studies compared the difference in equity returns and corporate bonds.

Department of Defense witness Legler employed three methods or techniques to determine his recommended return on common equity.

The first method he employed was the discounted cash flow (DCF) method. He performed a DCF analysis for CP&L specifically and also a DCF analysis for a group of single A rated electric utilities. Dr. Legler employed the annual version of the DCF model.

Witness Legler's CP&L-specific DCF resulted in a cost of common equity range of 12.3% to 12.8%, based upon a projected dividend yield of 8.3% (using average CP&L stock prices) and an expected growth rate of 4.0% to 4.5%. Witness Legler relied on three considerations to determine the 4.0% to 4.5% growth rate. One, he presented evidence for selected historical ten-year time periods during which dividend growth ranged from 4.66% to 5.06%. Two, he employed a retention of earnings or "plowback" ratio. This estimate of 4.3% dividend growth was derived by multiplying Value Line's estimate of CP&L's return on equity of 14.5% (adjusted by .5%) times his estimate of CP&L's retention of earnings equal to 30.0% (14.5% x 30.0% = 4.3%). Three, he cited that Value Line and Salomon Brothers projected a 4.0% dividend growth for CP&L.

Dr. Legler's DCF analysis for the group of A rated electric utilities resulted in a cost of common equity range of 11.6% to 11.7%. Witness Legler testified that he would judge CP&L to be of about average risk in comparison to the group of single A rated electrics. On cross-examination, he testified that investments in companies of equal risk require equal returns.

The second method employed by witness Legler was the risk premium method. The results of his risk premium analysis indicated a cost of equity estimate of 10.9% to 11.1% considering a more recent historical period and a cost of equity

estimate of 13.3% to 13.6% over a longer historical period. In his opinion, the risk premium method, if used at all, should be used in conjunction with other methods when estimating the cost of equity. He testified that he used the risk premium as a check on the other methodologies in this case.

The third method was the comparable earnings method. Witness Legler derived a cost of common equity of 11.90% for CP&L and 12.33% for the group of A rated electrics using a forward-looking comparable earnings analysis.

Dr. Legler testified, in the absence of announced intentions by CP&L to have a public offering, that flotation costs are hypothetical and he recommended that no adjustment be made to the cost of common equity capital to reflect an allowance for such costs.

Based on his studies, witness Legler determined that the cost of common equity to apply in this proceeding was within the range of 12.5% to 13.0%. He placed primary reliance on the DCF method. As previously noted, his DCF analysis led to a result of 12.3% to 12.8% for CP&L specifically and 11.6% to 11.7% for the group of A rated electric utilities. Witness Legler recommended that CP&L should be allowed a 12.75% return on common equity.

Public Staff witness Sessoms recommended that CP&L should be allowed the opportunity to earn a 12.04% annual return on common equity. To determine the investor return requirement on common equity, Sessoms relied upon the results of his DCF studies. He employed the annual version of the DCF model.

The DCF result for CP&L specifically indicated an investor return requirement of 11.7% to 12.3% based upon a dividend yield of 8.2% to 8.3% and an expected growth rate of 3.5% to 4.0%. The DCF result for a group of electric utilities which exhibited risk measures similar to those exhibited by CP&L indicated an investor return requirement of 11.8% to 12.4% based upon a dividend yield of 8.8% to 8.9% and an expected growth rate of 3.0% to 3.5%. From these ranges, he concluded that the investor return requirement on CP&L's common equity was 12.00%.

Witness Sessoms also calculated a factor to add to the investor return requirement which would allow CP&L the opportunity to recover the cost of issuing new shares of common stock publicly. First, he determined the average annual cost which CP&L had incurred over the ten year period 1978-1987 associated with public issuances. Then he divided this cost by CP&L's total common equity at December 31, 1987 to obtain a factor of .04%. He testified that this factor of .04% was the appropriate factor to add to CP&L's investor return requirement of 12.00% in order to allow the Company the opportunity to recover the costs associated with the public issuances of its common stock based on its known and actual costs.

Witness Sessoms also testified that the DCF calculations of Dr. Vander Weide contained two adjustments which were inappropriate. First, he testified that the quarterly compounding adjustment simply recognizes the additional return which will be realized by an investor who receives a dividend quarterly and reinvests the dividend in the Company. He pointed out that CP&L ratepayers should not be required to pay rates designed to provide a return to investors on CP&L dividends reinvested in an alternative investment. Further, he pointed out that even if investors elected dividend reinvestment in CP&L,

the Company can then use those funds to invest in plant assets which will earn an additional return. Second, Mr. Sessoms disagreed with the flotation cost adjustment made by Dr. Vander Weide within his DCF model. He testified that Dr. Vander Weide had put forth absolutely no evidence concerning any market pressure experienced by CP&L. Further, it was his opinion that even if market pressure occurs, it is an investment risk from which utility shareholders should not be protected by this Commission. With respect to the issuance expense adjustment of Dr. Vander Weide, he testified that the basis of Dr. Vander Weide's adjustment rests on an unsubstantiated claim that CP&L had not been allowed recovery of issuance expenses incurred since 1947. In contrast, Mr. Sessoms testified that his flotation cost adjustment assumes nothing with respect to past Commission treatment of issuance expenses.

The major difference in the application of the discounted cash flow method among the witnesses is with respect to the timing of dividend payments. As previously stated, Dr. Vander Weide uses the quarterly version of the model which provides for four dividend payments a year. Mr. Sessoms and Dr. Legler employ the annual version of the model where it is assumed that investors receive one dividend a year at the end of the year. The quarterly version of the model will result in a higher estimated cost of equity assuming the necessary data used to implement the models are the same. On the surface it would seem that Dr. Vander Weide's approach is better since it is well known that utilities under most circumstances do pay dividends four times a year. It is the opinion of Dr. Legler and Mr. Sessoms, however, that the context in which the model is used and other factors that are involved must be considered. Further, when these considerations are taken into account, it is their view that the annual version of the model provides the more acceptable estimate of the cost of equity.

First, we must consider that the discounted cash flow model is intended to estimate investors' expected return on equity. Thus, we must ask which of the two versions of the model comes closest to what investors would use themselves. Clearly, the annual version of the model is computationally easier to use. The version of the model used by Dr. Vander Weide as shown on page 22 of his testimony requires that the estimate of the cost of equity be found using a sophisticated iterative procedure. (Tr. Vol. 22, p. 153). The Commission believes that it is highly doubtful that investors actually use this version of the model. Further, it was pointed out during Dr. Vander Weide's cross-examination that published DCF estimates available to investors frequently use the annual version of the model. (Tr. Vol. 22, p. 153). To the extent that investors are influenced by these estimates or implicitly adopt them as their own is evidence that the annual version of the model forms the basis of these estimates. Dr. Vander Weide believes that investors use the quarterly model, but offered no direct support for his position other than to argue that if investors did not use the quarterly version of the model there would be arbitrage opportunities around ex-dividend dates and no such opportunities have been observed. Studies may not have observed these opportunities, but they may exist. (Tr. Vol. 22, p. 155). We would not conclude, however, that if they are observed that this necessarily means that investors are using the annual version of the model.

Most importantly, however, dividends that are reinvested during the year will earn a return thereby increasing the annual return to the investor. Moreover there is no requirement that utility stock investors reinvest their

dividends in the common stock of the utility. Alternatively, they may be reinvested elsewhere such as in a bank. Since these reinvested dividends, whether invested internally or externally, would earn a return, clearly, it is not necessary that utility ratepayers provide an additional return on such funds.

For the reasons generally set forth by Mr. Sessoms and Dr. Legler, the Commission, based upon the foregoing and the entire evidence of record, concludes that the annual version of the DCF model should be used for purposes of this proceeding.

Dr. Vander Weide's version of the DCF model explicitly provides for a flotation cost adjustment. This is accomplished by adjusting the price variable in the DCF model. Dr. Vander Weide used a 5% adjustment factor which includes 3% for issuance costs and 2% for market pressure. Taken separately, these percentages might be considered reasonable based on studies performed by Dr. Legler and other authors of published articles on the subject cited by Dr. Vander Weide. But as discussed in Dr. Legler's testimony the market pressure component is transitory, not necessarily positive, and to the extent it exists is only applicable to the externally raised equity.

Dr. Vander Weide's approach to the issuance cost adjustment basically amounts to providing an equity return on the Company's accumulated issuance expense during roughly the last 40 years. (Tr. Vol. 22, p. 153). Essentially, this treats the accumulated issuance costs as a perpetual equity investment like any other equity investment. Thus, Dr. Vander Weide is of the opinion, and correctly so if the Commission adopts this approach, that whether or not the Company intends to issue common stock in the future is irrelevant.

The Commission believes that Dr. Vander Weide's approach is inappropriate for the following reasons.

First, Dr. Vander Weide's approach assumes that the Commission has never provided any recovery for issuance costs. Clearly, there is no documentation to support this claim.

Second, Dr. Vander Weide's approach assumes that market pressure was present on all past issues. As shown in Dr. Legler's Schedule 15, such is not the case.

Therefore, for the reasons generally set forth by Dr. Legler, the Commission concludes, based upon the foregoing and the entire evidence of record, that no adjustment for flotation cost, including an adjustment for market pressure, is appropriate in this case. Specifically, no evidence was introduced tending to show that CP&L intends to issue new common stock in the near term. To the contrary, the testimony of CP&L's witness Smith reveals that the Company does not intend to issue new common stock in the next two to three years. (Tr. Vol. 8, pp. 85 and 86). In the absence of plans to issue new common stock in the near term, the Commission concludes that an allowance for flotation cost based upon the evidence of record is not justified for purposes of this proceeding. The issue of whether to allow issuance costs as part of the return on common equity will be determined on a case-by-case basis depending upon the evidence in each proceeding. Where warranted on a factual

basis, the Commission may find it appropriate to allow reasonable financing costs as part of the equity return.

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 impartial judgment and guided by the testimony of expert witnesses and other evidence of record. Whatever return is allowed must balance the interest of the ratepayers and investors and meet the test set forth in G.S. 62-133(b)(4):

> "...(to) enable the public utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors."

The 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 impartial judgment to ensure that all parties involved are treated fairly and equitably.

The Commission, based upon the foregoing and all other evidence of record, concludes that the reasonable rate of return for CP&L to be allowed on its common equity capital is 12.75%. Combining this with the appropriate capital structure, and cost of debt and preferred stock heretofore determined yields an overall rate of return of 10.45% to be applied to the Company's 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 12.75% allowed herein is consistent with competent, material, and substantial evidence offered in this proceeding. That evidence indicates that interest rates have increased slightly since the Company's last general rate case Order in August 1987, when CP&L was allowed a rate of return on common equity of 12.63%. Furthermore,

economic and market conditions are also slightly less favorable now than they were at the time we issued our Order in Docket No. E-2, Sub 526. In addition, no party appealed the rate of return on common equity of 12.63% allowed by the Commission in that docket.

The Commission believes that the rate of return on common equity of 13.5% requested by the Company is clearly excessive, while the rate of return on common equity of 12.04% recommended by the Public Staff is too conservative. Therefore, it is the judgment of the Commission, after weighing the conflicting testimony offered by the expert witness, that the reasonable and appropriate rate of return on common equity for CP&L is 12.75% as recommended by DOD witness Legler. The equity return proposed by Dr. Legler approximates the midpoint of the range of estimates proposed by witnesses Vander Weide and Sessoms. 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). We have followed these principles in good faith in exercising our impartial 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 determination of rate of return in one case is not res judicata in succeeding cases. Utilities Commission v. Power Co., 285 N.C. 377, 395 (1974). The proper rate of return on common equity is "essentially a matter of judgment based on a number of factual considerations which vary from case to case." Utilities Commission v. Public Staff, ____ N.C. ____ (No. 108A87, issued July 28, 1988, p. 12). Thus, the determination must be made in each case based on the evidence presented (and the weight and credibility thereof) in each case.

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 we 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 herein 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. 24

The Commission has previously discussed its findings and conclusions regarding the fair rate of return 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 537
STATEMENT OF OPERATING INCOME
Twelve Months Ended March 31, 1987
(000's Omitted)

Item	Present Rates	Approved Increase	Approved Rates
Operating revenues	$1,482,299	$134,819	$1,617,118
Operating revenue deductions			
Fuel and purchased power	293,533	-	293,533
Other O&M expenses	509,611	-	509,611
Depreciation	176,771	-	176,771
Taxes other than income	81,552	4,341	85,893
Income taxes	99,362	50,391	149,753
Total	1,160,829	54,732	1,215,561
Operating income before adjustments	321,470	80,087	401,557
Interest on customer deposits	(577)	-	(577)
Harris deferred costs	(16,825)	-	(16,825)
Net operating income	$ 304,068	$ 80,087	$ 384,155

SCHEDULE II
CAROLINA POWER & LIGHT COMPANY
North Carolina Retail Operations
Docket No. E-2, Sub 537
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended March 31, 1987
(000's Omitted)

Item	Amount
Investment in electric plant	
Electric plant in service	$4,869,311
Net nuclear fuel	133,271
Accumulated depreciation	(949,412)
Accumulated deferred income taxes	(489,978)
Net investment in electric plant	3,563,192
Allowance for working capital	
Materials and supplies	85,722
Other rate base additions and deductions	(9,756)
Investor funds advanced for operations	38,067
Total	114,033
Original cost rate base	$3,677,225
Rates of return	
Present Rates	8.27%
Approved Rates	10.45%

SCHEDULE III
CAROLINA POWER & LIGHT COMPANY
North Carolina Retail Operations
Docket No. E-2, Sub 537
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended March 31, 1987
(000's Omitted)

Item	Capitalization Ratio (%)	Original Cost Rate Base	Embedded Cost (%)	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	48.57	$1,786,028	8.62	$153,956
Preferred stock	7.43	273,218	8.75	23,907
Common equity	44.00	1,617,979	7.80	126,205
Total	100.00	$3,677,225		$304,068
	Approved Rates - Original Cost Rate Base			
Long-term debt	48.57	$1,786,028	8.62	$153,956
Preferred stock	7.43	273,218	8.75	23,907
Common equity	44.00	1,617,979	12.75	206,292
Total	100.00	$3,677,225		$384,155

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 25 AND 26

The evidence regarding these findings of fact concerning rate design is in the testimony and exhibits of Company witness Edge, Public Staff witness Turner, CIGFUR II witness Phillips, and Department of Defense witness Lim.

Percentage Increases and Rate of Return

Company witness Edge testified that the Company's rate design objective is to move toward uniform 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 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 14.99% each; increase rates for the large general service customer class by 11.77%; increase rates for the sports field lighting class by 11.72%; increase rates for the street lighting class by 2.88%; increase rates for the area lighting class by 0.58%, and no increase for the traffic lighting class.

Public Staff witness Turner recommended increasing the rates by customer class in such a way that the rates of return for each customer class would move toward or remain within 10% plus or minus of the overall N.C. retail rate of return. He proposed to increase rates for the residential, small general service, large general service and traffic lighting customer classes by the same percentage for each class; increase rates for the area lighting class and street lighting class each by 2.4 percentage points more than the percent increase adopted for the overall N.C. retail rates; and no increase for the sports field lighting class.

CIGFUR II witness Phillips proposed increasing rates for each customer class in such a way that any deviation between the rate of return for a given customer class and the overall N.C. retail rate of return would be reduced by 50%.

DOD witness Lim proposed that rates be increased for each customer class in such a way as to equalize rates of return between classes over time. He recommended that care be taken to ensure that the impact of any single increase to a given customer class be reasonable.

The Commission is of the opinion that for purposes of this proceeding the rates should be increased by the same percentage for all customer classes, except the sports field lighting class should be increased by one half the percentage increase adopted for the other customer classes. In such a manner, the resulting rates of return for the various customer classes will be more nearly equal based on the summer/winter peak and average cost allocation methodology, and the rates of return for the residential, small general service, large general service and traffic signal classes will all be maintained within 10% plus or minus of the overall N.C. retail rate of return without any unusually large increase for any customer class.

Large General Service

The Company proposes to continue using three declining blocks in its demand charge and a single block energy charge for large general service. The Company proposed that the percentage increase applied to each rate block in the demand charge be varied as part of the phased in revision of the single block demand charge approved in the last general rate case.

DOD witness Lim proposed that there be five rate blocks in the demand charge instead of three, and that the five rate blocks be based on the actual voltage levels of the service rather than the size of the demand as proposed by the Company. The Company contends that the three rate blocks do recognize the different voltage levels at which customers receive service, with the largest customers typically served off the transmission lines, the smallest customers typically served off the distribution lines, etc. The Company contends that demand charges based on voltage levels might encourage customers to specify transmission level voltage requirements when applying for service even when their actual needs can be supplied by distribution level voltage requirements. The Commission continues to believe the same as it ruled on this issue in the Company's last general rate case that the rate blocks should be based on size of demand as proposed by the Company.

DOD witness Lim contended that the base fuel factor contained in the energy charge reflected the systemwide average line losses and not the different line losses between jurisdictions or between rate classes within each jurisdiction or between service voltage levels within each rate class. He contended that the fuel factor, and therefore the energy charge, should reflect the difference between line losses at each voltage level. The Commission is not persuaded that the additional complexity which would be introduced into the fuel charge calculations under the DOD proposal would be justified by any benefits, particularly in view of the complexities already involved in the fuel cost calculations.

CIGFUR witness Phillips proposed that any rate increases for large general service be applied to the demand charges and not to the energy charges. CIGFUR also contended that higher voltage level customers should receive greater Service Voltage Discounts in their demand and energy charges than lower voltage level customers. The Commission is of the opinion that those concerns have already been adequately addressed under the Company's proposals as discussed above and as discussed elsewhere herein regarding cost allocation methodology.

Miscellaneous

The following rate design changes were proposed by the Company and were not opposed by any party in this proceeding.

(a) Revise the "Additional Charges" provision in each rate schedule to reflect current riders for income tax, fuel charges and EMFs.

(b) Increase the charges for three phase service in the residential and small general service rate schedules from $6.25 to $9.00.

(c) Increase the basic customer charges in each rate schedule as follows:

	Old Rate	New Rate	Increase
RES	$6.65	$6.75	1.8%
RES-TOU	9.75	9.85	1.0%
SGS, MGS, CSG & CSE	10.00	12.00	20.0%
LGS, LGS-TOU	450.00	500.00	11.1%

(d) Limit the availability of rate schedule SGS to customers with contract demands of generally 30 kW or less. Rates are designed to eliminate separate demand charges.

(e) Add new rate schedule MGS for customers with contract demands generally greater than 30 kW but less than 1000 KW who were previously served under rate schedule SGS. Rates are designed with a separate hopkinson type demand charge.

(f) Add new rate schedule SI for customers with seasonal and intermittent service who were previously served under rate schedule SGS. Availability will be limited to customers with contract demands of 30 kW or more.

(g) Withdraw seasonal and intermittent service Rider 5 to applications received after the date of this Order. Rider 5 customers with contract demands of 30kW or more will be serviced under rate schedule SI. Rider 5 customers with contract demands of less than 30 kW will be served under rate schedule SGS. The Company also proposes a plan to transfer existing Rider 5 customers to schedule SGS or schedule SI as appropriate.

(h) Withdraw closed rate schedules RFS and AHS for rural farm service and apartment house service respectively. The few remaining customers on the schedules will generally be served under rate schedule SGS.

(i) Increase the rates for closed rate schedules CSG and CSE by 10 percentage points more than the increase proposed for the SGS class in order to facilitate the transfer of customers to the alternative rate schedules.

(j) Revise the "contract period" provisions in rate schedules SGS-TOU and LGS in order for the line extension charges to be compatible with the charges stated in Line Extension Plan E.

(k) Increase the power factor adjustment charge from $0.30 to $0.40 per KVAR in rate schedules SGS, LGS and LGS-TOU, and in the service regulations.

(l) Revise the "voltage discount" provisions in rate schedules LGS and LGS-TOU in order to clarify when a customer qualifies for a discount.

(m) Decrease the number of kwh attributed to each type of traffic signal based on the study conducted pursuant to the Commission's Order in the last rate case in Docket No. E-2, Sub 526.

(n) Increase the minimum charge in rate schedule TSS from $10.00 to $12.00.

(o) Increase prices for 12000 lumen and 38000 lumen retrofit sodium vapor units (by 12.2% and 13.9% respectively) in rate schedule ALS exclusive of price changes proposed for the other units.

(p) Increase prices for 12000 lumen and 38000 lumen retrofit sodium vapor units (by 15.3% and 17.2% respectively) and for 2500 lumen incandescent units (by 21.1%) in rate schedule SLS, and increase prices for comparable 12000 lumen retrofit sodium vapor units in rate schedule SLR, exclusive of price changes proposed for the other units.

(q) Increase the connection and disconnection charges in rate schedule SFLS from $10.00 to $12.00.

(r) Close Standby and Supplemental Service Rider 7 to additional customers. Future customers will be served on Backup and Supplemental Service Rider 66.

(s) Increase charges in Rider 7 from $1.15 to $1.30, from $0.85 to $1.00, or from $1.40 to $1.60, depending upon the amount of parallel generation used by the customer.

(t) Revise Highly Fluctuating and Intermittent Load Rider 9 to be compatible with new rate schedules SGS and MGS.

(u) Increase charges in Curtailable Load Rider 58 for use during an economy curtailment by 0.6% to 1.0%.

(v) Withdraw Standby and Supplemental TOU Service Rider 61. No customers are on this rider.

(w) Add new Backup and Supplemental Service Rider 66 for customers with less than 50,000 kW backup requirement.

(x) Add new Federal Income Tax Rider 2 in order to refund overcollections on and after January 1, 1988, as a result of the reduced tax rates specified in the Tax Reform Act of 1986.

(y) Increase the charges in Line Extension Plan E by up to 6.8% for overhead extensions and by up to 15.9% for underground extensions.

(z) Revise the general service regulations to: (1) increase service charges for new connections from $14.00 to $15.00; (2) increase returned check charges from $7.00 to $9.50; and (3) revise the "Suspension of Billing Under Agreement at Customer Request" procedures in order to include procedures formerly covered in Rider 5. Rider 5 is being withdrawn.

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 and modified herein.

Filing of Rate Schedules

The Commission's final Order in Docket No. E-2, Sub 544, 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 544, will be issued jointly with this Order in Docket No. E-2, Sub 537, and the rate schedules filed in response to the Order in Docket No. E-2, Sub 544, and this Order in Docket No. E-2, Sub 537, 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 544, will supersede those comparable rate schedules filed in response to this Order in Docket No. E-2, Sub 537. Therefore, the Commission concludes that any rate schedules filed in response to the Commission's Order in Docket No. E-2, Sub 544, may be substituted for the comparable rate schedules filed in response to this Order in Docket No. E-2, Sub 537, 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 537.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

The evidence supporting this finding of fact is found in Company witness Bradshaw's testimony, Commission Orders, and Company filings in Docket No. E-2, Subs 537 and 526, and Docket No. M-100, Sub 113.

The Company in its cost of service determination based its level of income tax expense on a 34% federal income tax rate (FIT) and a 7% state income tax rate (SIT). These rates became effective on January 1, 1988, and January 1, 1987, respectively. No party objected to the use of these income tax rates and therefore, the Commission finds it appropriate to use these rates in its calculation of income tax expense.

Because the Company's current rates include an income tax expense based on a 40% federal income tax rate and a 6% state income tax rate, Company witness Bradshaw estimated in his additional direct testimony that the Company had overcollected its income tax expense for the period January 1, 1988, to the present by approximately $20,500,000. However, as discussed in Finding of Fact No. 17, the Company has received a recent private letter ruling from the IRS and based in part on that ruling, the Commission has adopted the Public Staff's recommendation to use the per books balance of accumulated deferred income tax. This change affects the calculation of the income tax overrecovery. The Commission, therefore, in its Order of July 22, 1988, requested that the Company file a recalculation of its income tax overcollection.

On July 27, 1988, CP&L filed the recalculated tax information requested by the Commission. The Company estimated the 1988 provision for refund of the difference between a 40% FIT rate and a 34% FIT rate to be $24,113,349. From this the Company deducted $2,276,781 which represents an overrefund of the 1987 refund provision of the difference between a 46% FIT rate and a 40% FIT rate. This results in a net overcollection of $21,836,568 excluding interest.

On August 2, 1988, the Public Staff filed its comments upon review of CP&L's computations as required by the Commission. In its comments, the Public Staff states that it would be inappropriate to offset the 1988 refund amount by

the overrefund of $2,276,781. Also, on August 3, 1988, the Attorney General filed his comments joining the position of the Public Staff in this matter.

On August 3, 1988, CP&L filed its response to the above-mentioned comments stating that the true-up is proper and should be offset against the 1988 Tax Reform Act (TRA) provision in determining the proper amount of refund due to the change in tax rates.

The Commission concludes that it is appropriate to offset the 1988 refund amount of income tax expense overcollection by the overrefund of the 1987 income tax expense overcollections. Accordingly, this net overcollection of $21,836,568 plus interest of $1,734,187 calculated at the rate of 10% per annum should be refunded to the customers employing a decremental rate rider for a period of 12-months. Following the termination of that rider, the Company shall file a report with the Commission reflecting the amount of the tax overcollection and the amount refunded.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

From the standpoint of economics and public acceptance, it has long been recognized in public utility regulation, when increases in rates are required, that smaller gradual or periodic increases are much more preferable and advantageous than are larger less frequent, or abrupt, increases in rates. Therefore, the Commission believes, given the level of the overall rate increase approved herein in conjunction with the 6.97% overall increase in rates which was allowed on August 5, 1987, that CP&L should be required to implement the instant rate increase through use of a rate moderation plan.

The propriety of rate moderation becomes more evident when one considers that much of the impact of the 6.97% rate increase granted in August of 1987 is yet to be reflected in consumer bills. The initial impact of the August 1987 rate increase was offset almost in its entirety for a period of approximately one year due to refunds associated with fuel cost overrecovery and income tax expense overcollection. Further refunds associated with fuel cost overrecovery during the twelve-month period ending March 31, 1988, and income tax expense overcollection during the period January 1, 1988 through August 4, 1988, will dampen the combined impact of the 1987 rate increase and the increase approved herein. This dampening effect will continue for a period of one year.

The rate moderation plan, adopted for the instant rate case and separate from any of the above mentioned refund plans, presented below will moderate the initial impact of the rate increase on consumers by segmenting it into three distinct uniform phases. By spreading the impact of the increase into three phases beginning with an initial increase of 3.03% followed by additional annual increases of 3.03% in calendar year 1989 and 3.04% in calendar year 1990, residential, commercial, and industrial consumers will be given an enhanced opportunity to incorporate the effect of this increase in the cost of electric energy into their current and future consumption and budgetary decisionmaking processes. As a result, the Commission is hopeful that every consumer will be placed in a more tenable position from which to cope with this necessary, although burdensome, increase in the cost of electric energy.

The Commission, for reasons set forth herein, has determined that CP&L's annual cost of providing electric utility service to its North Carolina retail

customers exceeds the level of revenue it is now authorized to collect through rates charged for its sales of service by $134,819,000. Accordingly, the Commission has granted the Company a $134,819,000 rate increase. To the extent that the impact of this rate increase is effectuated through use of a rate moderation plan, action must be taken to insure that both the Company and its customers are treated fairly. Since rate moderation requires that less than the full amount of the impact of the rate increase be reflected in consumer bills initially, some provision must be made to compensate the Company for losses it would otherwise sustain.

In order to facilitate the Commission's objective of achieving rate moderation while minimizing its total economic impact on both the Company and its customers, it is the Commission's belief that this goal can best be accomplished through use of certain funds currently classified on the Company's balance sheet as accumulated deferred income taxes. The level of accumulated deferred income taxes used in the Commission's rate moderation plan, when expressed in terms of gross revenue impact, has been set equal to the revenue increase granted herein; i.e., $134,819,000.

Deferred income taxes are derived as a result of use of "normalization" as opposed to "flow-through" accounting for the income tax effect of timing differences between the period(s) in which certain transactions enter into the determination of pre-tax accounting income (i.e., income for financial reporting and ratemaking purposes) and the period(s) in which those same transactions enter into the determination of taxable income (i.e., income on which the firm's actual income tax liability is based). Timing differences arise for many different reasons. However, the specific deferred income taxes used by the Commission for rate moderation are limited solely to deferred income taxes arising from timing differences related to differences between the book basis and the tax basis of depreciable property, including differences attributable to the repair allowance provisions of the Internal Revenue Code. It is clear from the late-filed exhibit of CP&L witness Bradshaw that the level of deferred income taxes available from this source for use in rate moderation is adequate. Based upon the Commission's understanding of the Internal Revenue Code's normalization requirements it does not appear that the Commission is constrained from use of these funds in this manner. To the extent required, the Company may accelerate the amortization of residual unprotected deferred income taxes (i.e., deferred income taxes not subject to Internal Revenue Code normalization requirements) so as to compensate for the loss of amortization of deferred income taxes used in rate moderation. Such accelerated amortization should not exceed the level of amortization reflected in the test-year cost of service. Parenthetically, it is noted that the Commission continues to be a strong proponent of comprehensive interperiod income tax allocation (i.e., income tax normalization) and its action in this regard should not be construed to signal a departure from such a point of view. CP&L should, therefore, continue to provide for deferred income taxes on all material timing differences in a manner consistent with the provisions of this Order.

In summary, the Commission has determined that CP&L should be required to implement the rate increase approved herein through use of a rate moderation plan; that the rate moderation plan should incorporate three uniform, distinct phases; and that certain funds classified on the Company's balance sheet as

deferred income taxes should be used for this purpose. The table presented below illustrates the impact of this plan as envisioned by the Commission.

ILLUSTRATION OF THE EFFECT OF
COMMISSION REQUIRED RATE MODERATION PLAN

(000'S OMITTED)

Description	Impact of Rate Moderation Initially	Year 2	Year 3	Total
Amount of increase required each year	$44,939	$44,940	$44,940	$134,819
Percent increase required each year over present rates	3.03%	3.03%	3.04%	9.10%
Cumulative percent increase over present rates	3.03%	6.06%	9.10%	9.10%
Rate increase impact deferred each year (expressed as a percent of present rates)	6.07%	3.04%	-	-
Rate moderation funds amortized (expressed in terms of gross revenue impact)	$89,880	$44,940	-	-

Based upon the foregoing and all other evidence of record, the Commission finds and concludes that CP&L should be required to implement the rate increase approved herein through use of a rate moderation plan. Said plan, which is to be developed and filed for Commission approval by CP&L, is to be consistent with the foregoing and all other findings and conclusions of the Commission as set forth herein. The rate moderation plan is to be effectuated through the use of decremental rate riders. Such rate riders are to be uniform to the extent possible. Therefore, deferred income taxes to be used for this purpose are to be assigned to the various customer classes based upon energy usage (i.e., kWh consumption).

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Power & Light Company shall be, and hereby is, authorized to adjust its electric rates and charges effective August 5, 1988, so as to produce an increase in gross annual revenues from its North Carolina retail operations of $134,819,000 based upon the test-year level of operations; provided, however, that this rate increase shall be implemented through use of a rate moderation plan. Said plan shall be developed by CP&L and shall be consistent with the Commission's findings and conclusions as set forth herein under Evidence and Conclusions for Finding of Fact No. 28.

2. That within five (5) working days after the date of this Order, Carolina Power & Light Company shall file with the Commission five (5) copies of its rate schedules and service regulations designed to produce the increase in revenues set forth in decretal paragraph 1 herein in accordance with the guidelines set forth in Appendix A attached hereto. Further, said filing shall provide for a rate moderation plan as required in decretal paragraph 1. The

rate schedules as required herein shall be accompanied by computations showing the level of revenues which will be produced by the rates for each rate schedule and shall clearly reflect the revenue impact of rate moderation. These rate schedules and rate moderation plan shall be effective August 5, 1988.

3. That within ten (10) working days after the date of this Order, Carolina Power & Light Company 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 peak and average cost allocation methodology adopted herein, including the minimum system technique, and adjustments to allocation factors reflecting power agency buyback percentages, power agency reserve capacity, and normalization of power agency actual entitlement energy.

4. That CP&L shall refund to its customers, in the form of a rider, the deferred fuel savings and interest totaling $15,324,000 associated with Harris 1 pre- and post-commercial operations over a 12-month period beginning with the effective date of this Order.

5. That the Company's schedule of depreciation rates as set forth in Appendix B attached to this Order is hereby approved.

6. That at the time the Company reaches a settlement with Westinghouse as to the NSSS cancellation claim, the Company shall file a report with the Commission and with the Public Staff detailing the settlement.

7. That the Company shall inform the Public Staff and the Commission, on an ongoing basis, of the status of the Westinghouse NSSS claim.

8. That the Company shall file a report with the Commission and the Public Staff, on a semiannual basis, detailing transfers and other changes to the cost of the abandoned Harris and Mayo units.

9. That effective with the AFUDC rate applied for the latter half of 1988, the Company shall cease to exclude pro-forma income tax savings associated with JDITC from the AFUDC rate. The deferred income tax component of the AFUDC rate should be calculated by applying the combined State and Federal income tax rate to the interest component calculated by use of the appropriate regulatory formula.

10. That CP&L shall refund its estimated overcollection of income taxes from January 1, 1988, through August 4, 1988, due to the change in the effective federal income tax rate from 40% to 34% and in the state income tax rate from 6% to 7%. This overcollection of $21,836,568, together with interest associated with such refund in the amount of $1,734,187, shall be refunded in the form of a rider to be effective for a 12-month period beginning the effective date of this Order. Following the termination of this rider, CP&L shall file a report with the Commission reflecting the amount of tax overcollection and the amount refunded.

11. 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 methodologies:

(a) summer/winter peak and average including minimum system technique;
(b) summer/winter peak and average excluding the 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 a general rate application.

12. That Carolina Power & Light shall file with the Commission five (5) copies of annual jurisdictional cost-of-service studies based on its end-of-year financial statements not later than 120 days after the end of the 1988 study year and each year thereafter. Such studies shall utilize the summer/winter peak and average cost allocation method, including the minimum system technique.

13. That all of the land originally purchased for the Shearon Harris project shall be included in rate base until further order of the Commission; and that the Commission's investigation into CP&L's land requirements and the planned disposal of excess land, if any, at the Shearon Harris nuclear plant site in Docket No. E-2, Sub 333, should be, and hereby is, continued; and the investigation shall be consolidated within CP&L's next general rate case and the Company, the Public Staff, and the Attorney General shall specifically address issues relating thereto, as hereinabove provided, in the context of that next general rate case.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of August 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Tate, Concurring in Part and Dissenting in Part
Commissioner Cook, Dissenting in Part

APPENDIX A

CAROLINA POWER & LIGHT COMPANY
DOCKET NO. E-2, SUB 537
GUIDELINES FOR DESIGN OF RATE SCHEDULES

(A) Hold the extra charges and miscellaneous service charges at the same levels proposed by the Company, except as follows:

(a) Increase service charges for reconnections during normal business hours from $14.00 to $15.00
(b) Increase service charges for reconnections during nonbusiness hours from $30.00 to $35.00

(B) Determine the amount of rate schedule revenues and other revenues, respectively, which are necessary to produce the overall revenue requirements established by the Commission in this proceeding.

(C) Increase the rate schedule revenue for each rate schedule by the same percentage in order to produce the total rate schedule revenues determined in step (B), except as follows:

(a) Increase the rate schedule revenues for the Sport Field Lighting rate schedule by 0.5 times the percentage increase used for the other rate schedules.

(D) 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 (C), except as follows:

(a) Hold the basic customer charge for each rate schedule at the level proposed by the Company.
(b) Maintain the $0.01 per kWh differential between summer and nonsummer energy charges in Residential rate schedule RES.
(c) Maintain revenue neutrality between comparable TOU rate schedules and non-TOU rate schedules.
(d) Increase the individual prices proposed by the Company for the lighting rate schedules (except Sport Field Lighting) by the same percentage.

(E) 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
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CAROLINA POWER & LIGHT COMPANY
APPROVED DEPRECIATION ACCRUAL RATES
(INCLUDES NET SALVAGE)

Production Plant/Unit	Approved Depreciation Accrual Rate
GROUP #1	
Asheville #1	0.03122
Asheville #2	0.02981
Roxboro #1	0.03012
Roxboro #2	0.03378
Roxboro #3	0.02827
Roxboro #4	0.02658
Mayo #1	0.02822
TOTAL GROUP #1	0.02850

GROUP #2	
Cape Fear #1	0.03831
Cape Fear #2	0.04149
Cape Fear #5	0.04012
Cape Fear #6	0.04320
Lee #3	0.03853
Robinson #1	0.03789
Weatherspoon #3	0.03990
Sutton #3	0.04382
TOTAL GROUP #2	0.04129
GROUP #3	
Lee #1	0.07256
Lee #2	0.05744
Sutton #1	0.07186
Sutton #2	0.10249
Weatherspoon #1	0.03905
Weatherspoon #2	0.07917
TOTAL GROUP #3	0.07382
TOTAL FOSSIL STEAM	0.03428

NOTE: Fossil Steam rates include 5% negative salvage for FERC Accounts 311 and 312 and 5% positive salvage for FERC Account 316.

Appendix B
Page 2 of 3

CAROLINA POWER & LIGHT COMPANY
APPROVED DEPRECIATION ACCRUAL RATES
(INCLUDES NET SALVAGE)

Production Plant/Unit	Approved Depreciation Accrual Rate
NUCLEAR UNITS	
Robinson #2	0.055489
Brunswick #1	0.033840
Brunswick #2	0.034859
Nuclear Excluding Harris	0.039716
Harris #1	0.028503
TOTAL NUCLEAR	0.031949
HYDRO UNITS	
Blewett	0.012712
Tillery	0.013470
Walters	0.015958
Marshall	0.013392
TOTAL HYDRO	0.014140

OTHER UNITS	
Cape Fear	0.036170
Weatherspoon	0.037664
Lee	0.036694
Sutton	0.035294
Roxboro	0.034283
Robinson	0.034267
Blewett	0.038196
Morehead	0.036448
Darlington	0.039200
Wilmington	0.038781
TOTAL OTHER	0.037589

NOTE: Nuclear rates include 5% negative salvage for FERC Accounts 321 and 322 and 5% positive salvage for FERC Account 325. Hydro and Other Production rates include 0% salvage.

Appendix B
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CAROLINA POWER & LIGHT COMPANY
APPROVED DEPRECIATION ACCRUAL RATES
(INCLUDES NET SALVAGE)

	NON-PRODUCTION PROPERTY	Approved Depreciation Accrual Rate
350	Land Rights	0.01336
352	Structures & Improvements	0.02241
353	Station Equipment	0.02008
354	Towers & Fixtures	0.02749
355	Poles & Fixtures	0.05181
356	Conductors & Devices	0.02912
359	Roads & Trails	0.01643
	TOTAL TRANSMISSION	0.02699
360	Land Rights	0.04622
361	Structures & Improvements	0.03020
362	Station Equipment	0.03391
364	Poles, Towers & Fixtures	0.04698
365	OH Conductors & Devices	0.04271
366	Underground Conduit	0.01877
367	Underground Conduit & Devices	0.02913
368	Line Transformers	0.02687
369	Services	0.02935
370	Meters	0.04804
371	Installation on Customer Premises	0.07663
373	Street Lighting & Signal	0.03617
	TOTAL DISTRIBUTION	0.03725

389	Land Rights	0.01410
390	Structures & Improvements	0.01891
391	Office Furniture & Equipment	0.04453
392	Transportation Equipment	0.06718
393	Stores Equipment	0.01641
394	Tools, Shop and Garage	0.02403
395	Laboratory Equipment	0.07518
396	Power Operated Equipment	0.03475
397	Communication Equipment	0.04937
398	Miscellaneous Equipment	0.02464
	TOTAL GENERAL	0.04951

COMMISSIONER TATE, CONCURRING IN PART AND DISSENTING IN PART: I concur with the Commission except as to Finding of Fact No. 10 and the Conclusions therefor.

Although the Majority takes 27 pages to explain their reasons for finding imprudence in Field Change Requests, the gist of it can be stated more simply:

(1) There were 57,500 Field Change Requests during the construction of Harris.
(2) This is too many and some must have been imprudent.
(3) Seventy-nine percent of the FCRs were due to regulation.
(4) ERGO, the remaining 21% were imprudent.

There is no evidence that any percentage of the FCRs was due to CP&L's imprudence. While there is evidence that mistakes were made and some work had to be redone, imprudence cannot be assessed by the arbitrary choice of a percentage.

The monetary disallowance is likewise strained. To arrive at the $8.66 million cost of "imprudence" in engineering FCRs and the $2.58 million due to construction FCRs, Canatom and the Majority rely on a number of Company studies during the construction of Harris. The Majority criticizes these studies but uses them as a basis for the disallowance nonetheless. Using various estimates, the calculation goes like this:

57,500 = Total FCRs

1. 56% of total FCRs are assigned to engineering (Multiply 56% times total FCRs and carry to Line 1A)	
1 A. Engineering FCRs	/ 32,200/
2. 21% of FCRs were not due to regulation (Multiply 21% times 1A and carry to line 2A)	
2 A. "Imprudent" Engineering FCRs	/ 6,762/
3. 35 engineering hours rework were required for each engineering FCR (Multiply 35 times 2A and carry to Line 3A)	
3 A. Engineering rework hours	/ 236,670/
4. Each engineering hour cost $36.60 (Multiply Line 3A times $36.60 and carry to Line 4A)	
4 A. Total cost of engineering FCR "Imprudence"	/$8,662,122/

The same methodology is used to determine construction "imprudence".

The mathematical total is neatly calculated but the inputs are all speculative at best. Imprudence should not be speculative; it should be proved; PROBATUM NON EST.

Sarah Lindsay Tate, Commissioner

COMMISSIONER RUTH E. COOK, DISSENTING IN PART: I respectfully dissent from the decision of the Majority in this case to treat $180.6 million of the cost of common facilities at the Harris Plant as cancellation costs for ratemaking purposes. I would treat the cost of the common facilities as excess capacity, thereby saving the retail ratepayers of North Carolina as much as $123 million over the next 10 years. The decision of the Majority to amortize the recovery of these costs over a period of 10 years will require CP&L's current retail ratepayers in North Carolina to pay rates higher than they need be.

I disagree strongly with the statement of the Majority that:

> "Treatment of CP&L's investment of $180,558,000 in these common buildings for ratemaking purposes as cancellation costs will serve to equitably apportion the risk and burden of those costs between CP&L's shareholders and its ratepayers."

By what logic does the Majority arrive at this decision? Why should ratepayers share in the "risk and burden" of an investment of $180 million? Why ask ratepayers to buy a pig in a poke? The decision was not theirs and the excess facililties provide them no benefits.

In my opinion, the common facilities in question are clearly excessive and should be treated for ratemaking purposes as excess plant or plant held for future use rather than as abandoned plant. Had the Majority adopted this more traditional ratemaking treatment, the rate increase granted to CP&L in this case would have been reduced by approximately $12.3 million on an annual basis.

In deciding this case, I subscribe to the holding of the North Carolina Court of Appeals in Utilities Commission v. Telephone Co., 15 N.C. App. 41, at 47 (1972) that:

> "We find no merit in appellant's contention that exclusion from the rate base of the value of property held by a public utility for future use amounts to confiscation of its property, as we know of no constitutional principle which requires a holding that a public utility be entitled to a return on that portion of its property not yet devoted to public use, nor do we perceive why present rate payers should be required to pay any part of the costs of the utility incurred solely for the benefit of future generations of rate payers...." (Emphasis added).

There can be no logical or equitable justification for requiring today's ratepayers to pay for costs associated with excess plant held for future use. Those costs should be recovered by CP&L from its ratepayers only when and if the excess plant becomes "used and useful." I do not believe, and obviously

the Majority concurs, that the common facilities in question are "used and useful" today. Furthermore, there is no clear evidence that these facilities will ever become "used and useful." To wit, the current fuel handling building, vastly overbuilt for present use, is housing facilities that do not require the seismic and other protections that are necessary for fuel handling.

Until such time as the common facilities in question become "used and useful," I believe it only fair that CP&L's shareholders, rather than current ratepayers, should be required to shoulder the risk and burden of the costs of such excess plant. It is my firm belief that ratepayers should pay for what they use at the time they use it--and not before.

Furthermore, my position that the common facilities in question are excess plant is in fact supported by the following statements taken from the Majority opinion:

> "There is no question that the buildings in question are significantly larger than necessary to serve only Harris Unit 1. The fuel handling building at the Harris Plant is the largest building of its type in the United States and probably the world. To appreciate the size of CP&L's fuel handling building, one need only realize that it could hold two buildings the size of the Washington Monument inside it and still have additional space for 50 rooms the size of the Commission's hearing room. In addition, the evidence in this case indicates that most fuel handling buildings for twin-unit nuclear plants are generally no more than 100 to 200 feet in length as compared to the length of 600 feet for the fuel handling building at the Harris Plant. Furthermore, the second spent fuel pool is not even connected at this time. In adopting this quantification for cancellation costs, we recognize the testimony to the effect that some space in the fuel handling building has been put to uses, such as office space and a firehouse, for which the Company would have otherwise had to build other buildings. However, the other buildings that the Company would have built for these uses would not have been as expensive and this has been taken into account in Canatom's quantification."
> (Citations deleted).

Therefore, for all of the reasons set forth above, I vigorously dissent from the decision of the Majority in this case to require current ratepayers to pay for excess plant costs that are clearly not "used and useful" today.

I wish to also comment on one other matter. In my opinion, the consulting fees incurred by CP&L in this case for non-company expert witnesses are clearly excessive. Those consulting fees total more than $4.9 million. I found much of the testimony offered by CP&L's outside consultants to be, at best, merely cumulative and repetitive to the testimony offered by CP&L's own very able management employees and, at worst, showing little or no knowledge of the specifics of the Harris Plant. In short, CP&L has engaged in overkill through its employment of outside consultants in defending itself against the Public Staff's prudence audit. CP&L's ratepayers should not be required to pick up the entire tab for excessive consulting fees. In my opinion, CP&L's shareholders should very willingly pay their fair share of these expenses and I hereby call upon the Company to voluntarily do so. In my opinion, these

consulting fees should be shared equally between CP&L's shareholders and its ratepayers.

In all other respects, I concur in the Majority opinion.

Date: August 5, 1988 Ruth E. Cook, Commissioner

DOCKET NO. E-2, SUB 544

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Power & Light Company for Authority to Adjust Its Electric Rates and Charges Pursuant to G.S. 62-133.2	)	ORDER APPROVING FUEL CHARGE ADJUSTMENT

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Wednesday, July 13, 1988, at 9:30 a.m.

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

APPEARANCES:

For Carolina Power & Light Company:

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

and

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

For Carolina Utility Customers Association, Inc.:

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

For Carolina Industrial Group for Fair Utility Rates:

Alan J. Miles, Bailey & Dixon, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865

For The Public Staff:

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

For The North Carolina Department of Justice:

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

BY THE COMMISSION: On May 4, 1988, Carolina Power & Light Company (CP&L or the Company) filed a Motion requesting ". . . that the Commission schedule an expedited hearing for the Company's 1988 fuel adjustment proceeding and issue its final order simultaneously with the order in the Company's pending general rate case, Docket No. E-2, Sub 537."

On May 9, 1988, the Attorney General filed Notice of Intervention pursuant to G.S. 62-20. On May 10, 1988, the Attorney General's Objection To CP&L's Motion for Expedited Hearing and Simultaneous Orders was filed. On that same date the Attorney General also filed its First Data Request. On May 10, 1988, the Public Staff filed its response to CP&L's Motion for Expedited Hearing and Simultaneous Orders.

On May 11, 1988, the Company filed its application pursuant to G.S. 62-133.2 and N.C.U.C. Rule R8-55 as amended by the Commission's April 27, 1988 Order. In its application, CP&L proposed a fuel factor of 1.305¢/kWh. This factor is an increment of 0.029¢/kWh over the 1.276¢/kWh factor adopted by the Commission in general rate case, Docket No. E-2, Sub 537. At the hearing, CP&L updated its fuel factor to 1.306 ¢/kWh.

On May 16, 1988, CP&L filed its Response to Attorney General's Objection to CP&L's Motion for Expedited Hearing and Simultaneous Orders.

Carolina Industrial Group for Fair Utility Rates (CIGFUR-II) filed its Petition to Intervene on May 17, 1988.

On May 18, 1988, the Commission issued its Order Scheduling Hearing and Requiring Public Notice.

Carolina Utility Customers Association, Inc. (CUCA) filed its Petition to Intervene and Protest on May 18, 1988. The Petitions of CIGFUR and CUCA were allowed by Commission Orders issued on May 24, 1988. The intervention of the Public Staff is recognized pursuant to NCUC Rule R1-19(e).

The matter came on for hearing at the time and place shown above. CP&L presented the testimony and exhibits of David R. Nevil, Manager - Rate Development and Administration in the Rates and Service Practices Department. The Public Staff presented the testimony and exhibit of Benjamin R. Turner, Jr., Engineer, Electric Division and the testimony, appendix and exhibits of Thomas S. Lam, Engineer, Electric Division. No other witnesses appeared at the hearing.

Affidavits of publication were filed by the Company showing that public notice had been given as required by the Commission's Order.

Based upon the verified application, the evidence adduced at the hearing, and the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT

1. Carolina Power & Light Company is duly organized as a public utility company under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. CP&L is engaged in the 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, 1988, normalized and adjusted for certain changes through June 1988.

3. CP&L's fuel procurement and power purchasing practices were reasonable and prudent during the test period.

4. The adjustments proposed by the Company for weather and by the Public Staff for customer growth in the test year are reasonable and appropriate for use in this proceeding.

5. Use of a normalized generation mix and the latest North American Electric Reliability Council Equipment Availability Report 1977-1986 nuclear capacity factors for boiling water (BWR) and pressurized water (PWR) reactors is reasonable and appropriate 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 61.93% which is appropriate for use in this proceeding.

6. The use of updated unit fuel prices is reasonable and appropriate for purposes of this proceeding.

7. The fuel factor which is reasonable and appropriate for use in this proceeding is 1.279¢/kWh (excluding gross receipts tax). This results in a fuel factor which is .003¢/kWh higher than the 1.276¢/kWh fuel factor approved in Docket No. E-2, Sub 537, CP&L's current general rate case, by Order also issued this date.

8. An Experience Modification Factor (EMF) decrement of .094¢/kWh is reasonable and appropriate for use in this proceeding.

9. An EMF interest refund factor of .013¢/kWh is reasonable and appropriate for use in this proceeding. This decrement is based on an interest liability to the ratepayers of $3,024,243.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

G.S. 62-133.2 provides that the Commission shall hold a hearing within 12 months after an electric utility's last general rate case Order 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 12-month period ending March 31 as the test period for CP&L. Thus, CP&L's filing, which was made on May 11, 1988, utilized the 12 months ended March 31, 1988 as the test period in this proceeding. All the prefiled exhibits and testimony submitted by the Company in support of its Application utilized the 12 months ended March 31, 1988, as the test year for purposes of this proceeding.

At the hearing the Company presented and the Public Staff agreed to the use of June 1988 fuel prices for development of the fuel adjustment factor.

The Commission concludes that the test period which is appropriate for use in this proceeding is the 12 months ended March 31, 1988, adjusted for weather normalization, customer growth, generation mix, and certain changes through June 30, 1988.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

NCUC Rule R8-52(b) requires each electric utility to file a Fuel Procurement Practice Report at least once every 10 years, plus each time the utility's fuel procurement practices change. Mr. Nevil indicated 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 another docket. Mr. Nevil further indicated he had been informed by Company personnel in January or February, 1988 that there were no significant changes to that Procurement Practice and it was therefore decided not to update it at that time.

In addition the Company files monthly reports as to the Company's fuel costs under its present procurement practices.

The Commission concludes that CP&L's fuel procurement and power purchasing practices and procedures were reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence on the adjustment to kWh sales due to the effect of weather is found in the testimony of Company witness Nevil.

The Commission is of the opinion that the adjustment proposed by the Company and accepted by the Public Staff to normalize the test year for weather is correct. This adjustment is representative of the method adopted by the Commission in the last general rate case and the last fuel proceeding, Docket No. E-2, Subs 537 and 533, respectively. The Commission, therefore, concludes that the adjustment proposed by the Company and accepted by the Public Staff to

normalize the test year for weather is reasonable and proper for use in this proceeding.

The evidence on the adjustment to kWh sales related to customer growth is found in the testimonies of Company witness Nevil and Public Staff witness Turner.

The Company and the Public Staff presented different adjustments to test year per book kWh sales for additional sales related to customer growth and increased usage. The Company adjustment is 806,422,953 kWh, and the Public Staff adjustment is 954,796,683 kWh. Both the Company and the Public Staff used the same customer growth methodologies that each presented in the general rate case proceeding in Docket No. E-2, Sub 537.

The difference between the Public Staff's customer growth position and the position taken by CP&L lies in the determination of the end-of-period (EOP) level of bills for the residential, small general service, large general service, traffic signal service, and street lighting service rate classes for both the North Carolina and South Carolina retail jurisdictions. There is no difference in the computation of growth related to the wholesale and the North Carolina Eastern Municipal Power Agency jurisdictions.

The calculation method proposed by the Company uses the actual number of customer billings booked in the last month of the test period, in this case the twelve-month period ending March 31, 1988. The Public Staff determined the normalized end-of-period level of bills by using regression analysis to derive an equation which describes the trend in bills over time. This equation is then used to compute the normalized end-of-period level of bills. The advantage of regression analysis, as stated by witness Turner, is that the equation gives weight to the number of bills over a period of time and develops a trend line representative of the growth in bills. His approach is to use data from periods of time which are multiples of 12 months ending with the most recent data available. These data are then used to derive equations which describe the trend in bills over time.

In his analysis, in choosing the equation for each customer class, witness Turner used the highest value of r-square except in the case of the North Carolina retail large general service customer class. In that case he selected the next best value of r-square because there was a sharp rise to 285 customers for two months and then a drop to 280 customers in March 1988. He explained that he was concerned as to whether or not the drop represented a new trend in the opposite direction. Because of this concern, he waited and took three more data points beyond the end of the test period. The results of that regressed data gave a best r-square fit which produced a calculated end-of-period level at March 1988 of 282 bills. This was consistent with the next best equation derived without the additional months of data and confirmed the suspicion that the original data was trending too high.

Witness Turner also noted that the Commission has adopted the use of regression analysis to determine a normalized end-of-period level of customers for various rate schedules in the following proceedings: Docket Nos. E-7, Sub 314; E-7, Sub 338; E-7, Sub 358; E-7, Sub 373; E-7, Sub 391; E-7, Sub 408; E-22, Sub 265; and E-22, Sub 273.

On cross-examination, witness Turner was asked if it would not be appropriate to use the actual number of bills if they were within the 95% confidence interval described by the selected equation. Witness Turner stated that the use of the 95% confidence interval was more appropriate when the equation was used as a predictor of what the level of bills will be in the future. The 95% confidence interval would state whether or not the predicted value was within the normal probability distribution.

Based on the evidence in the record of this proceeding and consistent with applicable Commission rules and regulations, the Commission finds that the use of regression analysis as advanced by the Public Staff in both this proceeding and the Company's current general rate case proceeding, Docket No. E-2, Sub 537, is an appropriate method for use in determining the normalized end-of-period level of customer billings for the residential, general service, traffic lighting, and street lighting customer classes.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

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 customer growth adjustments used by the parties in their calculations. For its nuclear units the Company used a 58.62% nuclear capacity factor, which was based on 70% for Harris 1 and on the five-year industry average capacity factors for PWRs (Robinson 2) and for BWRs (Brunswick 1 and 2), reflected in the North American Electric Reliability Council (NERC) 5-Year Generating Availability Report. The Company essentially followed the method prescribed in NCUC Rule R8-55(c)(1) for establishing the nuclear capacity factors. Witness Nevil testified that CP&L's system nuclear capacity factor was 65.9% for the test year and that the estimated performance for the period ending July 1989 will be approximately 70.7%. The Public Staff incorporated a 61.93% nuclear capacity factor which consisted of a 70% capacity factor for Harris 1 and the NERC Equipment Availability Report 1977-1986 PWR capacity factor for Robinson 2 and BWR capacity factor for Brunswick 1 and 2. These were the same nuclear capacity factors the Public Staff recommended in general rate case Docket No. E-2, Sub 537, which have been adopted by the Commission in that proceeding. The Attorney General, in his brief, also supported the use of the NERC 10-year national average capacity factor.

Commission Rule R8-55(c)(1) provides in part that:

> ... capacity factors for nuclear production facilities will be normalized based generally on the national average for nuclear production facilities as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, adjusted to reflect unique, inherent characteristics of the utility including but not limited to plants two years or less in age and unusual events. The national average capacity factor for nuclear production facilities shall be based on the most recent five-year period available and shall be weighted, if appropriate, for both pressurized water reactors and boiling water reactors.

As the Commission recognized when we recently amended this provision of our rule, it is proper to use national averages as a starting point for normalization as long as proper adjustments are made. Therefore, the Rule

recognizes that adjustments may be made in the normalization process to take into consideration unique, inherent factors which may impact the capacity factor of the utility involved. Based upon past nuclear performance for the CP&L system and national data, the Commission believes that CP&L's nuclear performance during the test year was higher than normal and, therefore, should be normalized. Furthermore, the Commission sees no reason to depart from the capacity factor of 61.93% used in the Company's general rate proceeding, Docket No. E-2, Sub 537, also decided this day, in light of CP&L's immediate past performance and a projection of 70.7% for performance for the 12 months ending July 1989.

The Attorney General introduced cross-examination exhibits pertaining to test year nuclear operations at the Company's Robinson and Harris nuclear plants and correspondence between the Company and the Nuclear Regulatory Commission (NRC). Further, the Attorney General, in his Brief filed in this docket, requests that the Commission remain informed about the safety and efficiency of CP&L's nuclear program. Indeed, the Commission recognizes the importance of a safe and efficiently operated nuclear program and will continue to monitor the nuclear programs of all utilities operating in this State.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Pursuant to NCUC Rule R8-55(c)(1), CP&L witness Nevil presented an exhibit showing nuclear fuel costs based on per unit prices burned during June 1988 for each individual nuclear unit. NCUC Rule R8-55(c)(1) requires that "...fuel costs will be preliminarily established utilizing the methods and procedures approved in the utility's last general rate case...." The Company's recommended method for calculating per unit nuclear fuel prices has never been recommended by CP&L or adopted by this Commission in any CP&L proceeding. Public Staff witness Lam used the method approved by the Commission in the last general rate case and the present general rate case. The Commission is of the opinion that a fuel adjustment proceeding is not a proper venue for a new nuclear fuel cost methodology to be presented. The Commission concludes that the methodology of calculating nuclear fuel prices presented by the Public Staff is reasonable and proper for use in this proceeding. It is the same method used in general rate proceeding, Docket No. E-2, Sub 537. The Commission rejects the proposal by the Company to use a new nuclear fuel price methodology that was not previously adopted in a general rate case proceeding.

The Company filed updated testimony using unit fuel prices as of June 1988, the most recent month for which data is available, to develop its fuel cost. The Public Staff also used burned fuel prices updated to June 1988. The Commission concludes that the unit burned fuel prices for June 1988 as proposed by the Company and accepted by the Public Staff are proper for use in this proceeding.

Other than use of a 61.93% system nuclear capacity factor, the nuclear fuel cost method, and customer growth, the methods utilized by the Company and the Public Staff to calculate the fuel factor in this proceeding are identical and consistent with past Commission practice and, therefore, should be adopted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Based on the foregoing, the Commission concludes that a fuel factor of 1.279¢/kWh is just and reasonable. This factor is .003¢/kWh higher than the base fuel factor of 1.276¢/kWh approved in Docket No. E-2, Sub 537. The calculation of the appropriate fuel factor of 1.279¢/kWh is shown in the following table:

	MWH Gen.	$/MWH	Fuel Cost (000's)
Coal	23,164,776	18.31	$ 424,147
IC	2,660	115.05	306
Nuclear	16,891,324	5.63	95,098
Hydro	716,548	-	-
Purchases: SEPA/COGEN	2,451,211	-	-
Other	284,879	18.29	5,210
Sales	(1,282,732)	16.93	(21,717)
	42,228,666		503,044
Less:			
PA Nuclear $13,021			
PA Coal $19,664			
			32,685
			470,359
Harris Buyback $2,153			
Mayo Buyback $3,725			
			5,878
Fuel Dollars for Fuel Factor			$476,237
MWH for Fuel Factor			37,237,727
FUEL FACTOR ¢/kWh			1.279¢/kWh

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

G.S. 62-133.2(d) 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 prudently 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...

Both Company witness Nevil and Public Staff witness Lam indicated that during the March 31, 1988, test year, CP&L experienced an over-recovery of $22,485,080, which translates into an EMF decrement of .094¢/kWh, excluding gross receipts tax. The Commission therefore concludes that an EMF decrement of .094¢/kWh, excluding gross receipts tax, is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Amended Rule R8-55(c)(5) states as follows:

> Pursuant to G.S. 62-130(c), any overcollection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

The Commission in its Order on Request for Clarification issued June 24, 1988, in Docket No. E-100, Sub 55, of which the Commission takes judicial notice, adopted the methodology advanced by CP&L in the instant docket, which accrues interest on the net overcollection at the end of the test period from the mid-point of the test period to the mid-point of the EMF refund period.

Witness Lam indicated that he had included $3,024,243 of interest, which amounts to a .013¢/kWh decrement. He indicated that a 10% annual rate of interest and the Commission's interest methodology pursuant to its Order on Request for Clarification were used to calculate the amount of interest due ratepayers.

Witness Nevil also stated in his additional direct testimony that he had "...revised Exhibit No. 6 to calculate $3,024,243 of interest using the method approved by the Commission in its Order on Request for Clarification and a 10% interest rate." (Tr. p. 17). Witness Nevil also indicated that 10% could be a little high under current market conditions and asked for the Commission to consider use of a lower rate.

The Commission believes that interest in this proceeding should be calculated using the methodology approved by the Commission in its Order on Request for Clarification and a 10% annual rate of interest. Based upon this calculation, the Commission concludes that the appropriate level of interest on the overrecovery achieved during the test period is $3,024,243 and results in an EMF interest decrement of .013¢/kWh, excluding gross receipts tax.

The Commission further concludes that the EMF decrement of .094¢/kWh and the EMF interest decrement of .013/kWh should be combined to produce a decrement of .107¢/kWh, excluding gross receipts tax.

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 .003¢/kWh increment (excluding gross receipts tax) from the base fuel component approved in Docket No. E-2, Sub 537. Said increment shall remain in effect until changed by a subsequent Order of the Commission in a general rate case or fuel case.

2. That CP&L shall further adjust the fuel component herein by a decrement (excluding gross receipts tax) of .107¢/kWh for the EMF including interest. The EMF is to remain in effect for a 12-month period from the date of this Order.

3. That CP&L shall file appropriate rate schedules and riders with the Commission in order to implement the fuel charge adjustment approved herein not later than five (5) days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of August 1988.

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

DOCKET NO. E-7, SUB 314
DOCKET NO. E-7, SUB 335

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-7, SUB 314
(REMANDED)

In the Matter of
Application by Duke Power Company for Authority to Adjust and Increase its Rates and Charges)

DOCKET NO. E-7, SUB 335
(REMANDED)

In the Matter of
Application by Duke Power Company for Authority to Adjust its Electric Rates and Charges Based Solely on Changes in Cost of Fuel)

ORDER ON REMAND

BY THE COMMISSION: These proceedings involve two cases which have been remanded to the North Carolina Utilities Commission by the North Carolina Court of Appeals and the North Carolina Supreme Court involving Duke Power Company, which are State of North Carolina ex. rel. Utilities Commission v. Kudzu Alliance, 64 N.C. App. 183, 306 S.E. 2d 546 (1983) (Docket No. E-7, Sub 335) and State of North Carolina ex. rel. Utilities Commission v. Conservation Council, 312 N.C. 59, 320 S.E. 2d 679 (1984) (Docket No. E-7, Sub 314).

The Court of Appeals in the Kudzu Alliance case, which involved a fuel clause adjustment proceeding held pursuant to G.S. 62-134(e), held that it was not proper, in the context of a G.S. 62-134(e) fuel cost adjustment proceeding, for the Commission to use a base rate established in a general rate proceeding, the fuel cost component of which was itself derived from a G.S. 62-134(e) proceeding. The Court also held that the Commission could not consider factors other than fluctuations in the cost of fossil fuels in determining the increase or decrease in rates in a fuel clause proceeding and on these grounds remanded the case for such further proceedings as might be necessary in light of two other recent Supreme Court decisions; State of North Carolina ex rel. Utilities Commission v. Public Staff, 309 N.C. 195, 306 S.E. 2d 435 (1983) and State of North Carolina ex rel. Utilities Commission v. North Carolina Textile Manufacturers Association, 309 N.C. 238, 306 S.E. 2d 113 (1983).

In its opinion in the Conservation Council case, the Supreme Court remanded a general rate case to the Commission to determine the reasonableness of Duke Power Company's fuel costs and the proper level of fuel expenses to be included in the Company's rates. The Supreme Court also held that the Commission had erred by including $29,685,371 of allowance for funds used during construction (AFUDC) in Duke's rate base, such amount of AFUDC having been entered on the Company's books after July 1, 1979, but accrued on construction work that occurred prior to that date. On remand, the Commission has been directed to reduce Duke's CWIP expenses by $29,685,371 and to order Duke to make appropriate refunds.

On October 22, 1985, the Commission entered an Order in these dockets on remand entitled "Order Scheduling Hearing and Establishing Procedure."

On November 7, 1985, Carolina Utility Customers Association, Inc. (CUCA), and Great Lakes Carbon Corporation, Intervenors in these dockets, filed a motion for continuance whereby the Commission was requested to enter an Order postponing all scheduled filings and hearings in these dockets until after the conclusion of all appellate proceedings resulting from the various appeals from the "Final Order on Remand Requiring Customer Refunds" entered by the Commission on September 10, 1985, in the similar remand proceeding involving Carolina Power & Light Company.

On December 5, 1985, the Commission entered an Order in these dockets granting the motion for continuance filed by CUCA and Great Lakes Carbon Corporation. The Commission had been advised orally that the other parties to these proceedings on remand supported the motion for continuance. Therefore, the Commission held further proceedings in Docket Nos. E-7, Subs 314 and 335, in abeyance pending resolution of the CP&L appeal.

On July 7, 1987, the North Carolina Supreme Court entered an Opinion affirming the "Final Order on Remand Requiring Customer Refunds" entered by the Commission on September 10, 1985, in Docket Nos. E-2, Subs 391, 402, 411, 416, and 446. State of North Carolina ex rel. Utilities Commission v. CP&L, 320 N.C. 1 (1987).

By letter dated September 9, 1987, CUCA advised Duke and the Commission that CUCA "...will not be a formal party to these proceedings and will take no position on Duke's tentative proposal to the North Carolina Utilities Commission."

On October 26, 1987, Duke Power Company filed a "Proposal for Disposition of Remanded Cases" (Proposal) requesting the Commission to approve the Company's Proposal to offset any refunds that might be due in Docket No. E-7, Sub 314, with regard to CWIP included in rate base against the undercollected fuel expenses that developed from the required fuel reconsiderations in the same and companion dockets, and to make no changes in rates because of the remanded cases.

Attached to Duke's Proposal was an exhibit which showed that the net refund associated with the improper inclusion of CWIP would be $6,936,000 through 1987. The exhibit also showed that $2,416,000 plus a compounding return would be collected in future rates to amortize the unrecovered AFUDC the Company would have been entitled to accrue in lieu of the inclusion of subject

CWIP in rate base. Another exhibit showed that Duke's fuel costs reflect an undercollection of at least $12,176,000 using different capacity factors as required by the Commission's Order of October 22, 1985. Under Duke's Proposal, there would be no refund under the CWIP remand, no additional excluded AFUDC added to the Company's rate base, and no recovery of any fuel cost undercollections.

In the alternative, the Company's proposal requested the Commission to do the following if any party elected to object to Duke's Proposal:

1. Establish a schedule for filing testimony and schedule a hearing to consider the issues in these dockets.

2. Consider evidence of CWIP expenditures incurred by Duke after July 1, 1979, which was not previously included in rate base in Docket No. E-7, Sub 314; and

3. Consider the matter of an appropriate refund based on the erroneous inclusion of AFUDC on pre-July 1, 1979, expenditures in rate base in conjunction with recovery of the undercollection of fuel costs so as to provide for a single rate adjustment.

On November 5, 1987, the Commission entered an Order in these dockets requesting that the parties file comments either in support of or in opposition to Duke's Proposal not later than December 1, 1987. The only parties to file comments with respect to Duke's Proposal were the Public Staff, the Attorney General, and Great Lakes Carbon Corporation. CUCA had previously advised the Commission by the letter of September 9, 1987, that it would not participate in these proceedings on remand.

The Public Staff filed its response to Duke's Proposal on November 6, 1987. The Public Staff calculated that Duke experienced a net overcollection in the amount of $1,237,000 considering both fuel and CWIP refunds rather than the undercollection Duke claimed in its Proposal. However, the Public Staff recognized that future depreciation and return requirements on the imputed unrecovered AFUDC for McGuire and future amortization of imputed AFUDC for Cherokee would offset the fuel cost overcollection it calculated. Since Duke was willing to forego the additional imputed AFUDC related to McGuire and Cherokee, the Public Staff was willing to forego the overcollection it had calculated. The Public Staff agreed with Duke's argument that to refund the overcharge resulting from illegal inclusion of CWIP in rate base and make a surcharge for the undercollected fuel costs and imputed AFUDC would be impractical.

The Public Staff's response also asserted that Duke's Proposal to substitute other CWIP to offset the exclusion of the illegally included CWIP in rate base was contrary to the Supreme Court's directive in Utilities Commission v. Conservation Council, 312 N.C. 59, 320 S.E. 2d 679 (1984), that the Commission order Duke to reduce CWIP expenses by $29,685,371 and "to make appropriate refunds."

The Attorney General timely filed his response, disputing the calculations contained in Duke's Proposal. The Attorney General recognized, as did the Public Staff, that Duke's calculations did not include unrecovered AFUDC costs

related to McGuire; and since Duke was willing to forego those costs, he did not contest Duke's concluding resolution of the remand cases. The Attorney General, in noting that Duke's calculations did not include AFUDC costs, stated that any discussion about offsetting over- or undercollections of future AFUDC costs relating to the Cherokee Station were premature in view of the fact that the Cherokee abandonment matter was before the Supreme Court with oral argument heard on December 7, 1987. The Attorney General does not object to Duke's Proposal (except insofar as he takes the same position as the Public Staff did with respect to substituting CWIP) that there would be no refund under the CWIP remand, no inclusion of the additional AFUDC in the Company's rate base, and no recovery of any fuel cost undercollections.

The Intervenor Great Lakes Carbon Corporation also responded to Duke's Proposal, disagreeing with a number of assumptions used in Duke's calculations. Great Lakes takes the same position as did the Public Staff and Attorney General that substituting CWIP would be unlawful. While Great Lakes disagrees as to the specifics of Duke's Proposal, it does not object to the entry of an Order in these dockets finding that no CWIP or AFUDC associated with the McGuire plant or the Cherokee plant can be included in rate base in the future; that no depreciation or amortization may be claimed on said AFUDC; and that no refund or surcharge is appropriate in these remanded dockets.

None of the other parties to these dockets filed comments either in support of or in opposition to Duke's Proposal.

The Commission has fully considered Duke's Proposal and the responses thereto filed by the Public Staff, the Attorney General, and Great Lakes. Having done so, the Commission is of the opinion, finds, and concludes that no refund or surcharge is appropriate as a result of these remanded cases.

Having found no party objects to Duke's Proposal that no surcharge or refund is appropriate in these dockets, the question of whether substitution of other CWIP to offset the inclusion of illegally included AFUDC related to pre-July 1, 1979, CWIP is lawfully permissible has become moot. A ruling on that issue, therefore, is unnecessary.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke Power Company shall not include additional AFUDC associated with the McGuire plant or cancelled Cherokee plant in rate base in the future and no depreciation or amortization may hereafter be claimed on any imputed AFUDC associated with McGuire or Cherokee.

2. That no refund or surcharge is appropriate in these dockets.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of February 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 434

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 NET FUEL CHARGE RATE REDUCTION

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Monday, May 23, 1988 at 11:00 a.m.

BEFORE: Commissioner Julius A. Wright, Presiding, and Commissioners Robert K. Koger and William W. Redman, Jr.

APPEARANCES:

For Duke Power Company:

Steve C. Griffith, Jr., Senior Vice President and General Counsel and Ronald L. Gibson, Associate General Counsel, Duke Power Company, Post Office Box 33189, Charlotte, North Carolina 28242

For Carolina Utility Customers Association, Inc.:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605

For the Public Staff:

Vickie L. Moir, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For the Using and Consuming Public

For the Attorney General's Office:

Lemuel W. Hinton, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27510
For the Using and Consuming Public

BY THE COMMISSION: On February 26, 1988, the Commission issued an Order providing that this fuel charge adjustment proceeding would be conducted pursuant to the amended Rule R8-55 in effect at the time of the hearing. On February 29, 1988, the Commission issued an Order scheduling Duke Power Company's (Duke or the Company) 1988 fuel charge adjustment proceeding for Monday, May 9, 1988.

On March 9, 1988, Duke filed its application pursuant to G.S. § 62-133.2 and NCUC Rule R8-55 relating to fuel charge adjustments for electric utilities. In its application Duke proposed a net composite fuel factor of 1.1196¢/kWh

(including nuclear fuel disposal costs and excluding gross receipts tax). The 1.1196¢/kWh, according to the Company's application, reflected adjusted test period fuel cost of 1.1822¢/kWh and a 0.0626¢/kWh Experience Modification Factor (EMF) decrement.

On March 11, 1988, the Attorney General filed Notice of Intervention pursuant to G.S. § 62-20. Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene on April 21, 1988. The Petition was allowed by Commission Order issued April 26, 1988. The intervention of the Public Staff is noted pursuant to NCUC Rule R1-19(e).

On May 4, 1988, the Commission issued an order rescheduling the hearing for May 23, 1988, requiring public notice and establishing certain filing dates.

The matter came on for hearing at the time and place shown above. Duke presented the testimony, exhibits and supplemental testimony and exhibits of William R. Stimart, Vice President, Regulatory Affairs. The Public Staff presented the testimony and exhibits of Michael C. Maness, Supervisor of the Electric Section of the Accounting Division and the testimony, appendix and exhibits of Thomas S. Lam, Engineer, Electric Division, filed May 16, 1988. No other witnesses appeared at the hearing.

Affidavits of Publication were filed by the Company showing that public notice had been given as required by the Commission's Order.

Based upon the verified application, the evidence adduced at the hearing, and the entire record in this matter and the Orders in Docket No. E-7, Subs 408, 410 and 417 of which the Commission takes judicial notice, 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 this Commission. Duke is engaged in the business of developing, generating, transmitting, distributing and selling electric power to the public in North Carolina. Duke is lawfully before this Commission based upon its application pursuant to G.S. § 62-133.2.

2. The test period for purposes of this proceeding is the twelve months ended December 31, 1987, normalized and adjusted for certain changes through April 30, 1988.

3. Duke's fuel procurement 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 in the test year are reasonable and appropriate for use in this proceeding. However, the proposal by the Company to annualize customer growth beyond the end of the test period is unreasonable and inappropriate.

5. A normalized generation mix is reasonable and appropriate for purposes of this proceeding.

6. The kWh generation from each nuclear unit 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. The fuel factor which is appropriate for use in this proceeding is 1.1497¢/kWh (excluding gross receipts tax), which reflects a reasonable fuel cost of $423,635,478 for North Carolina retail service. The result is a fuel factor which is .0168¢/kWh lower than the existing base of 1.1665¢/kWh adopted in Docket No. E-7, Sub 408.

9. An Experience Modification Factor (EMF) decrement of .0626¢/kWh is reasonable and appropriate for use in this proceeding.

10. An EMF interest refund factor of .0094¢/kWh is reasonable and appropriate for use in this proceeding. This decrement is based on an approximate interest liability to the ratepayers of $3,460,822.

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 9, 1988, utilized the 12-months ended December 31, 1987, 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, 1987, as the test year for purposes of this proceeding.

The Public Staff utilized a 12-month test period normalized and updated for certain changes through April 30, 1988, for purposes of developing its recommended 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, 1987, adjusted for certain changes through April 30, 1988, a normalized generation mix, and normalized for customer growth, weather, and the Catawba Agreements.

2. The difference between the system fuel costs recommended by the Company and the other parties is largely attributable to the differences between the nuclear capacity factors and fossil fuel costs used by the respective parties in their calculations. For its nuclear units the Company used a 60.51% nuclear capacity factor, which was based on the five year industry average capacity factors for PWRs reflected in the NERC GADS Equipment Availability Report. The Company essentially followed the method prescribed in 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. Witness Stimart indicated that Duke's system nuclear capacity factor was 71% for the test year and that the Company's production simulation model estimated performance for 1988 at approximately 68%. The Public Staff incorporated the 62% capacity factor for all units which was adopted in Duke's last general rate case, Docket No. E-7, Sub 408, and the Company's last fuel adjustment proceeding, Docket No. E-7, Sub 417.

3. 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, 1987. This is reflected in this proceeding in witness 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.

4. The Commission is of the opinion that the adjustments proposed by the Company and accepted by the Public Staff to normalize the test year for weather and customer growth are correct. These adjustments are representative of the methods adopted by the Commission in the Company's last general rate case and the last fuel proceeding, Docket No. E-7, Subs 408 and 417, respectively. In addition, the Company proposed to annualize customer growth beyond the end of the test period. Witness Lam testified that this proposal by the Company double counts customer growth and was not advocated by Duke and thus was not the method adopted by the Commission in the last general rate case, Docket No. E-7, Sub 408. Witness Lam also stated that none of the electric utilities had ever advocated this method previously. The Commission has reviewed the entire record concerning this latter customer growth adjustment that effectively extends the traditional end-of-period adjustment from the end of the test year to the point in time that the Commission's Order is issued. Aside from the fact that this adjustment employs data points beyond the close of the hearing, the Commission is concerned with the propriety of applying such a procedure which, if adopted, would establish a precedent for use in other proceedings that very likely would prove to be counterproductive. For example, consistent application of this concept in a general rate case in most, if not all, instances would be impractical due to the inherent need to identify all related changes in revenues, expenses, and investments up through the close of hearings. This would be an undertaking that, at best, would prove to be unduly burdensome. Based on the foregoing, the Commission concludes that it is inappropriate to adopt this latter customer growth adjustment at this time.

5. A 62% nuclear capacity factor for the purpose of setting rates in this proceeding was proposed by the Public Staff and Attorney General. This is the same nuclear capacity factor adopted by the Commission in Duke's last general rate case, Docket No. E-7, Sub 408 (1986), and in Duke's last fuel adjustment proceeding, Docket No. E-7, Sub 417 (1987). Duke has proposed that the Commission adopt a 60.51% nuclear capacity factor, based on the NERC 5-year average. In its brief, CUCA proposes use of Duke's lifetime composite nuclear capacity factor of 64.3%. Duke's actual system nuclear capacity factor for the test year ended December 31, 1987, was 71%. Based upon past nuclear performance for the Duke system and national data, the Commission believes that Duke's nuclear performance during the test year was abnormally high and, therefore, should be normalized. Commission Rule R8-55(c)(1) provides that

> . . . capacity factors for nuclear production facilities will be normalized based generally on the national average for nuclear production facilities as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, adjusted to reflect unique, inherent characteristics of the utility including but not limited to plants two years or less in age and unusual events. The national average capacity factor for nuclear production facilities shall be based on the most recent five-year period available and shall be weighted, if appropriate, for both pressurized water reactors and boiling water reactors.

As the Commission recognized when we recently amended this provision of our Rule, it is proper to use national averages as a starting point for normalization as long as proper adjustments are made. Therefore, the Rule recognizes that adjustments may be made in the normalization process to take into consideration unique, inherent factors which may impact the capacity factor of the utility involved. In this case, Duke witness Stimart testified that Duke's test year actual nuclear capacity factor was 71%, that Duke's lifetime nuclear capacity factor was 64.3%, and that Duke projected a nuclear capacity factor for 1988 in the range of 68%. All of these nuclear capacity factors are above the NERC five-year average recommended by Duke pursuant to Rule R8-55(c)(1). The Commission is of the opinion that unique and inherent factors exist which justify a refinement of the NERC five-year average in order to establish a normalized nuclear capacity factor for this case. The Commission concludes that Duke's nuclear capacity factor should be normalized based upon the use of a 62% nuclear capacity factor. This is the capacity factor adopted in Duke's last general rate case and in Duke's last fuel adjustment proceeding, and it is the nuclear capacity factor recommended in this proceeding by the Public Staff and Attorney General.

6. Pursuant to NCUC Rule R8-55(d)(4), Duke witness Stimart presented exhibits showing fossil fuel costs based on unit prices burned in the test year. The 1.1822¢/kWh system fuel cost requested by the Company included the test year burned price for coal of 1.687¢/kWh. Witness Lam of the Public Staff recommended using the most recent fuel prices available and incorporated an April 1988, burned price for coal of 1.666¢/kWh in his system fuel factor of 1.1492¢/kWh.

In Docket No. E-7, Sub 408, the Company's last general rate case, the Company proposed, the Public Staff accepted, and the Commission adopted the most recent available burned price for coal. In Duke's last fuel charge

proceeding, Docket No. E-7, Sub 417, Duke recommended a coal cost weighted between contract coal and spot coal. The Public Staff again recommended using the most recent available burned price for coal in the Sub 417 fuel proceeding, which included approximately 18% spot coal in the cost. The Commission accepted the Public Staff's recommendation. Witness Stimart in this proceeding proposes to use the test year ending December 31, 1987, average burned coal cost.

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. As noted in the Commission's Order in Docket No. E-7, Sub 417, witness Lam testified in last year's fuel proceeding that his updated coal cost reflected spot coal as approximately 18% of total purchases. The Company actually purchased approximately 18% of its coal requirements on the spot market during the test period. For the first four months of 1988 Duke has purchased 18% of its coal requirements on the spot market. Accordingly, the Commission concludes that use of April 1988 coal cost is appropriate and that the coal cost of 1.666¢/kWh as recommended by the Public Staff should be used for determining the fuel factor in this proceeding. The Commission notes that the Company's cost of coal has been trending downward for several years and that the burned cost of coal measured on a ¢/MBTU basis adopted in Docket No. E-7, Sub 417, using the same methodology approved herein, significantly matched the achieved burned cost of coal during the test period used in this proceeding. Further, the Commission concludes that the latest unit burned prices should be used in determining the per kWh oil and gas costs in this proceeding.

7. The other two items of difference between the Company and the Public Staff relate to the appropriate level of oil and gas generation and net pumped storage generation. The Public Staff has employed the same methodology to develop normalized oil and gas generation as adopted in previous proceedings. The Company differs from the Public Staff due to the exclusion of 1987 data that reflects negative generation. A review of the record indicates that the Company's oil and gas generation is trending downward and therefore the generation level proposed by the Public Staff is more representative and should be adopted. However, for future proceedings, the Commission requests that the parties review the pricing of oil and gas generation, should said generation be negative over the two-year period used in said proceedings.

The Company has used the same method adopted in the past for net pumped storage generation. No substantial evidence was presented to dispute this method. Therefore, the Commission adopts the Company's net pumped storage generation.

8. Based upon the foregoing, the Commission concludes that a fuel factor of 1.1497¢/kWh is just and reasonable. This factor is .0168¢/kWh lower than the existing base fuel factor of 1.1665¢/kWh approved in Docket No. E-7, Sub 408. The calculation of the appropriate fuel factor of 1.1497¢/kWh is shown in the following table:

	Adjusted Generation Mix (MWH)	Fuel Price $/MWH	Fuel Dollars (000s)
Coal	29,375,320	16.66	489,393
Oil and Gas	5,935	103.79	616
Light Off	-	-	4,138
Nuclear	28,058,938	6.27	175,930
Hydro	1,916,400	-	-
Net Pumped Storage	-314,017	-	-
Purchased Power	529,658	12.81	6,785
Interchange In	434,792	20.12	8,748
Interchange Out	-1,095,796	14.82	(16,240)
Catawba Contract Purchases (including NFDC)	8,862,362	6.96	61,682
TOTAL	67,773,592		731,052
Less: Intersystem Sales	647,390		11,930
Line Loss	4,578,007		
System MWH Sales & Fuel Cost	62,548,195		719,122
Fuel Factor ¢/kWh			1.1497

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. NCGS § 62-133.2(d) 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 prudently 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...

Both Company witness Stimart and Public Staff witness Lam indicated that during the December 31, 1987, test year, Duke experienced an over-recovery of $23,073,069, which translates into an EMF decrement of .0626¢/kWh. There being no evidence to the contrary, the Commission concludes that an EMF decrement of .0626¢/kWh is appropriate for use in this proceeding.

10. The Public Staff was the only party to this proceeding to present a calculation of the interest liability due to the ratepayers pursuant to amended Rule R8-55(c)(5). This section reads as follows:

> Pursuant to G.S. 62-130(e), any overcollection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers

through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

Public Staff witness Maness testified that the appropriate amount of interest to be refunded to the ratepayers is $4,355,194. To determine this amount, he applied an annual interest rate of 10% to the Company's monthly overcollections and undercollections, beginning with the first month of the test period. His calculation extends from the beginning of the test period to the end of the EMF refund period. To calculate the average interest to be accrued during the EMF refund period, Mr. Maness calculated one-half of an annual amount of interest. The Public Staff method also compounds interest annually, at the end of the test period.

The Company, while not presenting a proposed interest refund amount, recommended that the calculation of interest generally begin at the end of the test year. Specifically for this case, Company witness Stimart recommended accruing interest from the effective date of amended Rule R8-55, based on the over-recovery at the end of the test year. He testified that if the Commission calculated interest only from the date of the Commission's amendment of Rule R8-55 (April 27, 1988), it would avoid any question regarding retroactive adjustment of the price.

The Company argues that interest should be calculated beginning after the end of the test period because only at that time is the amount of the over-recovery to be refunded through the EMF known. Mr. Stimart testified that if the calculation of interest during the test period is allowed, it should be calculated on both monthly overcollections and undercollections.

Pursuant to the Commission's recent Order of June 24, 1988, in Docket No. E-100, Sub 55, that adopts said method, the Commission concludes that interest should be calculated on the test period over-recovery from the mid-point of the test period to the mid-point of the EMF period. For this proceeding, the interest calculation should include 18 months and the monthly rate should be the annual rate of 10% divided by 12. Based on this calculation, the Commission concludes that the appropriate level of interest on the over-recovery achieved during the test period is $3,460,822 and results in an EMF interest decrement of .0094¢/kWh.

IT IS, THEREFORE, ORDERED as follows:

1. That effective for service rendered on and after July 1, 1988, Duke shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a .0168¢/kWh decrement (excluding gross receipts tax) from the base fuel component approved in Docket No. E-7, Sub 408; and further that Duke shall adjust the fuel component established herein by decrements (excluding gross receipts tax) of .0626¢/kWh and .0094¢/kWh for the EMF and EMF interest, respectively. The EMF and EMF interest portions are to remain in effect for a 12-month period beginning July 1, 1988.

2. That Duke shall file appropriate rate schedules and riders with the Commission in order to implement the fuel charge adjustments approved herein not later than 10 days from the date of this Order.

3. That Duke shall notify its North Carolina retail customers of the fuel adjustments approved herein by including the "Notice to Customers of Net 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 29th day of June 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Appendix A

DOCKET NO. E-7, SUB 434

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 NET RATE REDUCTION

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order June 29, 1988, after public hearings, approving a fuel charge net rate reduction of $22,120,672 in the rates and charges paid by the retail customers of Duke Power Company in North Carolina. The net rate reduction will be effective for service rendered on and after July 1, 1988. The rate decrease was ordered by the Commission after review of Duke's fuel expense during the 12-month test period ended December 31, 1987, 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.

The Commission's Order will result in a monthly net rate reduction of approximately 60¢ for a typical residential customer using 1,000 kWh per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of June 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-13, SUB 44

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Nantahala Power and Light Company for Authority to Adjust and Increase Its Electric Rates and Charges	)	ORDER ON REMAND AFFIRMING PRIOR ORDERS WITH MODIFICATIONS

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. Finley, 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: On February 1, 1983, Nantahala Power and Light Company ("Applicant", "Company", or "Nantahala") filed an application with the Commission seeking to increase its rates and charges for retail electric service.

The Attorney General, the Public Staff, Jackson Paper Manufacturing Company, and a number of counties, towns, and individuals intervened.

On August 9, 1983, the Commission issued an Order which joined Aluminum Company of America ("Alcoa") and Tapoco, Inc. ("Tapoco"), as parties.

On November 29, 1983, the Commission entered a "Notice of Decision and Order" establishing rates for Nantahala on a stand alone basis and rejecting roll-in.

On December 22, 1983, the Commission issued its "Order Granting Partial Rate Increase" in which it elaborated upon its November 29, 1983, Notice of

Decision and Order. Timely exceptions were filed by various Intervenors. On April 12, 1984, the full Commission issued its "Order Denying Exceptions and Motions for Reconsideration and Further Hearing and Reaffirming 'Order Granting Partial Rate Increase'." Commissioners Douglas P. Leary and Sarah Lindsay Tate dissented from that Order in a separate opinion.

(The Orders of November 29 and December 22, 1983, and the Order of April 12, 1984, will be collectively referred to throughout this Order as "the Orders.")

Intervenors sought review of the Commission's decisions in the North Carolina Supreme Court. On August 13, 1985, the North Carolina Supreme Court issued an Opinion in which it dismissed the appeal of the Jackson Paper Company, but granted the appeals of the other Intervenors. The case was remanded to the Commission.

Nantahala and Alcoa then sought rehearing of the North Carolina Supreme Court's Opinion. The North Carolina Supreme Court denied rehearing by Order in Conference on November 5, 1985. Thereafter Nantahala, Tapoco, and Alcoa appealed to the Supreme Court of the United States, where appeals relating to Nantahala's prior two general rate cases, Docket No. E-13, Sub 29, and Docket No. E-13, Sub 35, were already pending. The United States Supreme Court vacated and remanded the North Carolina Supreme Court's decision in this case based on the United States Supreme Court's decision in Nantahala Power and Light Company v. Thornburg, 476 U.S. ____, 106 S. Ct. 2349 (1986) (hereinafter sometimes "Thornburg").

Before any action on remand was taken by the North Carolina Supreme Court, Alcoa, Tapoco, and Nantahala filed with the Court a motion to affirm the earlier decision of this Commission without further remand. This motion was opposed by the Intervenors.

On August 20, 1986, the North Carolina Supreme Court remanded this case to the Commission with the following directions:

> "This case is remanded to the North Carolina Utilities Commission for further proceedings consistent with this Court's opinion filed herein on 13 August 1985 but not inconsistent with the opinion of the United States Supreme Court in Nantahala Power and Light Company, et al. v. Thornburg et al. No. 85-568, decided 17 June 1986, 476 U.S. ____, 90 L. Ed.2d 943 (1986)"

On September 5, 1986, Nantahala, Tapoco, and Alcoa filed a Motion for Summary Disposition in this docket. On September 24, 1986, the Intervenors filed "Intervenor's Response to Appellees' Motion to Affirm Decision of the North Carolina Utilities Commission", opposing summary disposition and proposing additional hearings.

Oral argument on these matters was held before the full Commission on January 12, 1987. At the argument, counsel for the Intervenors moved that further proceedings in this case be suspended pending further hearings on remand in the Sub 29 and Sub 35 cases. This motion was later reduced to writing and filed on January 21, 1987. Alcoa and Tapoco, jointly, and Nantahala submitted responses to the Intervenors' motion on January 29, 1987.

On April 13, 1987, the parties filed Proposed Orders for the Commission's consideration.

Upon consideration of the entire record in this docket, including the hearings therein and the Orders of November 29 and December 22, 1983, and the Order of April 12, 1984; the decisions of the Commission in Docket No. E-13, Subs 29 and 35, including its decision of November 13, 1987; and the decisions and opinions of the North Carolina and United States Supreme Courts referred to herein, including the decision of the United States Supreme Court in Nantahala Power and Light Company v. Thornburg, the Commission makes the following

FINDINGS OF FACT

1. Nantahala is a duly organized public utility company under the laws of North Carolina, subject to the jurisdiction of this Commission, and holds a franchise to furnish electric power in the western part of the State of North Carolina under retail rates and service regulated by this Commission as provided in Chapter 62 of the General Statutes.

2. Tapoco is a duly organized public utility, holding a franchise granted by this Commission, and is domesticated as such under the laws of North Carolina. It is subject to the jurisdiction of this Commission with respect to retail ratemaking 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 purchase power between Tapoco and Nantahala that differs from the allocation of entitlements and purchase 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. Nantahala Power and Light Company v. Thornburg, 476 U.S. _______, 106 S.Ct. 2349 (1986).

5. The 1962 New Fontana Agreement and the 1971 Apportionment Agreement expired by their own terms on December 31, 1982. (These agreements were the subject of the Docket No. E-13, Subs 29 and 35 proceedings.) The New Fontana Agreement was replaced by the 1983 Interconnection Agreement negotiated independently by Nantahala with the Tennessee Valley Authority (TVA). Power supply agreements between TVA, Alcoa, and Tapoco were negotiated and entered into independently of Nantahala (the "Fontana III Agreements"). All of these agreements are subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission. Pursuant to the decision of the United States Supreme Court in the Thornburg case, this Commission does not have the authority, in setting Nantahala's North Carolina retail rates, to reform or modify or otherwise alter, directly or indirectly, these agreements.

6. Nantahala's North Carolina retail rates should, therefore, be established in this proceeding in recognition of and pursuant to the 1983

Interconnection Agreement executed between Nantahala and TVA, which is subject to the exclusive jurisdiction of FERC.

7. The independent agreements cited above between Nantahala and TVA and between Alcoa, Tapoco, and TVA are being presently investigated by the Federal Energy Regulatory Commission (FERC) with respect to their justness and reasonableness. (FERC Docket No. ER-82-774-000 et al.) The Commission has intervened in these proceedings.

8. If the Federal Energy Regulatory Commission should ultimately modify the foregoing agreements, this Commission will reopen this docket, upon its own motion or upon the motion of any party, to evaluate the impact of the FERC decision upon Nantahala's North Carolina retail rates and to order that any benefits resulting to Nantahala's North Carolina retail customers be flowed through to these customers through Nantahala's retail rates. Accordingly, the rates approved in this docket are provisional rates, subject to further review and modification by the Commission following the final decision of FERC.

9. The Commission is preempted by Federal law from employing any methodology that would reform or modify or otherwise alter wholesale power arrangements subject to the exclusive jurisdiction of FERC, such as the 1983 Interconnection Agreement between Nantahala and TVA. The roll-in methodology advocated by the Intervenors in this proceeding is prohibited by Federal law since it would reform or modify or otherwise alter the 1983 Interconnection Agreement. This methodology is based on the assumption that Nantahala and Tapoco constitute a unified single electric system.

10. (a) It is judicially noticed that FERC has conducted an investigation into whether Nantahala and Tapoco constitute a unified single electric system and has held that they do not. This determination by FERC was sustained by the U. S. Court of Appeals for the Fourth Circuit. Nantahala Power and Light Company v. FERC, 727 F. 2d 1342 (4th Cir. 1984). The nature of the Nantahala and Tapoco electric systems are the subject of investigation by FERC in a proceeding presently before that agency. FERC's determination on this issue is binding on the Commission for purposes of setting Nantahala's retail rates in North Carolina. This Commission cannot make findings on this issue contrary to the findings of FERC.

(b) Therefore, the Commission expressly finds that for purposes of setting Nantahala's North Carolina retail rates in this proceeding, the properties of Nantahala and Tapoco do not constitute a unified single electric system. As found in our Orders in this docket (Finding of Fact No. 9), Nantahala is a stand alone hydroelectric power company which operates its 11 hydroelectric generation stations for the sole benefit of its customers, all of which are in North Carolina, without any obligation to or regard for the TVA or Tapoco hydrostations in North Carolina and Tennessee or for Alcoa's power use in Tennessee. Further, Alcoa receives no power or any other direct benefit from Nantahala's power generation. All of the benefits of the generation from Nantahala's entire hydroelectric system are retained exclusively for the use and benefit of the North Carolina customers of Nantahala, whose entire service is confined to its service area in North Carolina.

(c) Thus, the roll-in methodology advocated herein by the Intervenors and previously utilized by the Commission in prior dockets in setting Nantahala's

retail rates is not appropriate for use in this proceeding since it contravenes the Thornburg decision. Consequently, each finding of fact appearing in our reaffirmed Orders which deals with a proper level of rate base, revenues, and expenses has been determined based upon Nantahala's stand-alone levels of revenues and costs.

11. FERC has exclusive authority over Nantahala's wholesale power arrangements. This Commission cannot substitute its own findings as to these arrangements as a basis to find that Alcoa dominated Nantahala to Nantahala's disadvantage, except to the extent that Nantahala may be entitled to redress from Alcoa or Tapoco or both arising from the FERC's ongoing investigation into the 1983 Interconnection Agreement and the Fontana III Agreement. This Commission therefore reserves its right to pierce the corporate veil between Alcoa, Tapoco, and Nantahala, to the extent that such action would not frustrate the regulatory authority of FERC, solely in order to insure that any relief to Nantahala's North Carolina retail customers arising from the FERC's investigation remains subject to final disposition by the Commission.

12. As a result of the above findings, the Commission has determined that further hearings to consider other ratemaking concepts, which are not a part of the record in this docket, are neither timely nor appropriate and are not in the public interest. The public interest requires a final resolution of this proceeding.

13. Except as modified herein, all of the findings, conclusions, and ordering paragraphs of the Commission's Orders in this docket are reaffirmed.

CONCLUSIONS

For the reasons set forth hereinafter, the Commission is of the opinion, and so concludes, that its Orders in this docket should be reaffirmed except as modified herein.

I. SCOPE OF REMAND

A.

After reviewing the Orders of November 29 and December 22, 1983, and of April 12, 1984, in this docket, the Orders in Sub 29 and Sub 35, including the Order on Remand issued November 13, 1987, and the opinions of the North Carolina Supreme Court and the United States Supreme Court in all of these cases, the Commission concludes that it is required to reaffirm its earlier Orders in this docket, except as modified herein, with further explanation that provides assurance that the Commission will reflect in Nantahala's retail rates any cost reductions in wholesale power or other relief approved by FERC.

The Commission is of the opinion, and so concludes, that its Orders in this docket, as initially written, comply fully with the principles of law enunciated in Thornburg. These Orders establish rates that allow recovery of all of Nantahala's wholesale costs. At the same time, these Orders make provisions for refunds and for reducing the established rates should FERC ultimately reduce wholesale costs in the consolidated FERC docket in which the Fontana III and the 1983 Interconnection agreements are being examined. The Commission determines that the primary holding of the North Carolina Supreme

Court in its opinion reviewing our Orders in this docket was that the Commission had deviated from its Orders in Sub 29 (Remanded) and Sub 35 without sufficient justification and that on remand the Commission should justify this departure or reinstitute roll-in. However, subsequent to the North Carolina Supreme Court's decision, the United States Supreme Court vacated the North Carolina Supreme Court's opinion in this case and also reversed the opinion in Sub 29 (Remanded) and vacated the opinion in Sub 35. Nantahala Power and Light Company v. Thornburg, supra. The Commission would be acting inconsistently with the United States Supreme Court if it tried to reconcile its actions in Sub 44 with actions taken in Sub 29 (Remanded) and Sub 35 that subsequently have been ruled unlawful by the highest court in the land. Additionally, the Commission finds that it examined and carefully considered all evidence offered by the parties when this case initially was heard and that the result it reached in its Orders is correct in light of the evidence presented.

B.

The North Carolina Court's August 13, 1985, Opinion remanding this case to the Commission instructed the Commission to undertake the following:

(1) To address the four issues raised by the Intervenors, namely:

  (a) Whether Tapoco is a North Carolina electric public utility;

  (b) Whether Alcoa is a North Carolina electric public utility;

  (c) Whether the properties of Nantahala and Tapoco constitute a unified single electric system; and

  (d) Whether Alcoa so dominated Nantahala as to require piercing the veil of corporate separateness between them.

(2) To address whether indirect benefits flow to Alcoa resulting from the exclusion of Nantahala from the successor agreement to the NFA, the 1983 Tapoco-TVA Exchange Agreement, and whether the roll-in will "cancel" or "true-up" any such indirect benefits as may be found to enure to Alcoa from this changed circumstance.

State ex rel. Utilities Commission v. Edmisten, 314 N.C. 122, 130, 149-153, 159, 333 S.E.2d 453, 459, 470-72, 475-76 (1985).

In addition the Court, noting the issuance of an ALJ's Initial Decision in a parallel FERC proceeding (FERC Docket No. ER82-774-000, et al), recommended that "the Commission may take the opportunity presented by the remand of this case for further proceedings to evaluate the impact of these decisions upon Nantahala's costs of service." Id. at 164, 333 S.E.2d at 478. The Court found that the Commission had failed adequately to address the relationship between the proceeding before it in this retail rate case (Sub 44) and the parallel proceedings that were then going on (and today continue) before FERC. Although the Commission's prior Orders indicated that it could reopen this proceeding to recognize the results of the FERC investigation, the Court apparently felt that the Commission was not explicit enough or did not provide enough detail as to the manner in which this would be accomplished.

II. RELATIONSHIP OF THIS CASE TO THE SUB 29 AND SUB 35 CASES

The North Carolina Supreme Court has directed the Commission to review its Sub 44 Orders to be certain that they are logically consistent with its earlier Sub 29 and Sub 35 Orders. The Commission believes that its original Orders were consistent with the earlier ones, with a result which recognizes changes in Nantahala's operations and its relations with TVA, Alcoa, and Tapoco, as more fully reflected in the 1983 Interconnection Agreement and the Fontana III Agreements. Many of the suggested inconsistencies referred to in the North Carolina Supreme Court opinion flowed from concepts in the Sub 29 Order that were ultimately found unlawful by the United States Supreme Court in Thornburg. The Commission's original Order in Sub 44 reflected both the facts and the law in a manner consistent with Thornburg, and its Order on remand in Sub 29 and Sub 35 issued November 13, 1987, does the same.

As set out in the Commission's findings in the Sub 44 Orders, the factual underpinnings of this case and of the Sub 29 and Sub 35 cases are substantially different. The Sub 29 and Sub 35 cases were built upon substantially the same record evidence relating to the formation and operation of the New Fontana Agreement and the Apportionment Agreement of 1971. These were the Nantahala power supply agreements that were in effect during the 1975 and 1979 test years of those proceedings. The New Fontana Agreement and the 1971 Apportionment Agreement expired by their terms on December 31, 1982. Through intervention of FERC in the termination of these agreements as wholesale rate schedules, these agreements were superseded effective as of January 2, 1983.

Pursuant to the North Carolina Supreme Court's instructions on remand in 1980 in the Sub 29 case, the Commission investigated rolled-in ratemaking by which Nantahala and Tapoco were combined for retail ratemaking purposes and treated as an integrated system. The Commission found that this form of ratemaking was to the advantage of Nantahala's North Carolina retail customers and directed its implementation. In its decision of July 3, 1985, the North Carolina Supreme Court concluded that the Commission in Sub 29 had fulfilled its directive to investigate this method of ratemaking and affirmed the Commission's decision. Utilities Commission v. Nantahala Power and Light Co., 313 N.C. 614, 332 S.E. 2d 397 (1985). This decision of the North Carolina Supreme Court subsequently was reversed in Thornburg. To the same effect was the proceeding in Sub 35.

By contrast, in its decision in this case (Sub 44) the Commission was confronted with new power supply agreements which superseded the agreements that had so troubled the North Carolina Supreme Court in State ex rel. Utilities Commission v. Edmisten, 299 N.C. 432, 263 S.E.2d 583 (1980). The new agreements differed substantially from the New Fontana Agreement and the 1971 Apportionment Agreement in that Nantahala no longer had a contractual relationship with either Tapoco or Alcoa in obtaining its supply of power from the Tennessee Valley Authority ("TVA"). Rather, Nantahala obtained a new agreement as a stand-alone company to interconnect with TVA and to purchase its excess requirements from TVA. Under the terms of the new agreements, Nantahala retains the ability to operate its generating facilities to serve its load as it best sees fit. The evidence in the record clearly showed, and the Commission so found in its December 23, 1983, and November 29, 1983, Orders in this case, that Nantahala's management had negotiated these agreements with TVA

without any interference by either Alcoa or Tapoco. (Finding Nos. 6, 7, and 9, and Conclusions therefor, in the Orders of November 29 and December 22, 1983.)

While the Commission's investigation of these new agreements was proceeding, the FERC was conducting its own substantial investigation into the reasonableness of the new agreements, as well as the reasonableness of the termination of the superseded agreements. (FERC Docket No. ER82-774-000 et al.) In order fully to protect the interests of Nantahala's North Carolina retail customers, the Commission intervened in the FERC proceeding as a party in an attempt to persuade that agency to provide Nantahala with a lower cost power supply arrangement. The FERC proceeding, heard some months after this case was heard, resulted in a favorable decision for North Carolina consumers by a FERC Administrative Law Judge ("ALJ"). Exceptions to the decision of the FERC ALJ were then filed by Nantahala, Tapoco, and Alcoa, and the customer representatives to the full FERC. By Order issued June 29, 1987, FERC issued its "Opinion and Order Affirming in Part and Modifying in Part Initial Decision" [of the ALJ]. This matter is now pending before FERC on motions for reconsideration of the June 29, 1987, Order.

The North Carolina Supreme Court in its opinion reviewing the Commission's Orders in this case stated that:

> "The principal question raised by this appeal is whether the Commission erred as a matter of law in its order establishing Nantahala's retail rates on a 'stand-alone' basis by failing to accord more than minimal consideration to competent evidence suggesting the continued propriety of utilizing the 'roll-in' rate making methodology applied by the Commission in two preceding general rate cases involving Nantahala, Tapoco, and Alcoa and affirmed by this court in . . . 'Nantahala I' [Sub 29] and . . . 'Nantahala II' [Sub 35]."

Edmisten, 314 N.C. at 129-30, 333 S.E.2d at 458.

The North Carolina Supreme Court recited its rulings in the earlier cases and concluded that:

> "The only circumstance which has changed under the Fontana III Agreements is the fact that the hydro resources of the single system are no longer coordinated as a single unit by TVA by virtue of the contractual agreement with the Alcoa system as they were under the OFA and NFA.
>
> *************
>
> "Once again, the only relevant factual change in circumstance since entry of these orders has been the execution of the Fontana III Agreements."

Id. at 146, 147, 333 S.E.2d at 468, 469. The North Carolina Supreme Court reversed the Commission because the Court found "the Commission's total failure to address the issues raised by the intervenors . . . completely inconsistent with its previous determinations and Orders in the Sub 29 (Remanded) and Sub 35 cases . . . ." Id. at 153, 333 S.E.2d at 472.

The North Carolina Supreme Court's opinion was rendered after it had affirmed the Commission's Orders in Sub 29 (Remanded) and Sub 35 and before these Orders were reversed by the United States Supreme Court in Thornburg. In affirming the Sub 29 (Remanded) and the Sub 35 Orders, the North Carolina Supreme Court held that the Orders were lawful in spite of the FERC Orders that contained different conclusions on whether Nantahala's power supply arrangements were reasonable. The United States Supreme Court in Thornburg subsequently overruled the North Carolina Supreme Court's review of the Sub 29 (Remanded) and Sub 35 Orders and held that the roll-in affirmed by the North Carolina Court in these dockets was unlawful.

The North Carolina Supreme Court now has instructed the Commission to entertain proceedings consistent with its earlier opinion in this case but not inconsistent with the decision of the United States Supreme Court in Thornburg. The principle of law established in Thornburg is that if FERC reviews power supply arrangements and establishes wholesale power supply costs under these arrangements, a state commission may not independently review the same arrangements and come to different conclusions in order to establish retail rates that allow recovery of fewer costs. Appalachian Power Company v. Public Service Commission of West Virginia, 812 F.2d 898 (4th Cir. 1987) ("The Supreme Court's recent Nantahala decision supports our conclusion that states are powerless to exert authority that potentially conflicts with FERC determinations regarding rates or agreements affecting rates. The Nantahala Court reiterated the principle that in setting retail rates states must give effect to FERC-approved wholesale rates and agreements affecting those rates."). The Commission recognized this principle by intervening in the FERC consolidated proceeding.

The now-vacated North Carolina Supreme Court decision would have required the Commission to "give more than minimal consideration to the evidence" presented by Intervenors in this proceeding. Nantahala Power and Light Co. v. Edmisten, supra, 314 N.C. at 151. Intervenors' evidence, however, may not be used to arrive at a decision different from that already reached by the Commission. To do so would be clearly in violation of the United States Supreme Court's decision in Thornburg.

Intervenors' evidence in this proceeding consisted of the testimony of two witnesses, Messrs. Springs and Solomon. Witness Springs' testimony consists of his credentials and background (Tr. V. 7, pp. 14-17), a discussion of the relevant parties and facilities (Tr. V.7, pp. 17-24), a historical discussion of development of hydroelectric facilities and power arrangements among Nantahala, Tapoco, Alcoa, and TVA (Tr. V.7, pp. 24-48), and the witness' evaluation of the new Nantahala agreement and his roll-in methodology, which included the opinion that Tapoco and Nantahala consitituted a unified single system. (Tr. V.7, pp. 48-62). Witness Solomon's testimony provides the accounting computations necessary to carry out witness Springs' roll-in proposal. Tr. V.7, pp. 101-08.

Thus, the Intervenors' evidence that the Commission has been directed to reconsider in this case analyzes in detail the prior and current power arrangements that the United States Supreme Court found to be already regulated by FERC pursuant to FERC's exclusive jurisdiction under the Federal Power Act, Nantahala Power and Light Co. v. Thornburg, supra, 106 S.Ct. at 2357, 2359-60, and combines and allocates the Nantahala and Tapoco power supplies in the same

manner which was struck down as unlawful by the United States Supreme Court. Thus, there is no record testimony that would support any result different from the Commission's prior Order in this proceeding.

In fact, the Commission's prior finding, that Intervenors' roll-in should be rejected, remains valid:

> "The roll-in methodology proposed herein by the Intervenors for proforma purposes in fixing Nantahala's rates without any accompanying order from the appropriate federal jurisdiction requiring the physical sale of Tapoco power to Nantahala or a guarantee of Nantahala's financial integrity by Alcoa will ultimately result in insolvency or bankruptcy of Nantahala and an inability of Nantahala to meet its customers' needs for electric power, and will not serve the best interest of Nantahala's customers or its service area in North Carolina. . . ." (Finding No. 8, Orders of November 29 and December 22, 1983.)

If the Commission were to accept Intervenors' roll-in proposal, it would leave Nantahala with the precise type of "trapped costs" not recoverable in retail rates that the United States Supreme Court found objectionable in Nantahala Power and Light Co., v. Thornburg, supra.

The Commission's Orders in Sub 44 found the costs Nantahala incurred under Fontana III to be reasonable and properly recoverable through the Company's retail rates. The Commission recognized, however, that FERC, with primary jurisdiction over the 1983 Interconnection Agreement and Fontana III, was engaged simultaneously in a review of the justness and reasonableness of those agreements. The Commission stated that were it to establish retail rates for Nantahala that prevented Nantahala from recovering the costs it incurred while operating under the agreements, without an Order from FERC making additional low cost power available, Nantahala would be placed in an untenable position of buying power at the wholesale level that it could not pay for because of inadequate retail rates. This principle motivated the Commission to intervene and participate in the consolidated proceeding before FERC. This rationale is the same rationale employed by the United States Supreme Court in reversing the North Carolina Supreme Court's decision in Sub 29 (Remanded) and Sub 35. The United States Supreme Court in Thornburg ruled that the North Carolina Supreme Court's decision in those dockets resulted in "trapping costs" by preventing Nantahala from recovering costs through retail rates that FERC determined to be necessary wholesale costs.

In spite of the Commission's findings in this case that Nantahala should recover all costs incurred while operating under Fontana III, the Commission stated that should FERC subsequently modify or alter those arrangements, this case should be reopened to enable the Commission to make refunds and to lower Nantahala's retail rates to take advantage of FERC's actions. Moreover, through its intervention before FERC, the Commission has aggressively pursued the rights of Nantahala's retail ratepayers to obtain lower cost Tapoco power.

III. DECISION OF THE FOUR ISSUES RAISED BY INTERVENORS

Notwithstanding its discussion above of the impact of the Thornburg decision on this case, the Commission will address the four issues that the

Intervenors urged and that the North Carolina Court agreed are crucial with respect to the establishment of rates on a roll-in basis.

1. Is Tapoco a North Carolina Public Utility?

The Commission finds that Tapoco is a public utility for the reasons stated in its Order of October 3, 1980, which was considered and appended to its decision of September 2, 1981, in the Sub 29 proceeding. The provisions of that Order are incorporated herein by reference.

Briefly, the Commission in its Order of October 3, 1980, found that Tapoco's Articles of Incorporation state that one of its purposes is to provide power to the public; that Tapoco owns, operates and maintains, subject to the direction of TVA, four hydroelectric developments that are licensed by FERC; that in 1955 the North Carolina Commission granted a Certificate of Public Convenience and Necessity to Tapoco to purchase and operate the Santeetlah and Cheoah facilities and certain of Nantahala's transmission lines; and that Tapoco's Certificate requires it to provide power to Nantahala to serve its load at the village of Santeetlah.

Finally, the Commission notes that FERC is conducting an ongoing proceeding to investigate the new power arrangements with TVA. Tapoco, together with Nantahala, is a party in this proceeding. Because of the possibility that relief may become available to the retail ratepayers of Nantahala from the FERC proceeding, the Commission is further of the opinion that Tapoco should be declared a public utility for purposes of ensuring that such relief ultimately reaches the retail ratepayers.

2. Is Alcoa a North Carolina Public Utility?

The finding that Alcoa is a public utility is predicated upon the definition found in N.C. Gen. Stat. § 62-3(23)c (1984). Under that statute, a parent company is a public utility to the extent that its actions have an effect on the rates of a subsidiary operating as a public utility. In the Sub 29 and Sub 35 proceedings, the Commission found that Alcoa's actions, including its participation in the New Fontana Agreement and the 1971 Apportionment Agreement, operated to have an effect on Nantahala's rates to its customers.

As the Commission has held in the previous proceedings, under Nantahala's prior power supply arrangements Alcoa fits within the definition of a public utility under G.S. 62-3(23). See NCUC Docket No. E-13, Sub 29, "Order" (October 3, 1980) at 17-18. Since Alcoa still owns and has control over Nantahala, and therefore may be considered to have some impact upon Nantahala's rates, for purposes of this proceeding the Commission sees no reason to alter its prior determination that Alcoa fits within the statutory definition of a public utility.

Finally, it is necessary to declare Alcoa a public utility for reasons set forth elsewhere in this Order. In the event that the ongoing FERC investigation into the new agreements between TVA and Nantahala results in relief to the retail ratepayers of Nantahala, Alcoa should be amenable to this Commission's jurisdiction to ensure that any relief arising from the FERC's investigation remains subject to final disposition by the Commission.

3. Do the properties of Nantahala and Tapoco constitute a unified single electric system?

In FERC Docket Nos. ER76-828 and EL78-18, FERC investigated whether Nantahala and Tapoco constituted a unified single electrical system. FERC held that they did not. Opinion No. 139, 19 FERC Sec. 61,152 (May 14, 1982), rehearing denied, Opinion No. 139-A, 20 FERC Sec. 61,430 (September 30, 1982). This determination by FERC was sustained by the United States Court of Appeals for the Fourth Circuit. Nantahala Power and Light Company v. FERC, 727 F.2d 1342 (4th Cir. 1984). The nature of the Nantahala and Tapoco electric systems are the subject of investigation by FERC in the proceeding presently before that agency. Therefore, a determination by this Commission that Nantahala and Tapoco constitute a single integrated system is precluded by operation of Federal law. Under the Thornburg decision, FERC has the exclusive preemptive jurisdiction to review the power arrangements of TVA, Tapoco, Nantahala, and Alcoa.

The power flows across the Tapoco-Nantahala interconnection are wholesale transactions in interstate commerce. Nantahala and Tapoco are interconnected at the Santeetlah switchyard. This is their only point of interconnection. Under the Nantahala-TVA interconnection agreement the interconnection is managed by TVA. TVA is also interconnected with Tapoco at the same point at the Santeetlah switchyard, and, pursuant to the terms of both TVA's agreement with Nantahala and TVA's separate agreement with Tapoco, TVA is able to manage power flows from its Fontana facility to the north as well as to coordinate all power flows along the 161kV system owned by Tapoco which also is interconnected with TVA in Tennessee. These are transactions, therefore, which are regulated under the Federal Power Act by FERC. To the extent that FERC has investigated and made determinations with respect to the existence of unified electric systems comprised of Tapoco and TVA, this Commission has no jurisdiction to make contrary findings. Nantahala v. Thornburg, supra.

Therefore, for purpose of setting Nantahala's North Carolina retail rates in this proceeding, the Commission expressly finds that Nantahala and Tapoco do not constitute a unified single electric system. Even if the Commission were to find and conclude, however, that Nantahala and Tapoco constitute a unified single system, such finding would be meaningless in view of the prohibition in the Thornburg case against the methodology advocated by the Intervenors, which incorporated the concept of a unified system. (See testimony of Springs, Tr. Vol 7, pp 47ff.)

The Commission addressed in its earlier Orders in this docket the issue of whether Nanthala and Tapoco constitute an integrated system as they currently operate under the 1983 Interconnection Agreement and Fontana III. The Commission concluded that they do not constitute an integrated system. ("The Commission therefore concludes that Nantahala and Tapoco should be treated as separate and independent entities for rate-making purposes and that Nantahala's retail rates in North Carolina should be established in this proceeding in recognition of and pursuant to the more favorable terms and benefits of the 1983 Interconnection Agreement.") This was a significant conclusion leading to our determination to establish stand-alone rates for Nantahala and to reject roll-in. (Finding of Fact No. 9, and Evidence and Conclusions for Findings of Fact Nos. 6, 7, 8, 9, and 10, Orders of November 29 and December 22, 1983.)

The Commission likewise recognizes that the issue of whether Nantahala and Tapoco constitute a unified single system under Fontana III is presently being addressed by FERC in the consolidated proceeding in which FERC is investigating these agreements. FERC Docket Nos. ER82-774-000 et al. It is clear, based upon the United States Supreme Court's holding in Thornburg, that the Commission must defer to FERC's determination of this issue.

The Commission notes in passing that recent federal court decisions indicate that a finding that Nantahala and Tapoco form an integrated system would increase FERC authority to the detriment of our state authority. In Mississippi Industries v. FERC, 808 F.2d 1525 (D.C. Cir. 1987), the United States Court of Appeals for the District of Columbia Circuit specifically noted that Nantahala and Tapoco were found not to be an integrated system. Id. at 1559. The court noted that, with a multi-state integrated system, FERC's authority is all-controlling. Id. at 1549.

Similarly, in Appalachian Power v. Public Service Commission of West Virginia, supra, the United States Court of Appeals for the Fourth Circuit emphasized the broad scope of the Federal Commission to control all aspects of multi-state power arrangements. In Appalachian Power, the Company, its parent, American Electric Power Company, Inc., and their various affiliates entered into an agreement to allocate among utilities operating in several states the costs of operating an interstate transmission network. The West Virginia Public Service Commission attempted to assert jurisdiction over the agreement, arguing that an investigation into the "prudence" of a utility's entering into an agreement did not violate FERC's jurisdiction over the agreement's terms. The utilities filed suit alleging that the West Virginia PSC's order violated the Supremacy, Interstate Commerce, and Due Process Clauses of the United States Constitution. The District Court granted the utilities summary judgment. 630 F. Supp. 656 (S.D.W.Va. 1986.)

The United States Court of Appeals for the Fourth Circuit affirmed, noting that:

> "Because the AEP network is a system for the transmission of interstate energy, FERC's jurisdiction to approve the [agreement] follows from its authority to regulate facilities used for such transmissions. Alternatively, FERC jurisdiction over the [agreement] may be viewed as an exercise of its authority to scrutinize 'rates or charges' for the transmission and sale of energy in commerce. Although the [agreement] does not explicitly set a dollar rate for the transmission and sale of electricity in commerce, it has the same effect as if it did in that it creates the obligations owed by or payable to utility companies for the privilege of exchanging interstate electricity. As such, it is subject to FERC's exclusive jurisdiction over interstate rates." 812F.2d at 902.

4. Piercing the Corporate Veil

In its Orders in the Sub 29 and Sub 35 cases, the Commission held that because Alcoa had so dominated certain transactions involving its subsidiary Nantahala Power and Light Company, the separate corporate forms of Nantahala and Alcoa should be disregarded for purposes of determining the liability for refunds in those cases. Intervenors likewise urge a piercing of the corporate

veil in this docket in part because Alcoa did not participate in Nantahala's power supply negotiations.

Piercing the corporate veil is required if there exists an unreasonable transaction between parent and subsidiary that results in an injury to an innocent third party. In that event, if certain acts are shown, the law refuses to look at the corporate form as limiting the liability of the subsidiary to the third party. Huski-Bilt, Incorporated v. First-Citizens Bank & Trust Co., 271 N.C. 662, 669-71, 157 S.E.2d 352, 357-58 (1967). Ordinarily, if there is no unreasonable transaction between the parent and the subsidiary or if no injury results therefrom to innocent third parties, then there is no basis to apply the doctrine of piercing the corporate veil. The Commission finds that Nantahala's interconnection and power purchase agreements with TVA are subject to the preemptive jurisdiction of FERC and that the findings of that agency with respect thereto are binding upon the Commission. Accordingly, the Commission is of the opinion that the Thornburg case precludes this Commission from piercing the corporate veil in these circumstances, except in the limited circumstance hereinafter set forth. If there are facts under the 1983 Interconnection Agreement and Fontana III that warrant a piercing of the corporate veil, they are being addressed by FERC. This is an issue FERC must address and resolve.

Elsewhere in this Order the Commission has recognized the ongoing proceeding in the FERC investigating the 1983 Interconnection Agreement and the Fontana III Agreement. The Commission is of the opinion that, as hereinafter set forth, it should reserve its right to pierce the corporate veil between Alcoa, Tapoco, and Nantahala, to the extent that such action does not frustrate the regulatory authority of FERC, solely for the limited purpose of insuring that any relief to Nantahala's retail customers resulting from the FERC's ongoing investigation remains subject to final disposition by the Commission in this proceeding. Consequently, upon final resolution of the FERC investigation, the Commission will reopen this docket for the purpose of examining FERC's findings in order to determine and give effect to the impact of FERC's decision on Nantahala's North Carolina retail rates. Such action may require piercing the corporate veil of separateness between these affiliated interests.

V. INDIRECT BENEFITS

The North Carolina Supreme Court instructed that the Commission address the issue of whether Alcoa receives indirect benefits to the detriment of Nantahala under Fontana III. Under Fontana III Nantahala retains the full use and enjoys the full benefits of its hydroelectric generating plants. This change in operations forecloses the possibility that Alcoa receives any benefits, direct, indirect, or otherwise. The Commission so found. (Findings Nos. 6 and 7.) Nonetheless, FERC currently is examining Fontana III to determine its justness and reasonableness. Under the Thornburg decision of the United State Supreme Court, the Commission cannot address the issue of indirect benefits.

VI. RELATIONSHIP TO ONGOING FERC PROCEEDINGS IN FERC DOCKET ER82-774 ET AL.

The Commission stated in its November 29, 1983, and December 22, 1983, Orders its intent to reopen this proceeding in order to incorporate any changes

in Nantahala's power supply costs as a result of FERC actions in FERC Docket Nos. ER82-774-000 et al. The North Carolina Supreme Court in its opinion of August 13, 1985, expressed concern that the Commission had not made adequate provision for flowing through to Nantahala's retail rates the results of FERC wholesale determinations. Edmisten, 314 N.C. at 164, 333 S.E.2d at 478.

Accordingly, the Commission will now be more specific. The difficulty of dealing with the precise mechanism of flowthrough is complicated by uncertainty as to the timing, and the extent and nature, of a final decision by FERC. The case currently is pending before FERC on Motion for Reconsideration of the full FERC Order of June 29, 1987. However, because Nantahala has a purchase power adjustment clause, changes in Nantahala's costs of purchase power relating back to January 1983 could be flowed through the purchase power adjustment clause. Alternatively, the Commission could direct that any changes in Nantahala's purchase power costs be examined at the time of FERC action and a determination made at that juncture as to the most appropriate means of reflecting those costs changes in Nantahala's retail rates. These possibilities of implementing any relief by FERC were suggested by Nantahala, Tapoco, and Alcoa in their joint proposed Order; there may be other possibilities. Accordingly, the Commission will order that within 60 days after final FERC decision including any disposition of any motions for rehearing or reconsideration, Nantahala, Alcoa, and Tapoco shall show cause how the results of the FERC determination should be flowed through the Nantahala retail rates to North Carolina consumers.

Therefore, as a result of the ongoing FERC investigation, the Commission will retain jurisdiction of this proceeding and of the parties, including Alcoa and Tapoco, in order to insure that any benefits enuring to Nantahala's retail customers will be flowed through to them through Nantahala's North Carolina retail rates. Accordingly, the rates approved herein are provisional rates, the finality of which awaits the determination of FERC in the dockets before that agency and further Order of this Commission.

The Commission, as a party to the FERC proceeding, will also be able to seek the assistance of that agency in implementing any FERC-ordered refunds enuring to the benefit of the North Carolina retail ratepayers of Nantahala.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission's Orders in this docket be, and the same are hereby, reaffirmed, subject, however, to the modifications set forth hereinabove and below.

2. That the rates approved herein continue to be and are provisional rates, subject to further proceedings before this Commission upon the final determination by FERC of its proceeding in Docket Nos. ER82-774-000 et al.

3. That within 60 days after a full and final Order by FERC in its Docket Nos. ER82-774-000 et al, Nantahala, Tapoco, and Alcoa shall show cause unto the Commission how the FERC determinations in those dockets should be flowed through to the North Carolina retail ratepayers of Nantahala. To the extent that Nantahala singly, or jointly with Tapoco, is financially unable to implement any refunds or other relief to be ordered by FERC, this Commission shall determine whether Alcoa, as the dominant parent of Nantahala and Tapoco,

should be required to make such refunds as Nantahala and Tapoco, jointly or singly, are unable to make.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of February 1988.

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

DOCKET NO. E-22, SUB 304

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Virginia Electric and Power	)	ORDER APPROVING
Company Pursuant to G.S. 62-133.2 and	)	FUEL CHARGE
NCUC Rule R8-55 Relating to Fuel Charge	)	ADJUSTMENT
Adjustments for Electric Utilities	)	

HEARD: Monday, November 14, 1988, at 2:00 p.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Julius A. Wright, Presiding; Chairman Robert O. Wells and Commissioner Ruth E. Cook

APPEARANCES:

For Virginia Electric and Power Company:

Edgar M. Roach, Jr., Hunton and Williams, Attorneys at Law, Raleigh, North Carolina
and
James S. Copenhaver, Virginia Electric and Power Company, Post Office Box 26666, Richmond, Virginia 23261

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 North Carolina Department of Justice:

Lemuel W. Hinton, 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. (CUCA):

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605-2547

BY THE COMMISSION: G.S. 62-133.2 requires the North Carolina Utilities Commission to hold a hearing for each electric utility engaged in the generation and production of electric power by fossil or nuclear fuel within 12 months after the last general rate case order for each utility for the purpose of determining whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel component of purchased power over or under the base fuel rate established in the last general rate case. The statute further requires that additional hearings be held on an annual basis, but only one hearing for each utility may be held within 12 months of the last general rate case. In addition to the increment or decrement to reflect changes in the cost of fuel and the fuel component of purchased power, the Commission is required to incorporate in its fuel cost determination the experienced overrecovery or underrecovery of reasonable test period fuel expenses. The last general rate case order for Virginia Electric and Power Company ("Vepco" or "the Company") was issued by the Commission on December 5, 1983, in Docket No. E-22, Sub 273. The last order approving a fuel charge adjustment for the Company became final on November 30, 1987, in Docket No. E-22, Sub 295.

On September 9, 1988, Vepco filed pursuant to NCUC Rule R8-55 testimony and exhibits of the following witnesses: Andrew J. Evans, Director - Rate Design; Daniel J. Green, Director - Planning Services; and Preston W. Redmond, Supervisor - Accounting (Systems and Applications) in the Controller's Department. The Company also filed information and workpapers required by NCUC Rule R8-55(d).

The Commission issued an Order on September 15, 1988, scheduling a hearing, requiring public notice, and providing for the filing of interventions and testimony.

On October 10, 1988, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene. By Order of October 12, 1988, the intervention was allowed.

On October 31, 1988, the Public Staff filed the testimony and exhibits of Thomas S. Lam, an Engineer with the Electric Division.

On November 4, 1988, the Attorney General filed Notice of Intervention.

On November 8, 1988, the Company filed rebuttal testimony of Daniel J. Green.

The matter came on for hearing as scheduled. The prefiled testimony of all witnesses was copied into the record and their exhibits were admitted into evidence. The parties waived cross-examination of Company witness Evans.

Based upon the foregoing, the oral testimony of Company witnesses Green and Redmond and Public Staff witness Lam, and the entire record, the Commission makes the following:

FINDINGS OF FACT

1. Virginia Electric and Power Company is duly organized as a public utility operating under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. The Company is engaged in the business of developing, generating, transmitting, distributing, and selling electric power to the public in northeastern North Carolina. The Company has its principal offices and place of business in Richmond, Virginia.

2. The test period for purposes of this proceeding is the twelve months ended June 30, 1988.

3. The Company's fuel and power purchasing practices during the test period were reasonable and prudent.

4. The Company's actual test period jurisdictional fuel expenses were $27,798,114. Actual jurisdictional fuel revenues were $28,510,907 and exceeded fuel expenses for the test period by $712,793. The Company's test period jursidictional sales were 2,213,601,000 kWh.

5. The base fuel component approved in Vepco's last general rate case, Docket No. E-22, Sub 273, includes $27,104,325 of total system expenses paid to cogenerators and small power producers based on the Company's avoided cost rates. These dollars should have been included in non-fuel base rates inasmuch as they do not represent fuel costs actually incurred by the sellers as does the fuel cost component of other purchased power.

6. It is just and reasonable to establish a Rider E of .068¢/kWh (excluding gross receipts tax) to enable the Company to continue to collect the expenses associated with cogeneration and small power production purchases which were erroneously included in the base fuel component instead of non-fuel base rates in Docket No. E-22, Sub 273.

7. It is just and reasonable to establish a primary fuel component in this proceeding of 1.256¢/kWh (excluding gross receipts tax) based on the Company's actual jurisdictional fuel expenses during the test period, resulting in a decrement of .285¢/kWh from the 1.541¢/kWh base fuel component approved in general rate case Docket No. E-22, Sub 273.

8. It is just and reasonable to establish an experience modification factor (EMF) rider of (.037)¢/kWh (excluding gross receipts tax) based on 100% of the Company's jurisdictional over-recovered fuel expenses of $712,793 for the test period and interest in the amount of $106,919.

9. It is just and reasonable to establish a Westinghouse Credit Rider of (.050)¢/kWh (excluding gross receipts tax) based on the Company's estimated jurisdictional Westinghouse Uranium Settlement proceeds at July 1, 1988, of $1,108,602.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

G.S. 62-133.2(c) sets out the verified, annualized information which each electric utility is required to furnish to the Commission in an annual fuel charge adjustment proceeding for an historical 12-month test period. In NCUC Rule R8-55(b), the Commission has prescribed the 12 months ending June 30 as the test period for Vepco. The Company's filing on September 9, 1988, was based on the 12 months ended June 30, 1988.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

NCUC Rule R8-52(b) requires each electric utility to file a Fuel Procurement Practices Report at least once every ten years, plus each time the utility's fuel procurement practices change. Procedures related to Vepco's procurement of fossil and nuclear fuels were filed in Docket No. E-100, Sub 47, on June 29, 1984, and revised on June 6, 1985. In addition, the Company files monthly reports of its fuel costs pursuant to NCUC Rule R8-52(a).

The Commission concludes that Vepco's fuel procurement and power purchasing practices were reasonable and prudent during the test period.

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

Company witness Redmond testified that test period jurisdictional fuel expenses were $30,156,116. Public Staff witness Lam removed fuel cost payments to cogenerators and small power producers (qualifying facilities or QFs) from test period fuel expenses, because they were based on the Company's avoided cost rates and not on the sellers' actual fuel cost, and arrived at a jurisdictional fuel cost of $27,798,114. He stated that it was the Public Staff's position "that G.S. 62-133.2 does not permit the inclusion of any portion of administratively determined avoided costs." This position has previously been adopted by the Commission. The Attorney General and CUCA in their proposed orders also propose the exclusion of such costs as advocated by the Public Staff.

In Docket No. E-2, Sub 526, a general rate case involving Carolina Power & Light Company ("CP&L"), our August 5, 1987, Order states:

> 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.

Similarly, in a simultaneous Order in Docket No. E-2, Sub 533, a fuel proceeding, we 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.

Vepco nevertheless contends that the Commission should reverse its position and rule that the Company's avoided fuel cost is the actual fuel cost component of purchased QF power. Company witness Green states (1) that the Public Utility Regulatory Policies Act of 1978 (PURPA) requires Vepco to purchase from QFs at rates based in part on its avoided fuel costs, (2) that Vepco's cogeneration and small power production expenses are increasing significantly, (3) and that the inability to recover these expenses in fuel proceedings may necessitate annual rate cases.

The Commission is aware of Vepco's obligations under PURPA. The Commission is also aware that the Company's avoided fuel cost payments to QFs have doubled since the last rate case, although the avoided fuel cost portion of its rates has been declining. A large amount of Vepco's QF fuel dollars are associated with payments to Cogentrix under a negotiated contract based on approved avoided cost rates. Other QF fuel dollars are associated with hydro production, which has no fuel cost. In none of these respects is Vepco different from CP&L.

Furthermore, Vepco's position in Docket No. E-100, Sub 57, the latest avoided cost proceeding, is that the most appropriate method to determine avoided costs is a competitive bid process for new capacity but, according to witness Green, the Company does not yet know how the avoided fuel cost would be determined under this method. In any event, there seems to be no question that the fuel cost component of Vepco's QF purchases represents neither the QFs' nor the utility's actual fuel costs. For this reason, the Commission cannot treat this portion of purchased power dollars as it treats those which do represent actual fuel costs for purposes of setting or adjusting the fuel cost factor.

The Commission recognizes that cogeneration and small power production payments represent a rapidly increasing part of Vepco's cost of service. These payments are based on rates which include fuel and non-fuel related avoided energy costs as well as avoided capacity costs and far exceed the cogeneration and small power production payments included in the cost of service used in setting Vepco's base rates in 1983 in Docket No. E-22, Sub 273. Since that time, Vepco has recovered the so-called fuel cost portion of these payments through fuel charge adjustments under G.S. 62-133.2. The remaining portion of these increased costs, however, can only have been recovered through additional revenues from increased sales or through reduced expenses in other areas. Otherwise, Vepco could not have enjoyed five years of earnings sufficient to prevent the Company from seeking general rate relief. If, in the future, the Company requires a rate procedure to allow it to recover costs associated with cogeneration and small power production payments in excess of the actual fuel costs of the cogenerator outside of a general rate case, it must pursue appropriate legislative remedies, as such procedure is not currently authorized by G.S. 62-133.2.

Witness Lam further stated, and witness Green confirmed, that the base fuel component approved in Vepco's last general rate case includes $27,104,325 of total system avoided cost dollars associated with cogeneration and small power production. The Public Staff asserts that these dollars should have been included in non-fuel base rates. For the reasons set forth above, the Commission agrees.

In order to enable the Company to continue to collect this expense in rates, witness Lam proposed a separate Rider E of .068¢/kWh (excluding gross receipts tax). The Company did not oppose this Rider, assuming that the Commission determines that avoided fuel cost dollars should be excluded from the fuel factor. The Commission concludes that the Rider E proposal is just and reasonable. While it may appear to constitute an adjustment to base rates, the effect of Rider is just the opposite. It isolates and protects certain non-fuel expenses from adjustment in a fuel proceeding.

Witness Lam further indicated that test period fuel revenues should be reduced by the amount which would have been recovered through non-fuel base rates (.068¢/kWh x test period jurisdictional sales of 2,213,601,000 kWh) had avoided fuel cost dollars not been included in the base fuel component in the last rate case. The Commission concludes that this adjustment is also just and reasonable.

The Attorney General takes the position that the Commission is without statutory authority to adopt Rider E as proposed by the Public Staff in a G.S. 62-133.2 fuel charge adjustment proceeding. The Commission disagrees. We equate approval of Rider E to be in the nature of an Order on reconsideration entered pursuant to G.S. 62-80, which provides that:

> "The Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions."

It is clear that the Commission has the authority under G.S. 62-80 to amend any order or decision "at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard..." The Public Staff prefiled testimony in this case on October 31, 1988, and witness Lam proposed Rider E as part of that testimony. Thus, all parties to this proceeding were on notice as of October 31, 1988, that Rider E would be considered by the Commission during the hearing scheduled for November 14, 1988. To deny Vepco the opportunity to recover over $27 million of legitimate avoided fuel cost dollars on an annual basis which were properly included in its last rate case in Docket No. E-22, Sub 273 would be grossly unfair to the Company. No one is harmed by approval of Rider E. It merely allows Vepco to continue to collect revenues for legitimate costs that were previously approved by the Commission, but were erroneously included in the Company's base cost of fuel rather than in its nonfuel base rates. Correction of this error amounts to a justifiable exercise of our statutorily mandated duty to fix just and reasonable rates pursuant to G.S. 62-130 et seq.

Based on the foregoing, the Commission concludes that the actual test period jurisdictional fuel expenses of $30,156,116 shown by Vepco should be reduced by the avoided fuel cost dollars of $2,358,002, resulting in actual test period jurisdictional fuel expenses of $27,798,114. Jurisdictional fuel revenues of $30,016,156 should be reduced by $1,505,249, resulting in actual jurisdictional fuel revenues of $28,510,907 or $712,793 more than actual jurisdictional fuel expenses.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

NCUC Rule R8-55(c)(1) provides that capacity factors for nuclear production facilities will be normalized assuming that the Commission finds that an abnormality having a probable impact on the utility's revenues and expenses existed during the test period. The Rule further provides that the cost of fuel will be generally based on end-of-period unit fuel prices.

Company witness Green testified that for the period July 1987 through June 1988, Vepco's system nuclear capacity factor was 68.4%, compared to the North American Electric Reliability Council (NERC) five-year (1982-86) average of 60.5% for pressurized water reactors. He also testified, "The excellent performance of our generating units, together with economical purchases of power, have contributed to the continuing low level of fuel costs during a period when the Company experienced two all-time peaks in demand." Company witness Evans testified that the net effect of nuclear capacity factor and fuel price normalization was to increase jurisdictional fuel expense. Public Staff witness Lam testified that the use of actual test period expenses was the method approved by the Commission in the Company's last general rate case.

There being no evidence of abnormalities during the test period, the Commission concludes that the preliminary fuel factor in this proceeding should be based on actual expenses as shown in witness Redmond's exhibits, adjusted only to exclude costs based on the Company's avoided cost rates. This translates into a preliminary fuel factor of 1.256¢/kWh. The base fuel component approved in the last general rate case is 1.541¢/kWh, which, as explained above, contains .068¢/kWh of avoided fuel cost dollars that should have been included in non-fuel base rates. Thus, the preliminary fuel factor approved in this proceeding is .285¢/kWh lower than the total 1.541¢/kWh base

fuel component and .217¢/kWh lower than the actual fuel cost portion (1.541¢ - .068¢/kWh = 1.473¢/kWh) of the base fuel component.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

G.S. 62-133.2(d) provides that in fixing an increment or decrement rider the Commission shall

> incorporate in its fuel cost determination....the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period....

This provision is mandatory. It applies regardless of whether or not the utility is earning its allowed rate of return. NCUC Rule R8-55(c) provides for the refund of over-recovered fuel costs, plus interest, through an experience modification factor (EMF) rider. The Commission's Order of June 24, 1988, in Docket No. E-100, Sub 55, prescribes the method of interest calculation.

The Commission has found and concluded that Vepco's actual fuel cost over-recovery during the test period was $712,793. According to Public Staff witness Lam, this results in an EMF decrement of .032¢/kWh. The amount of interest to be refunded is $106,919, resulting in a further decrement of .005¢/kWh.

The Commission therefore concludes that a total EMF decrement of .037¢/kWh (excluding gross receipts tax) is just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Redmond testified with regard to Vepco's 1979 Settlement Agreement with Westinghouse and its proposal to treat all of the proceeds, less litigation expenses, as fuel related. The jurisdictional balance of the net proceeds at July 1, 1988, is estimated to be $1,108,602, which the Company proposes to flow through to its customers. Public Staff witness Lam agreed with Company witness Evans' calculation of a Westinghouse Credit Rider of .050¢/kWh (excluding gross receipts tax).

The Commission concludes that this rider is just and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That effective beginning with service rendered during the next regularly scheduled billing cycle, Vepco shall adjust the base fuel component in its North Carolina retail rates approved in Docket No. E-22, Sub 273, by a decrement of .285¢/kWh to reflect a new primary fuel factor of 1.256¢/kWh (excluding gross receipts tax).

2. That a Rider E of .068¢/kWh (excluding gross receipts tax) be instituted and remain in effect until further order.

3. That an EMF Rider of (.037)¢/kWh (excluding gross receipts tax) be instituted and remain in effect for one year.

4. That a Westinghouse Credit Rider of (.050)¢/kWh (excluding gross receipts tax) be instituted and that the Company maintain an accounting of the credit.

5. That Vepco notify its North Carolina retail customers of the rate adjustments approved in this proceeding by including the "Notice to Customers of Rate Reduction" attached to this Order as Appendix A as a bill insert with customer bills rendered during the next regularly scheduled billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of December 1988.

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

APPENDIX A

DOCKET NO. E-22, SUB 304

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Virginia Electric and Power Company Pursuant to G.S. 62-133.2 and NCUC Rule R8-55 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 in this docket on December 21, 1988, after public hearing, approving a $1.48 million net reduction in the annual rates and charges paid by the retail customers of Virginia Electric and Power Company (Vepco) in North Carolina. The rate reduction will be effective beginning with service rendered during the next regularly scheduled billing cycle. The net rate reduction was ordered by the Commission after a review of Vepco's fuel expenses during the 12-month test period ended June 30, 1988, and includes actual changes experienced by the Company with respect to the cost of fuel and the fuel component of purchased power during the test period.

The Commission's Order will result in a net rate reduction of approximately $.67 for a typical residential customer using 1,000 kWh per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of December 1988.

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

DOCKET NO. E-7, SUB 427

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Duke Power to Purchase the Stock Interest of Aluminum Company of America in Nantahala Power and Light Company) ORDER APPROVING STOCK TRANSFER

HEARD IN: Bryson City: Wednesday, March 2, 1988, at 7:00 p.m., Superior Courtroom, Swain County Administration and Courthouse Building, Mitchell Street, Bryson City

Franklin: Thursday, March 3, 1988, at 9:30 a.m., Courtroom A, 4th Floor, Macon County Courthouse, 5 W. Main Street, Franklin

Raleigh: Tuesday, August 16, 1988, at 9:30 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh

BEFORE: Commissioner Sarah Lindsay Tate, presiding, and Commissioners Edward B. Hipp and William W. Redman, Jr.

APPEARANCES:

For Duke Power Company:

Steve C. Griffith, Jr., Ellen Ruff and Ronald L. Gibson, Duke Power Company, Post Office Box 33189, Charlotte, North Carolina 28242

For Aluminum Company of America and Tapoca, Inc.:

David R. Poe, Jesse T. Wilkins, and Ronald D. Jones, LeBoeuf, Lamb, Leiby & MacRae, Attorneys at Law, 520 Madison Avenue, New York, New York 10022

For Nantahala Power and Light Company:

Edward S. Finley, Jr. and Alaine Y. Miller, Hunton and Williams, Attorneys at Law, Post Office Box 109, Raleigh, North Carolina 27602

For Jackson Paper Company:

David H. Permar, Hatch, Little & Bunn, Box 527, Raleigh, North Carolina 27608

For Horace M. Wilson, Intervenor:

James H. Holloway, Jr., Western N.C. Legal Services, Post Office Box 426, Sylva, North Carolina 28779

For the North Carolina Department of Justice:

Jo Anne Sanford, Lemuel W. Hinton, and Richard L. Giffin, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27620
For: The Using and Consuming Public

For the Public Staff:

Antoinette Wike and A. W. Turner, Jr., Staff Attorney, North Carolina Utilities Commission - Public Staff, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On November 3, 1987, Duke Power Company ("Duke") filed an Application for Written Approval of Stock Transfer pursuant to G.S. § 62-111(a) requesting that the Commission approve the transfer of the common stock of Nantahala Power and Light Company ("Nantahala") from Aluminum Company of America ("Alcoa") to Duke. Duke proposes to purchase Nantahala and to continue to operate it as a separate utility.

On November 12, 1987, the Attorney General filed a Notice of Intervention pursuant to G.S. § 62-20.

On December 15, 1987, the Commission entered an Order Instituting Investigation, Scheduling Public Hearings, and Requiring Public Notice. The Commission was of the opinion that an investigation and public hearings should be conducted to determine if the Commission's approval of the proposed sales and transfer of common stock would be justified by the public convenience and necessity. The Commission also made Nantahala, Alcoa, and Tapoco, Inc., a subsidiary of Alcoa, parties to this proceeding.

On January 19, 1988, Jackson Paper Manufacturing Company filed a Petition to Intervene which was allowed by Commission Order dated January 22, 1988.

On January 25, 1988, Darlene Israel filed a Motion to Intervene, which was allowed by Commission Order dated February 1, 1988. On March 3, 1988, Ms. Israel was allowed to withdraw as a party.

On February 2, 1988, Mr. and Mrs. George R. Corbett filed a Petition to Intervene. By Order entered on April 4, 1988, the Commission transferred and consolidated the Corbetts' Petition with Docket No. E-7, Sub 432, a Complaint filed by the Corbetts, because there were common questions of law and fact with the Complaint case.

On February 12, 1988, the Commission entered Orders allowing the Petitions to Intervene by Horace M. Wilson, the Town of Highlands Haywood Electric Membership Corporation, and North Carolina Electric Membership Corporation.

By Order issued February 24, 1988, the Commission, upon Motion of the Public Staff, continued the hearing in Raleigh on the Application from March 8, 1988, to June 14, 1988; and by Order issued May 4, 1988, the hearing was rescheduled to August 16, 1988.

The Commission held a public hearing in Bryson City on March 2, 1988. The following public witnesses testified: T. C. Lewis, Ed Israel, Henry J. Truett, Chester Crisp, Hoyte Roberson, Ted Norcross, Linda Cable, Richard Schaddelee, Betty Smith Carol Orr, Beula Huffman, Connie Orr, Virginia Bridges, Joe Hinkie, Dan Pittillo, John Wittekind, Winford Brooks, and William Foust.

The following day the Commission held a public hearing in Franklin. The following public witnesses testified there: Elbie Styles, Bill Green, Bob Gardner, Ralph Sanders, David Henson, Nina Anderson, Joe Carter, Dorothy Crawford, A. Rusus Morgan, Jr., Tamera Crisp, Carolyn Huscusson, Bob Gelder, Tom L. Massie, William E. McPeters, Jr., Harold Robinson, Carl Nicholas, and Veronica Nicholas.

On June 22, 1988, upon Motion of the Intervenors filed on May 26, 1988, the Commission issued Order Granting Motion to Compel Production of Documents.

On July 12, 1988, the Commission issued an Order scheduling a prehearing conference among the parties for July 27, 1988. The prehearing conference was held as scheduled, and on August 1, 1988, the Commission issued its Prehearing Order setting forth certain procedures to be followed at the hearing scheduled to begin on August 16, 1988.

Prefiled testimony was filed in this docket by Douglas W. Booth of Duke Power, N. E. Tucker, Jr., of Nantahala, and Benjamin Turner of the Public Staff.

The Commission conducted its scheduled evidentiary hearing on August 16, 1988. Duke presented the testimony of Douglas W. Booth, President and Chief Operating Officer. Nantahala presented the testimony of N. Edward Tucker, Executive Vice President. The Public Staff presented the testimony of Benjamin R. Turner, Engineer in the Electric Division. The following public witnesses appeared at the hearing and offered testimony: David E. Hinson, Mayor of the Town of Franklin and Chairman of the Southwestern North Carolina Regional Council of Local Governments (Macon, Swain, Jackson, Clay, Cherokee, Graham, and Haywood Counties); William Green, Murphy, County Manager for Cherokee County; Mercedith Bacon, Bryson City, member of the Swain County Board of Commissioners; Chester Crisp, Robbinsville, Chairman of the Graham County Board of Commissioners and County Manager; Doyle Brock, Robbinsville; Tom Massey, Sylva, Director of the Jackson County Planning and Economic Development Corporation; Dan Pittillo, Sylva; Veronica Nicholas, Sylva, on behalf of the Western North Carolina Alliance Energy Task Force; Michael Redfox, Cherokee; Joe Griener, Raleigh, Secretary/Treasurer of the Carolina Canoe Club; Daniel Moore, Cashiers; and David Wheeler, Whittier. Dr. Hinson, Mr. Green, Mrs. Bacon, Mr. Crisp, Mr. Brock, Mr. Massey, and Mr. Moore all testified in support of the sale. Mr. Pittillo, Mrs. Nicholas, Mr. Redfox, and Mr. Wheeler opposed the sale. Mr. Griener took no position for or against the sale, but expressed the concern of his organization about the potential impact of the sale on the "white water" community.

Based upon the testimony and exhibits presented at the hearing, the proposed Order of Duke and the comments thereon by the parties, the judicial notice of Docket No. E-13, Subs 29, 35, and 44, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Duke Power Company is a public utility engaged in the generation, transmission, distribution, and sale of electric energy in the central portion of North Carolina and the western portion of South Carolina, comprising the area in both states known as the Piedmont Carolinas. Duke is subject to the jurisdiction of this Commission.

2. Alcoa is a Pennsylvania corporation and owns all of the outstanding common stock of Nantahala, consisting of 38,202 shares. Tapoco is a wholly-owned subsidiary of Alcoa. Both Alcoa and Tapoco have been declared public utilities in earlier proceedings before the Commission. See Docket No. E-13, Subs 29, 35, and 44. The two companies are now involved in the appeals of these dockets, and Alcoa has specifically retained the right "to pursue any and all remedies available to it or [Nantahala]" with regard to any pending cases. Section 11.3(c) of the Stock Sale Agreement.

3. Nantahala is a public utility engaged in the generation, transmission, distribution, and sale of electric energy in the mountainous regions of North Carolina. Nantahala was founded in 1929 and today serves customers in parts of six western North Carolina counties with power from its own hydroelectric projects in the region, supplemented with purchases of power from the Tennessee Valley Authority ("TVA") pursuant to the TVA Agreement.

4. Duke and Alcoa have reached an agreement pursuant to which Alcoa's outstanding stock interest in Nantahala will be purchased for a sum representing 100% of the net book value of outstanding common stock in Nantahala as of the closing date. The details of the transaction are set forth in a Stock Purchase Agreement between Duke and Alcoa.

5. Duke and Nantahala have entered into an Interconnection Agreement under which Duke will construct new transmission facilities into the eastern part of Nantahala's service area, thereby interconnecting the two utilities. Following Duke's purchase of its stock, Nantahala will remain a separate operational utility serving the same customer load it now serves in western North Carolina. The benefits of the Nantahala hydroelectric projects will remain with the customers of Nantahala. Once the interconnection is established, Duke will assume from TVA the role of supplying Nantahala's requirements over and above that supplied by Nantahala's own generation.

6. The Duke Interconnection Agreement contains an express contractual commitment by Duke to serve Nantahala for 20 years. The TVA Agreement with Nantahala, which was first implemented in 1983, has an initial 10-year term and contains a 5-year termination notice provision. The 10-year term and 5-year termination notice provision of the TVA Agreement is a matter of concern to the Federal Energy Regulatory Commission and to some of Nantahala's customers. Moreover, any decision by Duke to terminate service is subject to review by FERC; a TVA decision to terminate service is not.

7. A settlement agreement has been filed with the Federal Energy Regulatory Commission that would set the wholesale rates Nantahala will pay Duke. This proposed settlement is expected to be approved. The rate for capacity is lower than that originally proposed, and the Public Staff and

Attorney General supported the settlement. The proposed settlement was introduced into evidence in this Docket as Duke's Exhibit 5.

8. The acquisition of Nantahala by Duke is beneficial to Nantahala and Duke and their respective customers. Nantahala will purchase power, energy and associated transmission services from Duke after Nantahala is interconnected with Duke to supplement Nantahala's existing hydroelectric capacity required to meet Nantahala's load. Based upon rate schedules presently in effect, Nantahala's cost of purchasing these requirements from Duke will be less than what Nantahala's costs would be if it continued to purchase its excess requirements from TVA.

9. The sale approved by this Commission will have a significant impact on the rates paid by Nantahala's ratepayers for electric service. Under the Duke Interconnection Agreement, Duke will replace TVA as Nantahala's primary source of firm supplemental power. The cost of power provided by Duke is estimated to be 30% less than the cost of power provided by TVA. Based on actual 1987 data, purchases from Duke would have been 0.936¢ per kWh less than from TVA based upon Duke's proposed wholesale rates. A residential customer using 1000 kWh each month would have seen an average monthly bill decrease of $9.36 (from $62.82 to $53.46), which is a 15% decrease from Nantahala's present rates. Nantahala estimates savings in supplemental power costs under the Duke Agreement to be approximately $45,000,000 through 1994. Nantahala further projects that its power supply costs will be lower under the Duke Agreement after 1994.

10. Nantahala's overall system reliability will be enhanced through the establishment of an interconnection with Duke on the eastern end of Nantahala's system. Thereafter, continuation of the TVA interconnection on the western end of Nantahala's system will enable Nantahala to have access to two separate sources of supply in emergency situations. Nantahala's current and future customers, both retail and wholesale, will benefit from Nantahala's ability, under the Interconnection Agreement with Duke, to bank for future use energy produced by its hydroelectric generation that is not required to meet Nantahala's then current load. The increased availability of long-term power supplied from Duke will help to assure Nantahala's ability to respond to future growth in its load. In contrast to the present Nantahala-TVA interconnection arrangement, Duke has agreed to assume Nantahala's power supply requirements for the future.

11. Nantahala will benefit from Duke's plans to allow it to remain a separate subsidiary. Duke has no plans to merge the two companies. Nantahala will have the ability to build additional hydroelectric generation facilities if and when they become economically feasible.

12. Nantahala will also receive many intangible benefits from the sale. Duke has expertise in management, engineering, construction, and finance that will be available to Nantahala. Duke will also assist Nantahala in obtaining a funding for its capital improvement and construction projects.

13. Duke and its customers will benefit from the enlargement of the Duke transmission system and the sale of supplemental energy to Nantahala. Nantahala is a winter-peaking utility, and Duke is normally a summer-peaking utility. Duke will therefore be making the bulk of its sales to Nantahala

during Duke's off-peak season. Furthermore, while Nantahala will receive the total economic benefit available to it from its hydroelectric generating plants, Duke's customers will receive the benefit when Duke is able to schedule the output of Nantahala's hydroelectric plants to meet Duke's total system peak demands.

14. The future interconnection between the two utilities and the anticipated integration of Nantahala's load into Duke's planning and supply operations best serve the interests of the companies' customers. Duke will assume the responsibility of planning for Nantahala's load. Nantahala's ability to plan to meet its future load demands will be augmented by its new relationship with Duke, including the new interconnection and power supply arrangement with Duke's large, reliable, and economical system.

15. At the present time the Duke and Nantahala systems are not interconnected. Under the Duke Interconnection Agreement, Duke will construct, as soon as possible after regulatory approvals have been obtained, a transmission line to the Nantahala system. This line, which will be 30 miles in length and will take approximately 18 months to construct, is the subject of a complaint proceeding before the Commission in Docket No. E-7, Sub 432. Until the transmission line is completed, the benefits to Nantahala and its customers that will result from the interconnection of the two systems cannot be realized.

16. Duke's power marketing and business development skills will be utilized in the Nantahala service area to enhance business and industrial development.

17. Forty (40) resolutions of cities, counties, and civic groups have been adopted in support of Duke's purchase of Nantahala. The county and municipal governments supporting the purchase include Swain, Graham, Jackson, Macon, and Cherokee counties; and the Towns of Robbinsville, Sylva, Bryson City, Franklin, Andrews, Webster, Dillsboro, and Cashiers. The Tribal Council of the Eastern Band of the Cherokee Nation and the Western Carolina University Board of Trustees are among the other organizations that have formally supported the sale.

18. Public witnesses testified for and against the proposed sale. The great majority of the witnesses, who included county and city officials, favored the sale.

19. Under the Stock Purchase Agreement, Alcoa is responsible to Duke and Nantahala for any refunds relating to the litigation in NCUC Docket No. E-13, Subs 29 and 35. Since the rates being charged by Nantahala are those established by Docket No. E-13, Sub 44, Alcoa is responsible for all refunds occurring up to the date of closing. Alcoa and Tapoco remain parties subject to the Commission's jurisdiction in Docket No. E-13, Subs 29, 35, and 44.

20. For approximately 15 years, Nantahala's regulatory proceedings have become far more burdensome or controversial than appropriate due to its affiliation with Alcoa. Since 1976 Nantahala has filed three retail rate cases with the Commission that have resulted in lengthy, expensive, and bitterly contested proceedings.

Based on the evidence presented, the Findings of Fact and the applicable law, the Commission makes the following:

CONCLUSIONS OF LAW

1. Duke's Application for Approval of Stock Transfer is properly before the Commission. The applicable statutory authority for Commission consideration of this Application is N.C.G.S. § 62-111(a), which states in pertinent part:

> "No franchise now existing or hereafter issued under the provisions of this Chapter, other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity."

Our Supreme Court and this Commission have construed the statute as requiring the Commission to determine whether or not rates and service will be adversely affected by the proposed sale. State v. Carolina Coach Company, 269 N.C. 717, 153 S.E. 2d 461 (1967); In the Matter of Application of Aluminum Company of America to Convey its Stock Interest in Nantahala Power & Light Company, Docket No. E-13, Sub 51 (Recommended Order Deferring Final Ruling, issued September 11, 1984) (application withdrawn by Alcoa in 1987); In the Matter of the Purchase of Mooresville Telephone Company, Docket No. P-37, Sub 35 (57 NCUC Reports 526) (1967).

For the reasons set forth hereinafter, the Commission issues this Order approving Duke's Application.

2. The proposed transfer is in the public interest and is consistent with public convenience and necessity. Neither the rates nor the service of Duke and Nantahala will be adversely affected by the sale. Nantahala's customers will benefit through lower supplemental power costs, increased system reliability, and access to a long-term reliable power supply. Duke's customers will benefit through sale of supplemental power and increased system reliability through the additional transmission interconnection. Therefore, the Commission is of the opinion that Duke's Application for Written Approval of Stock Transfer should be allowed.

3. The Commission should retain jurisdiction over Alcoa with regard to all pending dockets in which Alcoa is involved.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

Duke presented the testimony of Douglas W. Booth, its President and Chief Operating Officer, who described the terms of the Stock Purchase Agreement between Duke and Alcoa, and the terms of the Interconnection Agreement between Duke and Nantahala. Witness Booth also discussed the effect of the acquisition of Nantahala, Duke's plans for Nantahala, and how the acquisition of Nantahala serves the public interest.

Nantahala presented the testimony of N. E. Tucker, its Executive Vice President, who discussed the benefits to Nantahala's customers that will result from being acquired by Duke and purchasing supplemental power under the Interconnection Agreement with Duke. The Public Staff presented the testimony of Benjamin Turner, Engineer in the Electric Division, who discussed the impact of the sale of Nantahala on its customers, presented the Public Staff's conclusion from its investigation that the sale will benefit Nantahala's customers, and recommended that the Commission approve the sale.

No other party presented prefiled testimony.

The record in this proceeding fully supports the conclusion that the acquisition of Nantahala by Duke will result in benefits to both companies and their customers, will not adversely affect the rates and service of either Duke or Nantahala, and is therefore in the public interest.

Witness Booth testified that the Duke and Nantahala service areas are contiguous, but not interconnected. Therefore, Duke will construct a transmission line from its Jocassee substation in South Carolina to Tuckaseegee, North Carolina, to interconnect with Nantahala. This transmission line will become part of Duke's overall transmission system. The cost of this line will be allocated among all customers as a part of Duke's system costs in a future general rate case. Nantahala will have an interconnection with Duke on the eastern end of its service area and with TVA on the west. These interconnections enhance the system reliability for Nantahala as well as Duke.

Witness Booth explained that following the purchase of Nantahala, Duke and Nantahala will continue to operate as separate utilities and serve the same loads and service areas that they now serve. Duke expects the Securities and Exchange Commission to grant an exemption under the Public Utility Holding Company Act in order for Duke to hold Nantahala as a subsidiary. Duke has no plans to merge the two companies. Nantahala will continue to retain the benefits of its low-cost hydroelectric generation for the customers in the Nantahala service area. Regardless of whether or not the two companies ever merge, witness Booth stated that Nantahala's customers will continue to retain the benefits of Nantahala's hydroelectric generating facilities. Although Nantahala will operate as a separate utility, the operation of the Duke and Nantahala systems can be coordinated in such a way as to benefit both systems. Duke may dispatch the Nantahala system, which will allow Duke to coordinate the output of Nantahala's hydroelectric plants with Duke's system to meet the combined needs of both. Because Nantahala is winter-peaking and Duke is normally summer-peaking, the bulk of Duke's sales to Nantahala should be off-peak. This load diversity will enable Duke to utilize its resources more effectively. Because Duke will assume the public service obligation of meeting Nantahala's load, Duke will include Nantahala in its long-term system planning. This planning may result in the construction of new generating facilities should they become economically feasible. Finally, Duke's marketing and business development capability will be utilized in the Nantahala service area to enhance business and industrial development.

Mr. Tucker explained why Nantahala supports Duke's Application to acquire its stock. Nantahala's customers will benefit through lower supplemental power rates, increased system reliability, and access to long-term power supply.

Also, the supplemental rate under the Interconnection Agreement with Duke will be lower than TVA's current rates.

Mr. Tucker also explained the increase in system reliability which will result from interconnecting with Duke. Nantahala has one transmission line running east-west across its service area. Approximately 50% of Nantahala's generation and 100% of its supplemental power feeds into the transmission system from the west. The majority of Nantahala's load and its load growth is occurring in the eastern part of its service area. The interconnection with Duke at the eastern end of Nantahala's system will provide an additional source of power where it is needed most.

Mr. Turner testified that based on the Public Staff's investigation, the sale of Nantahala to Duke would be beneficial to Nantahala's customers; he recommended that the sale be approved. Witness Turner explained that the cost of supplemental power represented 67% of Nantahala's operating expenses for 1987. Witness Turner estimated that if Nantahala had been operating under the Interconnection Agreement with Duke during 1987, the cost of power would have been 30% less than the cost of power supplied by TVA. Witness Turner also testified that there are other less quantifiable benefits to Nantahala's customers. Duke has recognized expertise and experience in the electric utility business which is expected to be available to Nantahala in terms of management, engineering, construction, and finance. Mr. Turner further urged the Commission to retain jurisdiction over Alcoa with regard to all pending dockets in which it is involved.

No party opposed the proposed sale. While some public witnesses testified against it, the great majority of them supported the sale.

Based on the record evidence, the Commission concludes that the acquisition of Nantahala by Duke is justified by the public convenience and necessity and serves the public interest. Approval of the Application will allow Nantahala to become affiliated with a utility system experienced in the electric utility business. Duke will be able to provide Nantahala with expertise in planning and construction of its facilities, as well as the benefits of Duke's experience in long-term planning and other aspects of utility operations. Duke will be able to assist Nantahala in the upgrading of its facilities and in determining the most efficient use of its generating capability.

Most important, however, the interconnection with Duke will allow Nantahala to secure a long-term source of power to supplement its existing hydroelectric capacity at rates that are projected to be lower than what they would have been had Nantahala continued to purchase such supplemental power from TVA. At the same time, Nantahala will continue to retain the benefits of its low cost hydroelectric generation for its customers in its own service area. The importance of these benefits to Nantahala's customers cannot be stressed highly enough. This Commission has been greatly concerned for a number of years about the relatively high cost of Nantahala's purchases of supplemental power from TVA. Nantahala's three most recent rate cases have been the scenes of sharp and bitter contests, as the customers of Nantahala have attempted to supplant the more expensive TVA purchases with the benefits of the low-cost power generated on the system of Tapoco, Inc., another Alcoa subsidiary. Moreover, as witness Tucker testified, the energy charge

associated with the TVA purchases, which is recovered from Nantahala's customers by an adjustment factor, "has caused much confusion and has generated criticism of the TVA Interconnection Agreement." Currently, Nantahala's purchased power costs fluctuate substantially from month to month, due to variations in weather, stream flow, plant availability, and TVA's costs. Under the banking provision in the Duke Interconnection Agreement, the fluctuations will be smoothed out, and Nantahala's customers will experience more predictable rates.

Both witness Tucker and witness Turner testified about the significant savings in supplemental power cost if the sale were approved. Witness Tucker estimated the savings to be approximately $45,000,000 through 1994. He also projected that Nantahala's cost will be lower under the Duke Interconnection Agreement after 1994.

Witness Turner of the Public Staff examined the Duke Interconnection Agreement and estimated that the cost of power provided by Duke would be 30% less than the cost of power provided by TVA. Based on actual 1987 data, witness Turner testified that purchases from Duke would have been 0.936¢ per kWh less than from TVA based upon Duke's proposed wholesale rates. He calculated that a residential customer using 1000 kWh each month would have seen an average monthly bill decrease of $9.36 (from $62.82 to $53.46), which is a 15% decrease from Nantahala's present rates.

Witness Turner further stated: "As a result of its investigation, the Public Staff concludes that the sale will benefit the ratepayers of Nantahala and recommends that it be approved." He also saw no adverse impact on Duke's customers.

A settlement agreement has been filed with the Federal Energy Regulatory Commission that would set the wholesale rates Nantahala will pay Duke. The proposed settlement is expected to be approved by FERC. The capacity rate is lower than that originally proposed, and the Public Staff and the Attorney General support the settlement. The proposed settlement was introduced into evidence as Duke's Exhibit 5.

It is significant that more than 40 resolutions supporting the sale were adopted by numerous local governmental units and civic groups in Nantahala's service area. Formal expressions of support came from the Counties of Swain, Graham, Jackson, Macon, and Cherokee; and the Towns of Robbinsville, Sylva, Bryson City, Franklin, Andrews, Webster, and Dillsboro. Numerous Chambers of Commerce and civic organizations, such as the Jaycees and Lions Club, also filed resolutions in support of the sale. Public witnesses testified for and against the proposed sale in Bryson City, Franklin, and Raleigh; the great majority of these witnesses favored the sale.

Finally, the approval of the sale by the Commission will remove the controversy surrounding Nantahala as a result of its affiliation with Alcoa. Nantahala's three rate cases since 1976 have been the source of long, bitter, and expensive controversy. There have been appeals to the North Carolina Court of Appeals and Supreme Court and the United States Supreme Court. Witness Tucker testified that "[i]f Alcoa no longer owns Nantahala, Nantahala can operate more as a small electric utility should and may avoid devoting the time and expense to Alcoa-related issues that have been required in the past."

G.S. 62-2 declares it to be the policy of the State of North Carolina to encourage and promote harmony between the public utilities and their users. The Commission is of the opinion, and so finds and concludes, that the approval of Duke's application in this docket will remove the sources of conflict that have plagued the relationship between Nantahala and its customers over the years.

Additional Comments on Proposed Order and Changes Thereto

The Commission has carefully considered the Proposed Order filed by Duke on August 16, 1988, and the proposed changes filed by the Public Staff, the Attorney General, and Jackson Paper Manufacturing Company. Many of the proposed changes have been incorporated in whole or in part in this Order. The parties especially expressed their concern about the eventual possibility of a merger of the Nantahala and Duke systems and the possible effect on Nantahala's customers. Duke offered evidence, and the Commission found as a fact, that following the purchase of the stock, Duke and Nantahala will continue to operate as separate utilities and to serve the same loads and service areas that they now serve. Duke has no plans to merge the two systems. Duke further offered testimony, and the Commission further found as a fact, that Nantahala will also continue to retain the benefits of its low-cost hydroelectric generation for its customers in the Nantahala service areas. The Commission is of the opinion that it is unnecessary to speculate at this time about the possibility of a a merger of the two systems and the possible effects on Nantahala's customers. In the event that Duke should ever plan for a merger of the two systems, it must present the matter for consideration and determination by the Commission. The concerns expressed by the parties can then be addressed at that time.

IT IS, THEREFORE, ORDERED:

1. That Duke's Application for approval to purchase the stock interest in Nantahala from Alcoa is approved.

2. That Alcoa and Tapoco, Inc., shall remain subject to the jurisdiction of the Commission until all dockets in which they are involved are finally decided and closed.

3. That Duke shall advise the Commission when FERC approves the settlement agreement for the Interconnection Agreement and when it has obtained an exemption from the SEC under the Public Utility Holding Company Act.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of August 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. G-3, SUB 141
DOCKET NO. G-3, SUB 145

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. G-3, Sub 141

In the Matter of
Application of Pennsylvania and Southern Gas Company (North Carolina Gas Service Division) for an Adjustment of Its Rates and Charges

Docket No. G-3, Sub 145

In the Matter of
Application of Pennsylvania and Southern Gas Company (North Carolina Gas Service Division) for Approval of Filing of Rate Schedule T, Transportation Service to Interruptible Customers

FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, January 11, 1988, at 11:00 a.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 the Applicant:

R. Marshall Merriman, Jr., Brooks, Pierce, McLendon, Humphrey and Leonard, P. O. Drawer U, Greensboro, North Carolina 27402
For: Pennsylvania and Southern Gas Company

For the Intervenor:

Jerry B. Fruitt, 1042 Washington Street, Raleigh, North Carolina 27605
For: Carolina Utility Customers Association, Inc.

For the Public Staff:

David T. Drooz, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On December 4, 1987, a Recommended Order was entered in this docket granting Pennsylvania and Southern Gas Company (North Carolina Gas Service Division) an increase in rates and charges.

On December 21, 1987, Carolina Utility Customers Association, Inc., filed certain exceptions to the Recommended Order. Oral arguments on the exceptions

were subsequently heard by the Commission on January 11, 1988, with all parties being represented by counsel.

Based upon a careful consideration of the Recommended Order of December 4, 1987, the oral arguments of the parties before the full Commission on January 11, 1988, and the entire record in this proceeding, the Commission is of the opinion, finds, and concludes that all the findings, conclusions, and ordering paragraphs contained in the Recommended Order dated December 4, 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 Carolina Utility Customers Association, Inc., to the Recommended Order of December 4, 1987, be, and the same is hereby, overruled.

2. That the Recommended Order of December 4, 1987, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

3. That the increase in rates and charges granted in the Recommended Order issued on December 4, 1987, are effective as of the date of this Order and Pennsylvania and Southern Gas Company (North Carolina Gas Service Division) is hereby required to refile tariff sheets to reflect said increase.

4. That the proposed notice to customers filed with the Commission on December 22, 1987, is hereby approved and should reflect the effective date of the increase in rates and charges as being the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of January 1988.

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

DOCKET NO. G-9, SUB 278

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Piedmont Natural Gas Company, Inc., for an Adjustment of its Rates and Charges) RECOMMENDED ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN: Mecklenburg County Office Building, Charlotte, North Carolina, on October 4, 1988; Guilford County Courthouse, Greensboro, North Carolina, on October 5, 1988; and Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on October 11-14, 1988.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Edward B. Hipp and William W. Redman.

APPEARANCES:

For The Applicant:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, Post Office Drawer U, Greensboro, North Carolina 27402

For The Public Staff:

David T. Drooz and Robert B. Cauthen, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For The Attorney General Of North Carolina:

Lorinzo L. Joyner, Assistant Attorney General, Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

For Carolina Utility Customers Association, Inc.:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter arose upon the filing of an application on May 6, 1988, by Piedmont Natural Gas Company, Inc. (Piedmont, Applicant, or the Company), requesting an adjustment of its rates and charges effective June 5, 1988, to produce additional annual revenues from Piedmont's North Carolina operations of approximately $9,615,816.

Interventions were filed by L.H. Utility and Transportation Service, Inc., Carolina Utility Customers Association, Inc. (CUCA) and the Attorney General of North Carolina. The Public Staff - North Carolina Utilities Commission (Public Staff) also intervened on behalf of the using and consuming public.

By Order dated June 1, 1988, the Commission declared the application to be a general rate case under G.S. 62-137, suspended the proposed rate increase for a period of 270 days, scheduled the matter for hearing, requested the Company to give public notice of the application and the hearings and established the test period to be used in the proceedings.

The matter came on for hearing as scheduled. At the hearing in Charlotte, Don Morris, Allegra Westbrooks and Harold Hoak testified as public witnesses. At the hearing in Greensboro, W. Darrell Allred, Michael Barnes, William McNeil and Max Hipp testified as public witnesses.

The case in chief came on for hearing as scheduled in Raleigh. The Company presented the testimony and exhibits of the following witnesses:

1. John H. Maxheim, President, Chairman of the Board and Chief Executive Officer of Piedmont;
2. Eugene W. Meyer, Managing Director of Kidder, Peabody & Company, Incorporated;
3. Barry L. Guy, Vice President and Controller of Piedmont;
4. William W. Foster, Retired Benefits Salesman for Connecticut General Life Insurance Company;

5. Richard L. Lowe, Consulting Actuary for Mercer-Meidinger-Hansen, Incorporated;
6. Chuck W. Fleenor, Vice President of Gas Supply of Piedmont;
7. Ware F. Schiefer, Senior Vice President of Gas Supply and Transportation of Piedmont; and
8. Everette C. Hinson, Senior Vice President of Finance of Piedmont.

CUCA presented the testimony and exhibits of Donald W. Schoenbeck, Regulatory and Cogeneration Services, Incorporated.

The Public Staff presented the testimony and exhibits of the following witnesses:

1. Kevin W. O'Donnell, Financial Analyst for the Public Staff - North Carolina Utilities Commission;
2. Frederick W. Hering, Staff Accountant with the Accounting Division of the Public Staff;
3. Donald E. Daniel, Assistant Director of the Accounting Division of the Public Staff;
4. Jeffrey L. Davis, Public Utilities Engineer with the Natural Gas Division of the Public Staff; and
5. Eugene H. Curtis, Jr., Public Utilities Engineer with the Natural Gas Division of the Public Staff.

After the hearing, both the Company and the Public Staff filed certain late-filed exhibits as requested by the Commission.

Based upon the verified application, the testimony and exhibits received into evidence at the hearings, and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Piedmont Natural Gas Company, Inc., is a duly created and existing New York corporation authorized to do business, and doing business, in North Carolina as a franchised public utility providing natural gas service in 42 North Carolina communities. Piedmont is properly before the Commission in this proceeding for a determination of the justness and reasonableness of its rates and charges as regulated by the Commission under Chapter 62 of the General Statutes of North Carolina.

2. The test period established by the Commission and utilized by all parties in this proceeding is the twelve months ended January 31, 1988, updated primarily through July 31, 1988, but also updated to reflect certain changes which occurred up to the time that the hearing was closed as permitted by G.S. 62-133(c).

3. In its initial application Piedmont seeks approval of rates to produce additional annual revenues of $9,615,816.

4. Piedmont is providing good natural gas service to its existing customers.

5. The appropriate amount of cost-free capital to be considered in this proceeding is $282,327.

6. The reasonable allowance for working capital for Piedmont is $13,027,485.

7. The original cost of Piedmont's plant in service used and useful in providing natural gas service in North Carolina is $298,572,546. To this amount should be added leasehold improvements, net of amortization, of $1,981 and deducted accumulated depreciation of $75,157,603 and customer advances for construction of $431,503, resulting in a reasonable original cost less depreciation or a net gas plant in service of $222,985,421.

8. The reasonable original cost less depreciation of Piedmont's plant in service to its customers in North Carolina of $222,985,421, plus a reasonable allowance for working capital of $13,027,485 and less $20,478,963 of accumulated deferred income taxes, $282,327 of cost free capital and $247,496 of unamortized gain on bond defeasance, yields a reasonable original cost rate base used and useful to North Carolina customers of $215,004,120.

9. The reasonable level of annual volumes that Piedmont can be expected to deliver in North Carolina under normal weather conditions is 54,091,346 dekatherms. The total North Carolina and South Carolina supply required to achieve this level of gas deliveries is 68,663,804 dekatherms.

10. Piedmont cannot be expected to achieve the sales level approved herein without additional peaking supplies. The additional peaking supplies which Piedmont has contracted to purchase from Cabot Corporation provides a prudent solution to Piedmont's peak day gas requirements at a cost which is reasonable.

11. Piedmont's test year level of operating revenues, after appropriate accounting and pro forma adjustments, under present rates is $258,149,188, including other operating revenues of $773,673.

12. Piedmont's test year level of operating revenue deductions, after appropriate accounting and pro forma adjustments, including taxes, interest on customer deposits and amortization of gain on bond defeasance, under present rates is $237,155,789, which includes $7,267,141 for actual investment consumed through reasonable actual depreciation.

13. The capital structure which is proper for use in this proceeding is as follows:

Item	Percent
Short-term debt	6.08
Long-term debt	44.11
Common equity	49.81
Total	100.00

14. The proper embedded cost rates for Piedmont's short-term and long-term debt are 10.0% and 9.90%, respectively. The rate of return which should be applied to the original cost rate base is 11.63%. This return on Piedmont's rate base of 11.63% will allow the Company the opportunity to earn a

return on its common equity of 13.37%, after recovery of the embedded cost of both its long-term and short-term debt. Such returns on rate base and on common equity will enable Piedmont, by sound management, to produce a fair return for its shareholders, to maintain its facilities and services in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on terms which are reasonable and fair both to the customers and to the existing investors.

15. The annual revenue requirement approved herein is $264,941,170 (including other operating revenues of $773,673), an increase of $6,791,982 in Piedmont's gross revenues under rates currently in effect. The revenues approved herein will allow the Company to earn the rate of return on its rate base that the Commission has found to be just and reasonable and is based upon Piedmont's net original cost of rate base used and useful in providing service to its customers in North Carolina and its reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

16. It would be unjust and unreasonable to establish rates in this proceeding based solely upon equalized rates of return for all customer rate classes. Other relevant factors which must be considered in setting rates in addition to the estimated cost of service include value of service, quantity of natural gas used, the time of use, the manner of use, the equipment which Piedmont must provide and maintain in order to meet the requirements of its customers, competitive conditions and consumption characteristics.

17. Piedmont presently delivers natural gas to "process customers" under two rate schedules. Piedmont purchases natural gas at wholesale from its suppliers and resells it to its "process customers" under Rate Schedule 103. Piedmont also transports gas owned by its "process customers" under Rate Schedule 113. A full margin transportation rate for Rate Schedule 113 is just and reasonable and should be continued in this proceeding.

18. Piedmont presently delivers natural gas to large industrial customers under two rate schedules. Piedmont purchases natural gas at wholesale from its suppliers and resells it to large industrial customers under Rate Schedule 104. Piedmont also transports gas owned by its large industrial customers under Rate Schedule 107. A full margin transportation rate for Rate Schedule 107 is just and reasonable and should be continued in this proceeding.

19. The summer/winter rate differentials adopted herein are just and reasonable and should be approved.

20. The rates set forth in Appendix A attached hereto and approved herein are just and reasonable, do not result in any unjust or unreasonable discrimination or preference between or within classes of customers and should be approved. These rates will generate the appropriate level of revenues and will afford Piedmont an opportunity to achieve the approved overall rate of return of 11.63%.

21. Piedmont presently curtails customers on the basis of an end use priority system set forth in Commission Rule R6-19.2. This priority system was adopted at a time of severe gas curtailment. Under existing conditions of ample gas supplies, this end use priority system does not efficiently allocate

winter supplies of gas; therefore, the priority system should be replaced with a system of curtailment based on margin.

22. The procedures adopted by the Commission in Docket No. G-9, Sub 257 for the treatment of spot gas savings are fair and reasonable and should be continued; however, the procedures should be modified as set forth in this order.

23. Piedmont should be required to terminate its practice of retaining a markup or paying a commission to its wholly owned subsidiary PNG Energy Company.

24. Piedmont should be permitted to continue to use the services of Enmar, Inc., on the terms and conditions hereinafter set forth.

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 Order Setting Investigation and Hearing, Suspending Proposed Rates and Requiring Public Notice, and the testimony and exhibits of Company witnesses Maxheim, Schiefer and Guy and Public Staff witnesses Hering and Curtis, and is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding is contained in the record as a whole and is generally uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5, 6, 7 AND 8

The evidence supporting these findings is found in the testimony and exhibits of witnesses Daniel, Hering and Guy and, for the most part, is uncontested. There are, however, two issues which were not agreed upon.

Capitalization of Storage Demand Charges

In order to meet the winter peak requirements of its customers, Piedmont has to purchase gas in the summer and place it in storage for withdrawal in the winter. Piedmont recovers the carrying charges on the CD-2 demand and commodity charges in its rate base. Under the procedures approved by the Commission in Docket No. G-9, Sub 251, Piedmont also recovers the carrying charges on the capacity and demand charges it pays for storage while the gas is in inventory. Piedmont proposes to continue the procedures approved by the Commission in Docket No. G-9, Sub 251.

The Public Staff contends that Piedmont recovers its capacity and demand charges through the winter differential in rates when it sells the storage gas in the winter. The Company does not dispute the fact that it recovers the storage charges; however, it contends that it will not recover the carrying costs on the storage capacity and demand costs unless these costs are capitalized and put in rate base.

The Commission addressed this identical issue in Piedmont's last general rate case. In the Order in that case, the following conclusion was reached:

> "After careful review of this matter, the Commission agrees with Piedmont and concludes that the Company should be allowed to recover through rates the carrying charges on these storage capacity and demand charges. Therefore, these storage and demand charges should be included as a component of the Company's working capital allowance. Exclusion of these charges from the working capital allowance would prevent the Company from recovering through rates the associated reasonable carrying costs."

The record in this proceeding does not show any changes in the circumstances which existed at the time of our order in Docket No. G-9, Sub 251, and we have not been convinced that our earlier decision is not correct. Therefore, the Commission concludes that the appropriate level of working capital to be included in establishing rates in this proceeding is $13,027,485, as proposed by the Company.

Accumulated Deferred Income Taxes

On November 8, 1988, the Public Staff filed a Motion to Exclude Improper Data from Evidence by which it moved that the reference to $20,478,963 of accumulated deferred income tax on Schedule II of Piedmont's November 4, 1988, filing be stricken from the record. The Public Staff argued that Piedmont had increased its accumulated deferred income taxes to $23,793,661 in its application in order to correspond to an increase in plant in service, that the Public Staff had accepted this adjustment, and that Piedmont was now not only changing its position on this issue after the close of the hearing, but also "changing its evidence after the hearing is closed." The Public Staff asked that the figure shown on Piedmont's post-hearing filing be stricken. Piedmont responded that it had changed its position after the hearing in response to the discovery of a ruling by this Commission in another docket, that the figure in question is not new evidence but rather the result of subtracting numbers already in the record, and that the issue is one of legal interpretation of the Internal Revenue Code which is properly addressed through argument. The Commission agrees with Piedmont. Although it is clear that Piedmont has changed its position as to the appropriate level of accumulated deferred income taxes, we believe that the $20,478,963 figure is a mere computation based upon evidence already in the record. All parties have an opportunity to argue as to the appropriate interpretation of the tax law and the appropriate level of accumulated deferred income taxes, and the Commission will deny the Public Staff's Motion.

As spoken to above, in prefiled testimony both the Company and the Public Staff adjusted accumulated deferred income taxes by $3,314,698 to annualize actual test year deferred income taxes for plant placed in service between the end of the test year and September 30, 1988. This adjustment is inconsistent with rulings in Docket No. E-7, Subs 373, 391 and 408. The Company removed this adjustment in its proposed order in order to be consistent with the rulings in Docket No. E-7, Subs 373, 391, and 408. In those orders, the Commission concluded that the Internal Revenue Code provides that tax normalization must be made in compliance with requirements contained in the Code; otherwise, the affected utility could be in jeopardy of losing benefits

associated with accelerated depreciation. Thus, if the adjustment proposed by the Public Staff to deferred income taxes is allowed, there is a risk of a loss of deferred income taxes. This risk can be avoided if the Company deducts from rate base actual end-of-period accumulated deferred taxes. With this methodology, ratepayers are assured over time of receiving the benefits of all deferred taxes. Therefore, the Commission concludes that the appropriate accumulated deferred income taxes for use in the proceeding is $20,478,963, as proposed by the Company.

Based on the foregoing and the items of original cost rate base agreed to by the parties, the Commission concludes that the appropriate original cost rate base to be used in establishing rates in this proceeding is $215,004,120. This amount is set out in the chart below:

Item	Amount
Gas utility plant in service	$298,572,546
Leasehold improvement net of amortization	1,981
Less: Accumulated depreciation	(75,157,603)
Customer advances for construction	(431,503)
Net plant in service	222,985,421
Accumulated deferred income taxes	(20,478,963)
Allowance for working capital	13,027,485
Cost-free capital-Transco refunds	(282,327)
Unamortized gain from defeasance	(247,496)
Original cost rate base	$215,004,120

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Piedmont witnesses Schiefer and Fleenor and Public Staff witness Curtis presented testimony concerning the representative level of sales volumes and of the supply required to meet that level of sales.

For the most part, witnesses Fleenor and Curtis used the same method to determine normalized sales volumes, allocation percents and customer growth for Rate Schedules 101 and 102 customers. Based on this agreement, the Commission concludes that the weather normalization adjustment proposed by the parties is reasonable and should be adopted to establish end-of-period sales volumes in this proceeding. Likewise, the Commission accepts the growth adjustment agreed to by the parties for Rate Schedules 101 and 102 customers. The two witnesses differ, however, in their calculation of growth for volumes under Rate Schedules 103, 104 and 107. Consistent with the Commission's final decision in Piedmont's last general rate case, witness Fleenor did not project growth in sales to these customers. On the other hand, witness Curtis did project growth in these rate schedules. In his original testimony, witness Curtis calculated growth for Rate Schedules 103 and 104 by comparing the number of customers and volumes sold under these rate schedules during May, 1988 with the number of customers and volumes sold during June, 1987. In his original testimony, he did not project any growth in Rate Schedule 104 or Rate Schedule 107; however, he did project growth in Rate Schedule 104 and 107 volumes. In his revised testimony, witness Curtis lowered his original estimate of volume growth to Rate Schedules 103, 104 and 107 by 50% in order to make his growth methodology consistent with that approved for the Company in previous general

rate cases. Additionally, witness Curtis projected additional customer growth under Rate Schedules 104 and 107.

The Company asserts that witness Curtis' growth adjustment should be denied because it is based on reports filed by Piedmont in Docket No. G-100, Sub 24. Secondly, the Company asserts that the method used by witness Curtis is inappropriate for determining end-of-period volumes because it relies on two points in time. Finally, the Company contends that the Public Staff growth adjustment does not consider any alternate fuel price impact on natural gas sales volumes. Having carefully reviewed the record, the Commission concludes that the Public Staff's proposed growth to customers and volumes should be approved for Rate Schedule 103 but denied for Rate Schedules 104 and 107.

The Company cross-examined Public Staff witness Curtis concerning Public Staff Cross-Examination Exhibit No. 6. This exhibit shows twelve-month rolling totals for Rate Schedules 103 and 104 customers and volumes and is a workpaper initially provided by the Company to the Public Staff. The Commission notes that a close review of either the reports filed by Piedmont in Docket No. G-100, Sub 24 or Public Staff Cross-Examination Exhibit No. 6 reveals material growth to Rate Schedule 103 customers and volumes. The Commission is unable to find competent evidence in the record to dispute this fact. Therefore, the Commission concludes that the Public Staff's adjustment to end-of-period sales volumes and customers for Rate Schedule 103 is appropriate.

On the other hand, the evidence supporting the Public Staff's growth adjustment to Rate Schedules 104 and 107 is not nearly as substantial. It is clear that Rate Schedules 104 and 107 have not experienced the recent steady growth that Rate Schedule 103 has achieved. In fact, as pointed out by the Company, had witness Curtis used data for the twelve months ended July 31, 1987, he would have concluded that there was a decrease in sales to Rate Schedule 104 customers. Based on a careful review of the record, the Commission concludes that the Public Staff's growth adjustment to Rate Schedules 104 and 107 should not be adopted.

In response to the Company's concerns related to alternative fuel price impact on industrial gas sales volumes, the Public Staff notes that the Company is currently allowed to recover negotiated losses through procedures established for cost of gas savings in Docket No. G-9, Sub 257. It would be inappropriate to allow this treatment and to establish end-of-period sales volumes in this proceeding based in part on potential negotiated sales losses. Therefore, the Commission agrees with the Public Staff on this point.

The Company further states that its proposed no growth to Rate Schedules 103, 104, 107, is consistent with the Commission's decision in the Company's last general rate case. Although Company witness Fleenor's recommendation in this regard is consistent with the end result approved in Docket No. G-9, Sub 251, the Commission notes that the proper sales volumes for all rate classes is always subject to determination of whether or not a growth adjustment is appropriate for establishing rates. Clearly, this adjustment is one that must be carefully considered in each general rate case. The fact that no growth adjustment was found in Docket No. G-9, Sub 251 does not weaken the evidence supporting a growth adjustment in Rate Schedule 103, as adopted herein this proceeding.

The more difficult decision related to the determination of end-of-period sales volumes in this proceeding is not whether growth has occurred, as discussed above, but rather whether the Company's winter sales demand can be met by the gas supplies available to the Company. At the hearing, after considering the impact of signing a winter peaking contract with Cabot Corporation that provides for less volumes than that used in determining gas supply in the original application, the Company made a substantial reduction to Rate Schedule 104 winter sales. This reduction reflects the Company's position, presented at the hearing, that its current contractual supply volumes cannot support industrial winter sales demand, even before consideration of customer growth, and after inclusion of the Cabot Contract. The need for the Cabot Contract is discussed under Evidence and Conclusions for Finding of Fact No. 10 and will not be discussed herein.

Company witness Fleenor presented evidence that the Company's contractual gas supply could not meet normalized winter sales demand at a 95% capacity factor. The Public Staff noted that witness Fleenor's exhibit on this matter contained certain computational errors. However, after correction of these errors, this exhibit still supports the Company's contention that supply problems do exist in meeting industrial winter sales demand.

The Public Staff pointed out in its proposed order that other Company exhibits show that the Company has an adequate gas supply to meet firm customer requirements during the winter months. The Public Staff further pointed out that firm customers are comprised of Rate Schedules 101, 102, and 103. However, the Commission notes that the problem presented herein is not the ability to meet firm demand, but the ability to meet Rate Schedule 104 winter demand. The Commission further notes that the Company's adjustment to sales volumes for this supply shortage was to decrease the fourth step of Rate Schedule 104, and not to adjust Rate Schedules 101, 102, 103.

The Commission has given this matter much consideration. A close review of the exhibits, as corrected, sponsored by Company witness Fleenor and the reports filed by the Company in Docket No. G-100, Sub 24, shows that though the Company has a supply availability problem in meeting winter sales demand, it is not as severe as estimated by the Company. Based on the foregoing, and after consideration of the Cabot Contract as spoken to elsewhere herein, the Commission concludes that the Company's supply availability adjustment should be reduced by 221,623 dekatherms on a North Carolina retail basis.

Consistent with the Commission's decision as to the proper growth adjustment to Rate Schedule 103 volumes, the Commission concludes that 76,061 dekatherms should be removed from the fourth step of winter Rate Schedule 104, as an offset to growth approved herein for Rate Schedule 103. This adjustment is consistent with the decisions concerning gas availability and volume growth, and the normalization methodology employed by both the Public Staff and the Company.

Based upon the foregoing, the Commission concludes that the reasonable and proper level of sales and transportation volumes under normal weather conditions in North Carolina for use in this proceeding is 54,091,346 dekatherms. The total North Carolina and South Carolina supply required to achieve this level of gas deliveries is 68,663,804 dekatherms.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Piedmont witnesses Schiefer and Fleenor and Public Staff witness Curtis presented testimony concerning the need for additional peaking gas supplies to permit Piedmont to meet sales demand.

Witness Fleenor testified that Piedmont could not meet its projected peak day requirements without additional peaking supplies. He testified that Piedmont has determined through the study of detailed weather data and through statistical analysis that it should purchase sufficient peaking supplies to permit it to meet its requirements on a design day of 12 degrees fahrenheit.

In its application the Company included estimated peaking services of 2,104,953 dekatherms on a total North Carolina and South Carolina basis. On this same basis, the Company included in its updated cost of gas presented at the hearing 949,925 dekatherms of peaking service. This reduction in peaking service availability was taken into account in deriving Company witness Fleenor's position on the Company's inability to meet winter sales demand. The Commission has discussed this issue under Evidence and Conclusions for Finding of Fact No. 9. At issue here is the Cabot Contract for 949,925 dekatherms of peaking service for the winter period 1988-1989.

The Cabot agreement, which was introduced as an exhibit, provides for two separate and distinct incremental supplies, each providing 15,000 dekatherms per day. The first incremental supply provides gas from December 15, 1988 through February 15, 1989. This supply has a demand charge of $750,000 and a 100% take-or-pay obligation. The variable cost of this gas supply depends upon the availability of transportation on Transco's Leidy line in Pennsylvania. On those days when transportation is available, the variable cost is $3.50 per dekatherm. On those days when transportation is not available, the variable cost is $3.70 per dekatherm. The second 15,000 dekatherms per day of incremental supply provides for gas deliveries during the month of January 1989. This incremental supply has no demand or take-or-pay obligations and has a variable cost of $4.15 per dekatherm.

Witness Curtis testified that the gas purchasing practices of Piedmont are reasonable, but as to the Cabot contract he would have liked to have had more time to have reviewed other alternatives. When asked on cross-examination if the Public Staff's position was that Piedmont should not have signed the Cabot contract, Witness Curtis answered: "No, sir, that is not true." When asked if the Public Staff's position was that the price being paid by Piedmont for the Cabot gas is too high, witness Curtis replied: "I have no recommendation on that." When asked if anyone on the Public Staff could direct Piedmont to a cheaper source of peaking service, witness Curtis replied: "No, sir. As I stated before, I don't think anyone on the Public Staff is capable of doing that."

The Commission notes that since the Cabot Contract is for peaking service, then the cost of gas associated with said contract is greater than that charged for base load requirements from Transcontinental Gas Pipeline Company. Furthermore, it appears that Piedmont may have saved its ratepayers a considerable amount of money by delaying in executing this peaking contract. Witness Fleenor testified that the approximate $4.1 million cost of the Cabot contract compares with a Canadian supply which would have cost approximately $9

million, LNG which would have cost approximately $8 million, LGA which, if available, would have cost approximately $8.3 million, Carolina Pipeline which, if available, would have cost approximately $4.7 million and Transco CD which, if available, would have cost approximately $5.9 million, including demand costs. In any event, witness Curtis agreed that it would have been improper for Piedmont to have paid more for gas just so it could have filed a contract earlier.

Based on the foregoing, and recognition of the fact that the uncontroverted record in this proceeding supports the conclusion that Piedmont's purchasing practices are prudent, the Commission concludes that Piedmont requires additional peak day supplies of gas to meet the needs of its customers, that Piedmont was prudent in its purchase of gas from Cabot Corporation and that the cost of this gas should be included in the calculation of Piedmont's gas costs in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Public Staff witness Curtis and Piedmont witness Fleenor presented testimony concerning the representative end-of-period level of operating revenues.

The Company computed "Other Operating Revenues" at $773,673. There was no dispute as to this amount, and the Commission finds that it is the appropriate amount for use in this proceeding.

The Company calculated end-of-period revenues from the sale and transportation of gas of $256,023,454. The Public Staff calculated end-of-period revenues from the sale and transportation of gas of $260,715,241. The difference in the end-of-period revenues results from (1) the fact that the Public Staff increased the number of customers for Rate Schedules 103, 104 and 107, and (2) the fact that the Public Staff included more sales to Rate Schedules 103, 104, and 107.

With respect to the proper level of gas sales, we have previously found that the proper level of sales is 54,091,346 dekatherms.

Based upon this level of sales volumes, as discussed elsewhere herein, the Commission concludes that $257,375,515 is the appropriate level of end-of-period revenues from gas sales and transportation for use in this proceeding. Therefore, total end-of-period revenues under present rates is $258,149,188 as shown in the chart below:

Item	Amount
1. Sales of Gas	$257,375,515
2. Other Revenues	773,673
3. Total Operating Revenues	$258,149,188

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding of fact is found in the testimony and exhibits of Company witnesses Guy, Fleenor, Schiefer, Maxheim, Foster, and Lowe and Public Staff witnesses Hering, Daniel and Curtis. The following chart sets

forth the amounts proposed by the Company and the Public Staff under present rates.

Item	Company	Public Staff
Cost of Gas	$175,722,502	$178,314,749
Operation and Maintenance Expenses	35,819,073	34,358,575
Depreciation	7,267,141	7,267,141
Taxes Other Than Income	11,786,516	11,937,088
State Income Taxes	1,129,855	1,305,806
Federal Income Taxes	4,930,061	5,724,858
Amortization of ITC	(312,484)	(312,484)
Interest on Customer Deposits	191,927	191,927
Amortization of Bond Defeasance Gain	(64,560)	(64,560)
Total Operating Revenue Deductions	$236,470,031	$238,723,100

The witnesses agree on the amounts to be included for depreciation, amortization of ITC, interest on customer deposits and amortization of bond defeasance gain. The Commission therefore concludes that these amounts are reasonable and proper.

The cost of gas differences result from (1) the fact that the Public Staff included more sales to Rate Schedules 103 and 104 customers, (2) the fact that the Public Staff used unaccounted for dekatherms which were calculated on delivered volumes filed by the Company in its original filing rather than the updated unaccounted for volumes and (3) the fact that the Public Staff excluded the Cabot Corporation contract. The Commission concludes that unaccounted for volumes should be calculated consistent with end-of-period sales volumes. Therefore, based on end-of-period sales volumes of 54,091,346 dekatherms, related unaccounted for volumes, and inclusion of the Cabot Contract, as discussed elsewhere herein, the Commission concludes that the appropriate cost of gas for use in this proceeding is $176,719,793.

The next difference, operation and maintenance expenses, results from the fact that the Public Staff proposes to adjust uncollectibles, pension expense, employee medical insurance expense, and increase PNG Energy Company expenses allocated to the Company.

The first adjustment to operation and maintenance expenses proposed by the Public Staff, an increase in uncollectibles, relates to the difference in revenues calculated by the Company and the Public Staff. Since the Commission has found that the proper end-of-period revenues for use in this proceeding is $258,149,188, the Commission concludes that the proper adjustment to the Company's proposed uncollectible expense is $4,508. This adjustment properly matches end-of-period revenues and associated uncollectibles.

The second adjustment to operation and maintenance expenses proposed by the Public Staff, a decrease in the pension expense, was addressed on behalf of the Public Staff by witness Hering and on behalf of the Company by witnesses Guy and Lowe.

Witness Lowe, a consulting actuary for Mercer-Meidinger-Hansen, Incorporated testified that in recent years pension cost funding has been circumscribed by tax laws, particularly the Tax Reform Act of 1986 and the Omnibus Reconciliation Act of 1987. He also testified that pension expense has been almost entirely standardized by FASB-87. As a result of FASB-87 and the Tax Reform Act of 1986, witness Lowe determined that Piedmont should expense $3,988,939 for the fiscal year ending October 31, 1989. This expense level required by FASB-87 and the Tax Reform Act of 1986 compares with $2,432,528 for the year ending October 31, 1988.

Public Staff witness Hering testified that he rejected the increase in pension expense because, according to the legal staff of the Public Staff, the "increase does not meet the requirements of G.S. 62-133(c) which requires that an actual change must have occurred no later than the close of the hearing" and because "the change must be measurable with a reasonable degree of accuracy."

The Commission cannot assume that Piedmont's pension expense will remain static when the undisputed evidence is that this expense will substantially increase because of changes in the tax laws and in the accounting pronouncements of the Financial Accounting Standards Board which took place either before or during the test period. Thus, the Commission concludes that it has evidence of an actual change in cost within the meaning of G.S. 62-133(c). However, the Commission is not convinced that witness Lowe's testimony establishes the change in cost with accuracy. The Commission has carefully reviewed the evidence in this proceeding on this matter, the Tax Reform Act of 1986, the Omnibus Reconciliation Act of 1987, and FASB-87. Based on this review the Commission concludes that the appropriate level of pension expense to be included in establishing rates is the amount proposed by the Company reduced by $339,199, on a North Carolina jurisdictional basis.

The third adjustment to operation and maintenance expenses proposed by the Public Staff, a decrease in the employee medical insurance expense, was addressed on behalf of the Public Staff by witness Hering and on behalf of the Company by witnesses Guy and Foster.

Witness Foster who has 31 years of experience as either a group insurance or pension representative for Connecticut General, testified that Piedmont has been his client for more than 13 years. He described Piedmont's insurance plan as a "modified self-insurance arrangement known as Minimum Premium." This arrangement retains the features of an insurance contract relative to transferring risks from Piedmont to the insurance company but it enables Piedmont to avoid state premium taxes, gives them the advantage of cash flow savings on the payment of claims and allows Piedmont to hold its reserves or accruals which represent the amount for incurred but unreported claims. Under this arrangement, Piedmont makes payments to Connecticut General to cover operating expenses and pooling charges, and the remainder of the premium is deposited in a 501(c)(9) Trust. Claims are paid from the trust as they are incurred.

With respect to the amount of the premium paid to Connecticut General and/or placed in the trust, witness Foster testified that, prior to the beginning of each plan year, Connecticut General determines the rates based on Piedmont's actual experience. These rates are then multiplied by the number of employees and dependents to determine the amount of the premium to be paid to

Connecticut General and/or to be placed in the trust. Based on Connecticut General's recent calculations, it was determined that Piedmont's premium for the 1989 plan year should be increased by $1,324,783. Witness Foster explained that this increase was primarily caused by an increase in the claim activity from Piedmont's employees and their insured dependents and to general increases in medical care costs due to a number of factors, including the effect of the Consolidated Omnibus Budget Reconciliation Act. Finally, witness Foster pointed out that the amount of the increase was affected by the fact that the 1988 premium was understated and should not be used as the measure for future medical expenses.

Public Staff witness Hering testified that he rejected the increase in medical expense because (1) according to the legal staff of the Public Staff, the "increase does not meet the requirements of G.S. 62-133(c) which requires that an actual change in cost must have occurred no later than the close of the hearing," (2) "the change must be measurable with a reasonable degree of accuracy" and (3) "the underwriter has provided only a preliminary estimate which he admits contains flaws."

With respect to the Public Staff's contentions, witness Foster testified that in the opinion of Connecticut General's actuaries and underwriters, the projected premium represents the "best possible measure of Piedmont's premium for the 1989 plan year." Further, Connecticut General provided a September 13, 1988, letter which was introduced in evidence and which reads in its entirety as follows:

> "Based on your loss ratio for the period of July 1, 1987, through June 30, 1988, we have determined that your required premium for Medical Care coverage must be increased by $1,324,783. This change increases your total annual Medical premium to $2,689,132."
>
> "This increase will become effective January 1, 1989 and will be guaranteed for the 1989 plan year."

The letter is clear and unequivocable. The amount of the medical premium set forth in that letter was confirmed by witness Foster on the witness stand. The Commission concludes that this evidence shows an actual change within a reasonable time after the test period based upon circumstances and events occurring before the close of the hearing and that the evidence shows this change with a sufficient degree of accuracy to support its use herein.

The fourth adjustment to operation and maintenance expenses proposed by the Public Staff, an increase in PNG Energy expenses allocated to the Company, was addressed on behalf of the Public Staff by witness Daniel and on behalf of the Company by witnesses Maxheim, Schiefer and Guy.

Public Staff witness Daniel recommended that all commissions paid to PNG Energy Company and accumulated in Deferred Account 253 be refunded to Piedmont's customers and that no future commissions be paid to PNG Energy Company. In connection with these recommendations, he recommended that Piedmont's operating expenses be increased by $48,631 to reflect the cost incurred to acquire the North Carolina volumes on which commissions were paid during the test year.

The Commission addresses the issue of commissions paid to PNG Energy elsewhere in this Order. Though the Commission's decision as to the appropriate ratemaking treatment for these commissions is consistent with the Public Staff's proposal, the Commission concludes that this adjustment of $48,631 should not be adopted.

No party argues that the $48,631 should not be recovered. The Company's method, as currently in effect, would reduce cost of gas savings in the deferred account by these transaction costs. The Public Staff's recovery method would not reduce the deferred account but would allow for recovery of said costs through rates established in this proceeding. The problem with the Public Staff method is that if purchases of off system gas should increase, then the increased transaction costs would not be recovered. Likewise, if off system gas purchases should decrease, then the decreased transaction costs would be over-recovered. In order to ensure a proper matching of transaction costs and cost of gas savings, the Commission concludes that PNG Energy transaction costs should be used to reduce cost of gas savings in the deferred account, as currently approved in Docket No. G-9, Sub 257. The level of these costs are subject to continual review by the Public Staff and this Commission.

The difference between the Company and the Public Staff in taxes other than income is due to the different levels of end-of-period revenues proposed by the Public Staff and the Company. Since the Commission found under Evidence and Conclusions for Finding of Fact No. 11 that the appropriate level of revenues under present rates for the test period is $258,149,188 (including other operating revenues of $773,673), the Commission concludes that the appropriate level of taxes other than income is $11,829,907.

The difference in state income taxes and federal income taxes is due to the differences in the various components of taxable income and deductible expenses proposed by the Company and the Public Staff. Based on our findings above as to these various components of taxable income and deductible expenses, the Commission concludes that state income tax expense of $1,126,188 and federal income tax expense of $4,913,495 are appropriate under present rates.

Based on all the foregoing, the Commission concludes that the proper level of operating revenue deductions under present rates is $237,155,789 as shown in the following chart:

Item	Amount
Cost of Gas	$176,719,793
Operation and Maintenance Expenses	35,484,382
Depreciation	7,267,141
Taxes Other Than Income	11,829,907
State Income Taxes	1,126,188
Federal Income Taxes	4,913,495
Amortization of ITC	(312,484)
Interest on Customer Deposits	191,927
Amortization of Bond Defeasance Gain	(64,560)
Total Operating Revenue Deductions	$237,155,789

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding and conclusion is contained in the testimony and exhibits of Company witnesses Maxheim, Guy, and Hinson, and Public Staff witness O'Donnell.

For purposes of this proceeding, Piedmont is requesting that the Commission employ the Company's end-of-period capitalization at July 31, 1988, excluding short-term debt. The Public Staff advocates use of a pro forma capital structure based upon the twelve-month period ending July 31, 1988, including short-term debt. The Public Staff's recommended capital structure was adjusted to reflect the full effect of the Company's May 1988 common stock issuance. Both the Company and the Public Staff recommend that the capital structure be adjusted to reflect the effect of the Company's issuance of long-term debt in August 1988. The capital structures and associated embedded cost rates proposed by the Company and the Public Staff are as follows:

	Public Staff		Company	
Item	Capital-ization Ratio (%)	Cost Rate %	Capital-ization Ratio (%)	Cost Rate %
Short-term debt	6.10	10.00	-	-
Long-term debt	46.09	9.90	46.97	9.90
Common equity	47.81	-	53.03	-
Total	100.00	-	100.00	-

Public Staff witness O'Donnell testified that the capital structure advocated by the Public Staff is more appropriate for ratemaking purposes because it reflects the actual financing of the Company's proposed rate base and takes into consideration the seasonal nature of the Company's business. He stated:

> Approximately 6.2% of the Company's proposed rate base is gas inventory. Based on my estimation of how Piedmont finances, it is clear that short-term debt finances gas inventory. As a result, I

feel that the Company's proposal to exclude short-term debt from the capital structure is inconsistent with its proposed rate base.

Witness O'Donnell explained that a gas utility borrows short-term debt to finance the purchase of gas inventory during warm weather and then repays the short-term debt from the sale of the gas inventory during the winter season. He illustrated this relationship with a graph of monthly balances of short-term debt and gas inventory from January, 1978 through July, 1988.

Witness O'Donnell also presented a graph comparing the levels of short-term debt with construction work in progress (CWIP) over the same time period. From an examination of this graph and the graph of short-term debt versus gas inventory, witness O'Donnell concludes that short-term debt is more closely related to gas inventory than it is to CWIP. However, so as to give appropriate consideration to any short-term debt used to finance CWIP, witness O'Donnell recommends that the Company be allowed to base the rate at which it capitalizes allowance for funds used during construction (AFUDC) on the overall rate of return authorized by this Commission in this proceeding.

To further illustrate the seasonal nature of the gas business witness O'Donnell graphed the Company's short-term debt ratio and common equity ratio from January, 1978 through July, 1988. He pointed out that in the months leading up to year end the Company typically borrows short-term debt heavily. As a result, the Company's equity ratio decreases. After year end, the Company's equity ratio increases as winter sales of gas are used to pay down short-term debt and increase retained earnings.

Witness O'Donnell testified that the apparent correlation between gas inventory and short-term debt was not his only reason for including short-term debt in his recommended capital structure. He stated that the magnitude of Piedmont's short-term debt borrowings also influenced this decision. Witness O'Donnell's testimony showed that at times, including times during the test year, short-term debt amounted to as much as ten percent of total capitalization.

Witness O'Donnell was also questioned about his recommendation that the current prime rate be used as the embedded cost rate of the short-term debt. He noted that the true cost of the Company's short-term debt borrowings may be less than the prime rate and that the Company's latest Annual Report indicates the prime rate was the maximum rate charged the Company over the 1987 fiscal year.

Finally, witness O'Donnell testified that investors are fully aware of the Company's use of short-term debt and have incorporated the Company's debt leverage into its stock price. He noted again that during some years, including the test year, short-term debt has comprised more than 10% of total capitalization. He urged the Commission to recognize the true financial risk of the Company. Specifically, he stated:

> To exclude short-term debt from the capital structure for ratemaking purposes would be to mismatch a market based cost of equity with a capital structure that is not representative of the Company's financial risk.

In response to Public Staff testimony, the Company filed the rebuttal testimony of witness Everett Hinson. Witness Hinson on rebuttal contended that the Public Staff's recommended average capital structure was mismatched with their end-of-period rate base, revenues, operating expenses, and taxes. During cross-examination, witness Hinson acknowledged that the Public Staff did not take a year end approach to all items but instead used average balances of working capital and average volume balances of gas inventory in their revenue requirement calculations. Parenthetically, it is noted that the use of average balances in developing a reasonable and representative level of working capital for inclusion in the rate base is a usual and customary practice of this Commission. Even though Piedmont advocated use of an end-of-period capital structure, the Company also advocated use of certain average balances for purposes of determining the working capital component of rate base.

Witness Hinson gave several reasons for disagreeing with the inclusion of short-term debt in the capital structure for ratemaking purposes. His first reason was that the inclusion of short-term debt would be a departure from the Commission's decisions in Piedmont's general rate cases over the last thirteen years and in the majority of rate cases involving major utilities decided since 1982. During cross-examination he acknowledged the Commission's decision concerning short-term debt in the 1986 Public Service of North Carolina general rate case (Docket No. G-5, Sub 207) which is the most recent natural gas rate case heard by this Commission. Short-term debt was included in the capital structure of Public Service.

Witness Hinson also opposed the inclusion of short-term debt on the grounds that the Company's short-term debt was not permanent capital. During cross-examination, witness Hinson read the Standards and Poor's definition of permanent capital for natural gas companies as found in the April 27, 1987 issue of Standard & Poor's Credit Review. That definition calls permanent capital, "The sum of long-term debt (including current maturities) short-term debt used for bridge financing, and all stockholder's equity." Witness Hinson also read from the same publication that as of December 31, 1986, Standard and Poor's considered 7.4% of Piedmont's total capitalization to consist of short-term debt. When cross-examined further on this matter witness Hinson continued to maintain that Standard and Poor's did not consider short-term debt in the current analysis of the Company.

The final reasons witness Hinson gave for the exclusion of short-term debt were, first, that it would be extremely difficult to determine the proper level of short-term debt to be included in the capital structure and, second, that it would be equally as difficult to determine the appropriate cost rate to be assigned such short-term debt.

During cross-examination, witness Hinson was asked to read an excerpt from the Commission's Final Order in the 1986 Public Service of North Carolina case (Docket No. G-5, Sub 207). In that case the Commission found the prime rate prevailing at that time to be the appropriate cost rate for the short-term debt included in the capital structure. Witness Hinson also acknowledged that Piedmont's 1987 Annual Report states the prime rate is the Company's maximum short-term debt cost rate.

During cross-examination, Company witness Guy testified that short-term debt was an integral part of the Company's operations. The following is an excerpt from that cross-examination:

"Q. You buy gas during the summer and finance that with short-term debt. Don't you?
A. That's one of the uses.

Q. And then you sell the gas in the winter and pay off the short-term debt. That's the way--
A. That's true.

Q. --the way it works. Okay, But the short-term debt is an integral part of that whole proceeding. Is it not?
A. The short-term debt is an integral part of our entire operation, not just the buying and storing of gas."

The Commission after having very carefully considered the foregoing and the entire evidence of record finds and concludes that the average balance of short-term debt as proposed by the Public Staff should be included in developing the Company's reasonable capital structure for purposes of this proceeding. The Commission further finds and concludes that the long-term debt and common equity components of the Company's capital structure should be based on the adjusted end-of-period levels as proposed by the Company.

The weight of the evidence in this case clearly indicates that short-term debt is one of the permanent methods of financing that is used consistently by the Company to finance its public utility operations. It is therefore incumbent upon the Commission to take such action as is required to ensure that the impact of such financing methodology is fully and fairly reflected in the ratemaking process.

In the electric utility industry, in general rate case proceedings and for the purpose of developing the rate used to capitalize AFUDC, it is assumed that short-term debt is used exclusively to finance investment in CWIP. This assumption while being inherently reasonable also provides an exceedingly efficient and effective means of allocating the cost, and for facilitating the recovery of costs, associated with short-term debt financing in the electric utility industry. The propriety of utilization of this technique rests upon the fact that the investment in CWIP in the electric utility industry over the years has far exceeded the level of short-term debt outstanding, a condition that does not exist with respect to Piedmont. The evidence in the instant case tends to show that short-term debt on average over the years far exceeds the average investment in CWIP. Therefore, it can only reasonably be concluded that short-term debt is used by Piedmont to finance a segment of its operations other than its construction program. In view of the foregoing and given the high degree of correlation which exists between the levels of short-term debt and the levels of gas inventory maintained by Piedmont in conjunction with other evidence of record, it is reasonable to conclude that short-term debt is used, as least in part, to finance the Company's investment in rate base including gas inventory. Therefore, it is entirely consistent and proper to include a reasonable and representative amount of short-term debt in the Company's capital structure for purposes of this proceeding.

With respect to the long-term debt and common equity components of the capital structure adopted for use herein, it is the Commission's belief that the levels of such components of capitalization are the most representative of the levels the Company can be expected to experience prospectively. Moreover, when such components of capitalization are combined with the short-term debt capital found reasonable for inclusion herein the capital structure so derived reflects a reasonable capital structure for a utility such as Piedmont at this point in time.

Based upon the foregoing, the Commission finds and concludes that the reasonable and appropriate capital structure for use in this proceeding is as follows:

Item	Percent
Short-term debt	6.08
Long-term debt	44.11
Common equity	49.81
Total	100.00

With respect to the prospective capitalization of AFUDC, said capitalization is to be accomplished in a manner consistent with the findings and conclusions set forth herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence supporting this finding and conclusion is found in the testimony and exhibits of Company witnesses Maxheim, Meyer, and Hinson, and Public Staff witness O'Donnell.

As justification for the exclusion of short-term debt from the capital structure, the Company through the testimony of witness Hinson contended that the determination of the appropriate cost rate for short-term debt is a problem. The Commission notes that the evidence in this proceeding regarding the appropriate cost of common equity capital is also complicated and conflicting. This fact does not relieve the Commission of the responsibility of determining its cost. Nor does any party contend that, because of the difficulty of determining its cost, common equity should be excluded from the capital structure. In view of the uncontradicted evidence that the Company's maximum short-term debt rate is the prime rate, the Commission finds 10.0%, as recommended by the Public Staff, to be a reasonable and representative cost rate for short-term debt at this time.

The Company and the Public Staff agree that the embedded cost of long-term debt is 9.90%.

Therefore, based upon the foregoing and the entire evidence of record the Commission finds and concludes that the appropriate cost rates to be assigned short-term and long-term debt for purposes of this proceeding are 10.0% and 9.90% respectively.

In his prefiled testimony witness Maxheim stated that the Company was requesting a return on common equity of 14.5%. Witness Maxheim did not offer any further testimony directly related to the derivation of the requested return on common equity.

Witness Meyer, testifying for the Company, described the capital markets in which Piedmont must operate to attract capital, and he evaluated Piedmont's cost of common equity capital. He concluded that the Company's requested return on common equity of 14.5% was an absolute minimum. He also concluded that if the Commission were to authorize a return on common equity below the requested 14.5%, it would increase the risk of Piedmont and, in turn, increase the cost of Piedmont's capital in the future.

In essence, witness Meyer's testimony was based more on his experience and not so much on financial theory.

Public Staff witness O'Donnell relied upon the Discounted Cash Flow (DCF) model to determine the cost of common equity to the Company. In his prefiled testimony witness O'Donnell found the cost of common equity to the Company to be 12.25%. At the time of the hearing witness O'Donnell updated all of his calculations for known and actual changes and found 12.25% to still be the cost of common equity to the Company.

In his updated testimony witness O'Donnell performed a DCF analysis on Piedmont as well as a group of gas distribution companies which are similar in risk. To calculate the dividend yield, witness O'Donnell divided the latest known dividend by an average of each company's week ending stock prices for the 26 week period of April 15, 1988, to October 7, 1988. This resulted in a dividend yield of 6.7% for Piedmont and 7.1% for the comparable group.

Witness O'Donnell employed three methods to estimate the expected growth in dividends. The first method was a log-linear "least squares" regression of earnings, dividends, and book value on a per share basis. The second method was the "plowback" method which is also known as the "retention" method. The final method was to use the Value Line forecasted and historical (5 and 10 years) compound annual rates of change for earnings per share, dividends per share, and book value per share. These methods yielded an average growth rate of 4.3% for the comparable group which, when combined with the group's 7.1% dividend yield, produced a cost of equity of 11.4%.

In determining his recommended return based on his DCF analysis, witness O'Donnell did not use Value Line's forecasted growth rate for Piedmont. On cross examination, witness O'Donnell stated that he regarded the Value Line forecast of Piedmont's growth to be an outlier since this one growth rate was much higher than the other growth rates for Piedmont and the comparable group. He noted that the Value Line forecast for Piedmont was higher than the Company's 10 year historical growth even though current allowed rates of return are much lower than rates have been over the last 10 years. Witness O'Donnell also noted that Value Line was forecasting a 2% decrease in the Company's revenues over the next 3 to 5 years while simultaneously forecasting an increase in growth. The average growth rate witness O'Donnell obtained for Piedmont was 5.9% which, when combined with the Company's dividend yield of 6.7%, produced a cost of equity of 12.6%.

Witness O'Donnell concluded that the cost of common equity to Piedmont was in the range of 11.4% to 12.6% and found the investor return requirement on the Company's common equity to be 12.25%. He selected a figure higher than the midpoint of the range since he believed Piedmont's growth rate would be somewhat higher in the future due to its relatively fast growing service area.

Based on an examination of Piedmont's known and actual financing costs attributable to the public issuances of common stock over the years 1978-1988, witness O'Donnell calculated a factor of .12% which he testified would allow the Company to recover its known financing costs when added to the investor return requirement. This .12% financing cost added to the investor return requirement of 12.25% resulted in witness O'Donnell's final recommendation of 12.37%.

In rebuttal, Company witness Hinson took issue with two aspects of witness O'Donnell methodology. First, witness Hinson stated Mr. O'Donnell took a different approach in his DCF study in this case versus the Company's 1985 general rate case. Upon cross examination witness Hinson explained that the change in witness O'Donnell's approach to which he was referring was actually a change in some of the companies in his comparable group. Witness Hinson agreed that the Commission should be made aware of changing risk factors for Piedmont and the gas industry in general. He acknowledged that it was witness O'Donnell's professional decision to change the companies he employed so as to retain a group of comparable companies despite the change in risk factors.

Witness Hinson also asserted that witness O'Donnell did not perform a "traditional" Piedmont specific DCF analysis in this case. When questioned on this contention he stated that he was referring to the fact that witness O'Donnell had not used the Value Line forecasted growth rate in computing his company-specific DCF. Witness Hinson agreed that all available growth rates should not be used in a company specific DCF analysis if they are not consistent with one another.

Finally, witness Hinson cited the allowed rates of return for all companies in witness O'Donnell's comparable groups in Piedmont's 1985 case and the present case. Witness Hinson stated that the allowed rates of return for the companies selected by witness O'Donnell in these two cases are close to Piedmont's request in the present case. However, witness Hinson acknowledged that only three of these companies had rate case decisions in 1988.

The determination of the appropriate fair rate of return for the Company is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers. In the final analysis, the determination of a fair rate of return must be made by this Commission, using its own impartial judgement 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 stockholders, considering changing economic conditions and other factors, as 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. 277, 206 S.E. 2d 269 (1974).

The Commission is mindful of the fact that its conclusion of the appropriate rate of return must be based upon specific findings showing what effect it gave to particular factors in reaching its decision. Utilities Commission v. Public Staff, 322 N.C. 689, 699, 370 S.E. 2d 567, 573 (1988).

The Commission has considered carefully all of the relevant evidence presented in this case, with the constant reminder that whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers and that the Commission must use its impartial judgement to ensure that all parties involved are treated fairly and equitably. More specifically, we have considered the following:

(1) The need for Piedmont to attract new capital. Piedmont is continuously adding new plant to better serve its customers and must be in a position to raise new capital. Piedmont's current growth exceeds the national average, and Piedmont has projected that it will need $60.5 million, $63.5 million and $66.6 million of additional capital in 1989, 1990, and 1991, respectively. Piedmont will need to raise additional equity capital in the near term. If Piedmont sells equity capital at less than its cost, it will increase the risks to Piedmont and, in turn, the costs of Piedmont's capital in the future and the rates to its customers.

(2) The risk of investment in Piedmont. In its April 27, 1987, review of Piedmont, Standard & Poor's recognized that "with about one-half of send out going to customers who can burn alternate fuels, Piedmont's market risk profile is well about average." In that same review, Standard & Poor's recognized that Piedmont's "debt leverage remain a bit aggressive at 50%" and that "any meaningful balance sheet improvement will require additional equity infusions." In recent years, the business risks of the gas industry, in general and Piedmont, in particular, have been increasing due to difficulties in managing gas costs, accessing least-cost gas supplies, obtaining additional pipeline access, maintaining industrial fuel load, concern over gas supply in the intermediate term, lags in responding to swings in gas supply, and uncertainty and the erratic nature of federal gas supply policies. Piedmont's risk is also magnified because of its substantial dependence on industrial customers who have dual fuel capabilities.

(3) Comparison with other companies. Witness O'Donnell's DCF analysis of "comparable" companies resulted in a range of 11.4% to 12.6%. From this analysis, witness O'Donnell recommended a 12.37% return, which included a .12% issuance cost. The Commission notes, however, that "the DCF methodology

presents some difficulties, especially in determining investor expectations." Utilities Commission v. Public Staff, 322 N.C. 689, 694, 370 S.E. 2d 567, 570 (1988). These difficulties are explained in Phillips, The Regulation of Public Utilities (1985), pp. 356-57, as follows:

> "The discounted cash flow model (DCF) represents an attempt to estimate the equity investors' capitalization rate. . . However, use of the DCF model for regulatory purposes involves both theoretical and practical difficulties."
>
> "The theoretical issues include the assumption of a constant retention ratio (i.e., a fixed payout ratio) and the assumption that dividends will continue to grow at rate "g" in perpetuity. Neither of these assumptions has any validity, particularly in recent years.."
>
> "Most frequently, the major practical issue involves the determination of the growth rate; a determination that is highly complex and that requires judgment."

The Commission also notes that there is a difference between the returns allowed by regulatory commissions and the returns measured by the DCF. This point can be illustrated by comparing the results of witness O'Donnell's DCF analysis of October 10, 1988, with the substantially higher allowed return for the companies in the study. Clearly, the companies did not earn the return allowed by the various state commissions.

(4) Changing economic and financial conditions. Witness O'Donnell testified that over the past two years there has been a general increase in bond yields; for example, from January 1987 to September 1988, the yield on A-rated utility bonds increased from 8.8% to 10.35%. He further testified that there was a "crash" in the stock market in October 1987, that the market has been moving somewhat sideways since that date and that the market is currently in a slightly cautious state.

The nature of the evidence in a case such as this makes it extremely difficult to balance all of the opposing interest, since much, if not all, of the evidence is based on individual witnesses' perceptions and interpretations of trends and data from the capital market. The Commission must use impartial judgment to ensure that all parties involved are treated fairly and equitably.

The Commission, based upon the foregoing and all other evidence of record, concludes that the reasonable cost of common equity capital to be allowed Piedmont is 13.37%. Combining this with the appropriate capital structure, and the cost of short-term and long-term debt heretofore determined yields an overall rate of return of 11.63% to be applied to the Company's rate base. Such rates of return will enable Piedmont 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 Commission believes that the return on common equity of 14.5% requested by the Company is clearly excessive, while the return on common equity of 12.37% recommended by the Public Staff is too conservative. Therefore,it is the judgment of the Commission, after weighing the conflicting testimony offered by the expert witnesses, that the reasonable and appropriate rate of return on common equity for Piedmont is 13.37%. The equity return adopted by the Commission is slightly below the midpoint of the range of estimates proposed by the witnesses, after inclusion of the Public Staff's adjustment of .12% for issuance costs. Issuance expense has been included in the cost of common equity capital based upon the Commission having concluded that Piedmont will need to raise additional common equity capital in order to finance its construction program during the 1989-1991 time frame.

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). We have followed these principles in good faith in exercising our impartial 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 determination of rate of return in one case is not res judicata in succeeding cases. Utilities Commission v. Power Co., 285 N.C. 377, 395 (1974). The proper rate of return on common equity is "essentially a matter of judgment based on a number of factual considerations which vary from case to case." Utilities Commission v. Public Staff, 322 N.C. 689, 694,370 S.E. 2d 567, 570 (1988). Thus, the determination must be made in each based on the evidence presented (and the weight and credibility thereof) in each case.

The Commission cannot guarantee that Piedmont 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 we 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 herein 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. 15

The Commission has previously discussed its findings of fact and conclusions regarding the fair rate of return which Piedmont should be afforded an opportunity to earn.

The following schedules summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve based upon the determinations made herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and the conclusions heretofore and herein made by the Commission.

SCHEDULE I
PIEDMONT NATURAL GAS COMPANY, INC.
DOCKET NO. G-9, SUB 278
STATEMENT OF OPERATING INCOME FOR RETURN
FOR THE TEST YEAR ENDED JANUARY 31, 1988

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenues:			
Sale of gas	$257,375,515	$6,791,982	$264,167,497
Other Revenues	773,673	-0-	773,673
Total operating revenues	258,149,188	6,791,982	264,941,170
Operating Revenue Deductions:			
Cost of gas	176,719,793	-0-	176,719,793
Operating and maintenance expenses	35,484,382	22,644	35,507,026
Depreciation	7,267,141	-0-	7,267,141
Taxes other than income	11,829,907	217,973	12,047,880
State income taxes	1,126,188	458,596	1,584,784
Federal income taxes	4,913,495	2,071,542	6,985,037
Amortization of ITC	(312,484)	-0-	(312,484)
Interest on customer deposits	191,927	-0-	191,927
Amortization of bond defeasance gain	(64,560)	-0-	(64,560)
Total operating revenue deductions	237,155,789	2,770,755	239,926,544
Net operating income for return	$ 20,993,399	$4,021,227	$ 25,014,626

SCHEDULE II
PIEDMONT NATURAL GAS COMPANY, INC.
DOCKET NO. G-9, SUB 278
STATEMENT OF RATE BASE AND RATE OF RETURN
FOR THE TEST YEAR ENDED JANUARY 31, 1988

Item	Present Rates	After Approved Rates
Gas utility plant in service	$298,572,546	$298,572,546
Leasehold improvements net of amortization	1,981	1,981
Less: Accumulated depreciation	(75,157,603)	(75,157,603)
Customer advances for construction	(431,503)	(431,503)
Net plant in service	222,985,421	222,985,421
Accumulated deferred income taxes	(20,478,963)	(20,478,963)
Allowance for working capital	13,027,485	13,027,485
Cost-free capital - Transco Refunds	(282,327)	(282,327)
Unamortized gain from defeasance	(247,496)	(247,496)
Original cost rate base	$215,004,120	$215,004,120
Rate of Return	9.76	11.63%

SCHEDULE III
PIEDMONT NATURAL GAS COMPANY, INC.
DOCKET NO. G-9, SUB 278
STATEMENT OF CAPITALIZATION AND RELATED COSTS
FOR THE TEST YEAR ENDED JANUARY 31, 1988

	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
		Present Rates		
Long-term debt	$ 94,838,317	44.11%	9.90%	$ 9,388,993
Short-term debt	13,072,251	6.08%	10.00%	1,307,225
Common equity	107,093,552	49.81%	9.62%	10,297,181
Total	$215,004,120	100.00%		$20,993,399
		Approved Rates		
Long-term debt	$ 94,838,317	44.11%	9.90%	$ 9,388,993
Short-term debt	13,072,251	6.08%	10.00%	1,307,225
Common equity	107,093,552	49.81%	13.37%	14,318,408
Total	$215,004,120	100.00%		$25,014,626

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

The evidence supporting these findings is found in the testimony and exhibits of Company witnesses Ware F. Schiefer and Chuck W. Fleenor, Public Staff witnesses Eugene H. Curtis, Jr. and Jeffrey L. Davis, and CUCA witness Donald W. Schoenbeck.

The parties disagree on the following rate design issues: (1) the rates of return to be allowed for each customer class; (2) the margin to be permitted for Rate Schedules 107 and 113; and (3) the appropriate summer/ winter differentials to be used with respect to Rate Schedules 101 (Year Round), 102 (Year Round), 102 (Air Conditioning) and 103.

Customer Class Rates of Return

Witnesses Fleenor, Davis and Schoenbeck all presented one or more cost of service studies. These studies show various rates of return for the different customer classes.

Company witness Fleenor prepared a cost of service study in accordance with the NARUC manual for gas rate design. However, he declined to establish a "zone of reasonableness" for class rates of return shown by the cost of service study, explaining that "there are varying risks in serving various types of customers." On cross examination, he agreed that the industrial rates of return shown in the cost of service study were overstated because they were

based on tariff rates, whereas industrial customers had actually realized over $4 million in savings by negotiating below tariff rates in order to meet alternate fuel prices. Finally, witness Fleenor indicated that cost of service studies are more art than science and that their accuracy is probably only within an order of magnitude. Company witness Schiefer used witness Fleenor's cost of service study in designing rates.

Witness Schiefer testified in further detail about Piedmont's proposed rate design. He considered cost of service, value of service, competition, the need to avoid discrimination, system load equalization, revenue stability, quantity of use, time of use, and the need to minimize rate shock. He agreed that while residential rates were 10% lower than three years earlier, the large volume customers had seen their rates decline by 24% over the same period. Witness Schiefer also stated that rates of return shown on a cost of service study for captive or firm customers were not comparable to the returns shown for interruptible or fuel switchable customers, given the fact that fuel switchable customers can leave the system at any time alternative fuel prices are below natural gas prices, whereas the firm customers have no choice once their heating plant is in place. He further explained that it is appropriate for fuel switchable customers to pay a higher rate of return to reflect the higher financial risk they pose for Piedmont by their ability to leave the system.

Public Staff witness Davis prepared cost of service studies using both the United and Seaboard methods of cost allocation and based on the NARUC manual for gas rate design. For each method he calculated cost of service with both a one-day peak demand and a three-day sustained peak demand. As shown in Revised Davis Exhibit No. 3, the results of the cost of service studies vary according to the method used and to the length of the peak. Witness Davis recommended that a range of cost of service studies be considered rather than just one. He testified that a "cost of service study is judgmental in nature and is more appropriately viewed in rate design to determine the direction in which rates should be adjusted instead of their magnitude." In a similar vein, he stated, "Cost of service studies should be considered in rate design, but not exclusively." Finally, witness Davis noted that the industrial returns in his cost of service studies are overstated because (1) industrial customers negotiate their rates below the rates assumed in the cost of service study, thereby reducing the return they actually pay, and (2) some of them are allocated cheaper gas by Piedmont to compete with the price of alternate fuels.

Public Staff witness Curtis prepared a rate design that was "generally reflective of witness Davis' cost of service study." Witness Curtis' rate design considered the total revenues paid by each customer class, which includes both the rate per therm and the monthly facilities charge. The result is that the increase falls on the residential and small general service customers. Witness Curtis' rate design not only placed the entire burden of the Public Staff's recommended rate increase on residential and small general service customers, it also shifted some of the revenue requirement currently supported by industrial customers to residential customers. This movement in the direction indicated by the cost of service studies is also clear in witness Curtis' Data Responses filed pursuant to Commission request. These rate designs, based on Piedmont hypothetically receiving 25%, 50%, 75%, and 100% of its requested increase, uniformly show reductions in the revenues paid by industrial customers, despite an overall revenue increase. At the same time,

it is apparent from the existing tariffs that Rate Schedules 101 and 102 customers already pay significantly higher rates per dekatherm than Rate Schedules 103 and 104 customers. Witness Curtis testified that in addition to the cost of service studies, he considered "the fact that many lower priority customers do not pay full margin and the need to protect higher priority customers from rate shock . . ."

Witness Schoenbeck testified about rate design on behalf of CUCA. Witness Schoenbeck criticized the approaches of the Public Staff and Piedmont in several respects. CUCA's main contention is that the Commission should adopt the goal of rates based solely on cost of service and should achieve this goal over the next three rate cases, moving one third of the way to equalized customer class rates of return in this proceeding. The effect on Piedmont's residential customers, based on the Company's requested revenue requirement, would be a 12.10% increase. The 12% increase for residential customers proposed by CUCA is only one-third of the way to solely cost-based rates. CUCA contends that cost of service should be the "overriding" or "controlling" criteria in designing rates.

The Commission has examined the various cost of service studies and has concluded that while they are an important and relevant guide or factor to be weighed in designing rates in this proceeding, they reflect a great deal of subjective judgment on the part of the person conducting the study and, therefore, cannot be blindly followed. Furthermore, cost of service studies are not the sole factor which should be considered in designing rates. Both the Public Staff's and witness Fleenor's cost of service studies were generally based on the recommendations of the NARUC's Gas Rate Design (August 6, 1981). These recommendations begin with the following caution:

> Utility ratemaking has never been considered an exact science. A rate structure should recover the total revenue requirement of the utility which includes a fair rate of return. Cost is an important guide in ratemaking but, in practice, individual rates are designed within a broad framework of other factors besides cost. Those factors may be subdivided into such factors as economic, regulatory, promotional, and social.

The Supreme Court of North Carolina has also noted that factors other than cost of service should be considered in setting utility rates. In State ex rel. Utilities Commission v. N.C. Textile Manufacturers Assoc., 313 N.C. 215, 222, 238 S.E.2d 264, 269 (1985), the Court held:

> In determining whether rate differences constitute unreasonable discrimination, a number of factors should be considered: "(1) quantity of use, (2) time of use, (3) manner of service, and costs of rendering the two services." Utilities Comm. v. Oil Co., 302 N.C. 14, 23, 273 S.E.2d 232, 238 (1980). Other factors to be considered include "competitive conditions, consumption characteristics of the several classes and the value of service to each class, which is indicated to some extent by the cost of alternate fuels available." Utilities Comm. v. City of Durham, 282 N.C. 308, 314-15, 193 S.E.2d 95, 100 (1972).

The Supreme Court recently examined this matter again in State ex rel. Utilities Commission v. Carolina Utility Customers Association, ___ N.C. ___, ___ S.E. 2nd. ______ (No. 467A86, filed October 6, 1988). In this case, CUCA and other parties challenged the Commission's decision in a North Carolina Natural Gas Corporation (NCNG) general rate case that the differences in rates of return among NCNG's various customer classes were not unreasonably discriminatory nor unjust and unreasonable. The Court found that the Commission had made adequate findings and conclusions and that the Commission had drawn "legitimate distinctions" which justify maintaining large industrial rates of return at a higher level than residential, commercial, and small industrial rates of return. The Court held, "While an assessment of the Commission's ORDER based simply on the cost of service evidence might suggest the adopted rates are unreasonably discriminatory, the Commission's analysis of the non-cost factors permitted in our case law is sufficient to justify the Commission's decision." Id. at ______.

The Commission finds that it is not reasonable to adopt the goal of solely cost-based rates and equalized rates of return among customer classes. The Commission has consistently recognized the importance of non-cost factors in designing rates, and such a decision was just recently upheld by the N. C. Supreme Court. The Commission, having considered each of the factors listed by the Court, finds and concludes that the rate design adopted for this proceeding, which is derived from the rate design proposed by the Public Staff, is just and reasonable and does not unreasonably discriminate for the following reasons:

(1) Fully equalized returns would place an enormous burden on residential customers relative to their historical rates. The effect of equalized returns, even if achieved over three rate cases, would be traumatic to Rate Schedule 101 because these customers cannot easily switch fuels, unlike many lower priority customers. At the time Rate Schedule 101 customers bought their heating plants, their gas rates looked relatively attractive compared to how they would look under equalized returns, and the long-established expectations of these customers should be taken into consideration.

(2) Rate Schedule 101 customers pay the highest unit price rates. They contribute a disproportionately large share of the Company's revenue requirement relative to the volumes they use. It would be unjust and unreasonable to place any greater increase on the residential customers at this time than that approved herein.

(3) Under the Commission's rate design, the residential and small general service customers will pay the entire rate increase approved herein and, in addition, some of the revenue requirement formerly paid by the lower priority customers. Although cost of service studies tend to show that Piedmont earns a higher return on the sale of gas to its industrial customers, Piedmont's rates to these customers have materially decreased over the past ten years. During this ten-year period, Piedmont's rates have emphasized a shift in costs to residential and commercial customers. That emphasis is continued in this case.

(4) Cost of service studies are highly judgmental and should be considered as only one among many factors in rate design. Non-cost factors such as those listed above must be considered.

(5) Rates of return between customer classes, as shown on cost of service studies, are not directly comparable. Large industrial customers do not always pay the rates approved, as assumed in cost of service studies. Piedmont has the right to, and does, negotiate rates for these customers in order to meet alternative fuel prices. This ability to negotiate lower rates gives these industrial customers a bargaining power unavailable to residential and small general service customers and increases the risk to the Company. This risk justifies a higher rate of return relative to residential and small general service customers. This bargaining power has resulted in lower priority customers paying millions of dollars less in revenues than contemplated in the cost of service studies, which assume full margin tariff rates.

(6) Rates of return are not comparable for another reason. The lower priority "fuel switchable" customers pose greater financial risk because they can leave the system, causing Piedmont substantial loss of sales. The degree of this risk is a function of alternative fuel prices. Therefore, it is important that Piedmont be able to negotiate gas prices below the tariff rate when alternative fuel prices are low, in order to lessen the risk of losing customers. It is equally important that the tariff rate be set so as to result in a return being paid by these customers when alternative fuel prices are high that will compensate Piedmont for the higher risk of these customers.

(7) Rate design must give appropriate weight to value of service, to the consumption characteristics of large industrial customers and to competitive conditions. If rates are not competitive with alternate fuels, the Company would be unable to sell its gas to "fuel switchable" customers and the remaining captive customers would have their rates increased because they would have to pay the fixed costs now being paid by "fuel switchable" customers.

(8) Rate design must give appropriate weight to the quantity of use. Large industrial customers pay "step rates" with declining blocks. Under these rates, the unit price goes down as consumption goes up, reflecting the reduced per unit cost of providing service to larger users.

For these reasons and the other reasons stated by Public Staff and Piedmont witnesses, the Commission declines to adopt a goal of solely cost-based rates. In reaching this decision, the Commission has weighed all the evidence in the record and has also followed past Commission policy on these issues and followed the legal guidelines set forth by the Supreme Court in State ex rel. Utilities Commission v. Carolina Utility Customers Association. Id. Based upon a careful consideration of the evidence in this case, the Commission concludes that the rates set forth in Appendix A attached hereto are just and reasonable, do not result in any unjust or unreasonable discrimination or preference between customers or classes of customers, and should be approved. The Commission is of the opinion that the rates approved in this proceeding result in a fair distribution of the overall rate increase granted to Piedmont among customer classes and that it would be unjust and unreasonable, based upon the evidence presented in this case, to shift any greater rate increase to the residential and small general service customers served by Piedmont who are already paying and will continue to pay the highest unit price rates on the system.

Transportation Rates

Testifying for CUCA, witness Schoenbeck criticized this Commission's policy of setting full margin transportation rates instead of cost-based transportation rates. This testimony was addressed by Piedmont witness Schiefer, who listed the reasoning and factual conditions behind the Commission's decisions on this issue in past cases, and then stated, "There has been no change in these conditions . . . "

At the outset, the Commission notes that witness Schoenbeck's contention is a repetition of CUCA's position in Docket No. G-9, Sub 250 and Docket No. G-9, Sub 251. In the first docket, the Commission held:

> In our determination of whether existing Rate 107 is discriminatory and whether proposed Rate 107 is just and reasonable, the Commission must consider a number of factors. These factors include cost of service, value of service, quantity of gas used, the time of use, the manner of use, the equipment which the utility must provide and maintain in order to take care of the customers' requirements, competitive conditions and consumption characteristics. Utilities Commission v. N.C. Textile Asso., 313 N.C. 215, 328 S.E.2d 264 (1985); Utilities Commission v. Bird Oil Co., 302 N.C. 14, 273 S.E. 2d 232 (1980); and Utilities Commission v. Piedmont Natural Gas Company, 254 N.C. 734, 120 S.E.2d 77 (1961).
>
> The Commission has considered each of these factors and has concluded that no justification exists for a difference between the margins earned on the two rate schedules.
>
> * * *
>
> No convincing evidence has been presented to justify the charging of lower rates for customers receiving gas under Rate Schedule 107 than for customers receiving gas under Rate 104. As stated by Public Staff witness Nery: 'If transportation rates escape responsibility for full margin, other captive customers will unfairly subsidize transportation customers and will pick up the additional cost.' Such a result would be unfair and unlawful.

In Docket No. G-9, Sub 251, the Commission said:

> Specifically, the Commission continues to find no justification for a difference between the margins earned on the Company's sales rate schedule and its transportation rate schedule. In making this determination, the Commission has considered a number of relevant factors, including cost of service, value of service, quantity of gas used, the time of use, the manner of use, the equipment which Piedmont must provide and maintain in order to take care of the requirements of its customers, competitive conditions and consumption characteristics. . . . It is obvious to the Commission that the services performed by Piedmont are the same whether service is provided under the sales rate or transportation rate.

In the last cited case, the Commission also found that regardless of whether the service is rendered under Rate Schedules 104 or 107, (1) the gas passes through the same pipes, meters and regulators, (2) Piedmont provides the same load balancing and use of storage, (3) the same employees perform the billing services, (4) there is no difference to customers in the value of the service received, (5) the use by the customers is the same and (6) their consumption characteristics are the same. We agree with witness Schiefer that there has been no change in these conditions since the Commission's Order in Docket No. G-9, Sub 251.

Witness Schoenbeck contended that Piedmont's transportation rates improperly include gas acquisition costs. Witness Schiefer disagreed and testified that when Piedmont transports customer-owned gas, Piedmont must deal with the producer selling that gas, the pipeline transporting the gas and the various regulatory agencies who must approve the transaction; that these services are very similar to the services rendered in connection with sales services and are certainly not less costly; and that any attempt to isolate the costs of performing these services for transportation gas and for sales gas would be speculative at best. As to transportation customers paying demand charges twice--once to Transco and again in the full margin rate to Piedmont--witness Schiefer stated that the problem lies in the FERC transportation rate. Public Staff witness Davis likewise testified that it was not improper to allocate demand costs to transportation customers, as full margin transportation rates do. He observed that transportation customers do not have firm transportation, that they need to come back on Piedmont's system as sales customers when their transportation is interrupted, and that Piedmont therefore ends up paying for capacity to serve these customers even when they are transporting their own gas. Accordingly, it is appropriate for Piedmont to charge full margin transportation rates to recoup the cost of reserving capacity to serve these customers when they want to switch back to being sales customers.

The Commission agrees with the reasons cited by witnesses Schiefer and Davis. Moreover, the Commission finds that transportation rates, like sales rates, should reflect not only cost of service, but also non-cost factors. Based on the record in this proceeding, the Commission is of the opinion that no justification has been shown to cause us to reverse our conclusions in Docket No. G-9, Subs 250 and 251.

With respect to unbundling transportation and other gas-related services witness Schoenbeck testified that it was not possible to fully litigate these issues in this rate case. He asked the Commission "to initiate a thorough hearing or workshop on the matters raised and briefed in Docket No. G-100, Sub 47." Piedmont witness Schiefer responded that the Company needed to obtain more information, needed to educate its customers, needed to see greater stability in the gas industry, and needed clearer, more certain regulation from FERC before it would be in a position to propose unbundled rates. The Commission agrees with the parties that there is not an adequate record in this proceeding to begin unbundling services and rates. This issue is more appropriately addressed in other proceedings.

Summer/Winter Differentials

Witness Schiefer, testifying for the Company, and Witness Curtis, testifying for the Public Staff, made the following recommendations for summer/winter differentials on various rate schedules:

Rate Schedule	Company	Public Staff
Rate 101 (Year Round)	$0.50	$0.30
Rate 101 (Heating Only)	$0.50	$0.50
Rate 102 (Year Round)	$0.40	$0.30
Rate 102 (Heating Only)	$0.50	$0.50
Rate 102 (Air Conditioning)	$1.097	$0.82
Rate 103	$0.25	$0.30

Witness Curtis testified that he developed his differentials by dividing storage gas costs by winter sales to Rate Schedules 101, 102 and 103. Witness Schiefer testified that the fallacy with witness Curtis' approach is that storage costs are not the only additional costs associated with winter sales. Winter customers also create additional costs such as demand charges, peaking services and return on storage plant. When these additional costs are included, the total additional cost is approximately $13.2 million. When this amount is divided by winter firm sales of 22.1 Bcf, a differential of $.60 is computed. This differential is twice witness Curtis' recommended $.30 differential. Witness Schiefer further testified that although the computed differential was $.60, he recommended a lesser amount for year round customers on Rate Schedules 101 and 102 and $.25 for Rate Schedule 103 because a small portion of the peaking services are used before November 1 and after March 31. Finally, he testified that Piedmont has severe competitive problems with Rate Schedule 103 customers and that Piedmont is increasingly experiencing competitive problems with Rate Schedule 102 customers.

In Piedmont's last general rate case, Docket No. G-9, Sub 251, the Commission's Order dated December 11, 1985, made the following conclusion:

> The Commission further concludes that the summer/winter differential proposed by Piedmont for Rate 101 and 102 Year Round customers is appropriate. These customers also purchase most of their gas in the winter and depend to a large extent upon storage and peaking services.

Based on the testimony of witness Schiefer and the previous conclusions of this Commission, we conclude that the winter/summer differentials should reflect both storage costs and peaking costs. The rates proposed by Piedmont accomplish this objective; therefore, we conclude that the winter/summer differentials proposed by Piedmont should be approved.

Rate Schedules

Witness Schiefer proposed the elimination of Rate Schedules 102-A and 104-A, which provide for incrementally priced service under the Natural Gas Policy Act. The incremental pricing provisions of the Natural Gas Policy Act

have been repealed, so there is no longer any need for these Rate Schedules. No other parties opposed this proposal. The Commission finds and concludes that the elimination of Rate Schedules 102-A and 104-A is reasonable.

The full tariff for Rate Schedule 107 is set out on Page 9 (front and back) of Exhibit BLG-1. By the words of the tariff, this Rate Schedule is available to "any customer" which has obtained its own supply and wishes to transport it over Piedmont's lines. However, witness Schiefer testified that the intent of Rate Schedule 107 was not to transport for customers which qualified for Rate Schedule 103, but only to transport gas for customers which would otherwise be on Rate Schedule 104. Currently, Rate Schedule 103 customers may transport on Rate Schedule 113 if they use in excess of 200 dekatherms per day. Exhibit BLG-1, Page 22. Consequently, witness Schiefer agreed that the tariff language for Rate Schedule 107 should be amended to limit the availability of that Rate Schedule to customers which would qualify for sales service under Rate Schedule 104. This suggestion was not opposed by the other parties. The Commission finds and concludes that it is reasonable to amend the wording of Rate Schedule 107 by adding the words "and who otherwise qualifies for Rate Schedule 104" to the end of the first sentence in the section entitled "Applicability and Character of Service."

Rate Schedule 103 has a section entitled "Standby Fuel Capability" that requires customers receiving service on that rate to have "complete standby fuel and equipment available" or give a written statement to the Company that interruption will not cause undue hardship. Exhibit BLG-1, Page 5. This requirement, in combination with the usage requirements of Rate Schedules 102 and 103, means that some customers did not quality for any Rate Schedule offered by Piedmont. Mr. Schiefer agreed that elimination of the standby fuel requirement was the solution to the problem. No opposition was expressed by the other parties. The Commission therefore finds and concludes that the section entitled "Standby Fuel Capability" should be deleted from Rate Schedule 103. The Commission notes that this change in the wording of Rate Schedule 103 does not change the fact that this Rate Schedule is interruptible, though, as Mr. Schiefer testified, the supply situation has improved and Piedmont has traditionally not interrupted Rate Schedule 103. Elimination of the standby fuel requirement in Rate Schedule 103 simply means that those customers have a choice as to whether it is worthwhile for them to put in such capability; it does not change the original intent that they are still interruptible.

CUCA proposed that Rate Schedule 113 be made available to Rate Schedule 103 customers if they use in excess of 50 dekatherms per day. This proposal was not opposed. Based on the foregoing, the Commission adopts this proposal.

Rate Design

As between the specific rate design proposals of the parties, the Commission finds the Public Staff's approach best suited to the reasoning adopted by the Commission. Under the Public Staff's approach, Rate Schedule 101 would experience an increase, and Rate Schedule 103 and lower would enjoy no increase or reductions. The rate designs proposed by Piedmont and CUCA create too great a risk of rate shock for Rate Schedule 101. This is particularly true in light of the historical level of rates for Rate Schedule 101, the fact that they pay the highest price per unit of gas, the

fact that they are absorbing the majority of the rate increase in this case and will be paying part of the revenue requirement formerly assigned to lower priority customers, and the fact that industrial customers actually pay a lower return than shown in the cost of service studies due to negotiation. Based on the foregoing, the Commission concludes that the rate design utilized in this Order (which is derived from the Public Staff proposed rate design, adjusted for the Company's proposed summer/winter differential) is just, fair, reasonable, and not unreasonably discriminatory. Finally, in conjunction with the findings related to operating revenues, operating revenue deductions, rate base, capital structure, and rate of return, the Commission concludes that the rates approved herein will produce sufficient revenues to give the Company the opportunity to pay for a reasonable cost of service and achieve the approved overall return of 11.63%.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence supporting this finding and conclusion is found in the testimony and exhibits of Ware F. Schiefer for the Company, Eugene H. Curtis for the Public Staff and Donald W. Schoenbeck for CUCA.

Witness Schiefer testified that the current curtailment priorities were outmoded, had caused numerous customer complaints and should be replaced with a curtailment system based on margin. Witness Curtis testified that the Public Staff has recognized that price may be a better mechanism for curtailment than the current priority classification and that the Public Staff has filed a petition requesting the repeal of Rule R6-19.2 since this rule is obsolete. Witness Schoenbeck testified that the Commission should initiate a "hearing or workshop on the matters raised and briefed in Docket No. G-100, Sub 47" before amending the curtailment rules.

The curtailment priority system proposed by Piedmont is the generally accepted method of curtailment that was in place for many years prior to the gas shortages of the 1970s. The Commission's current curtailment rule, Rule R6-19.2, was adopted in the 1970s to deal with curtailment due to inadequate gas supplies. The Rule itself provides for curtailment "[i]n the event the total volume of natural gas available to a North Carolina retail gas distribution utility is insufficient to supply the demands of all of the customers of that utility . . ." The gas shortages of the 1970s, which prompted the Rule, do not exist today; we are now enjoying a period of ample gas supply. Just recently, the Public Staff has filed a Petition in Docket No. G-100, Sub 51, asking the Commission to repeal Commission Rule R6-19.2.

In the last Public Service general rate case, Docket No. G-5, Sub 207, the Commission issued an Order on November 19, 1986, which adopted for Public Service a curtailment priority system similar to that proposed by Piedmont herein. In that case, Public Service proposed that the existing curtailment rule should be retained in the event that it is needed in the future for emergency curtailment due to gas supply shortages, but that a new curtailment priority system should be adopted for routine winter curtailment due to weather. The Commission adopted Public Service's proposal.

It appears that curtailment based on margin may maximize revenues and help to keep rates down in the future. In this case, the Commission finds and concludes that Piedmont's proposal to make winter curtailment due to weather on

the basis of margin is fair and reasonable, and should be approved on an interim basis subject to the proceedings in Docket No. G-100, Sub 51. The Commission will act on Docket No. G-100, Sub 51, in the near future. In the context of that proceeding the Commission will consider whether the current curtailment rule, Rule R6-19.2, should be repealed or merely limited in its applicability and will consider any further relevant issues pertaining to curtailment which may be raised by the parties in that docket.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence supporting this finding and conclusion is found in the testimony of Ware F. Schiefer for the Company and in the testimony of Eugene H. Curtis for the Public Staff.

In Docket No. G-9, Sub 257, this Commission approved a mechanism which permits Piedmont to place the savings from the purchase of off system gas into a deferred account. To the extent that the savings are not required to offset negotiated losses, they are used to reduce rates for all customers. At present, Piedmont has a decrement of 43.08 cents per dekatherm in its rates to reflect this procedure.

Public Staff witness Curtis noted that over the last annual period Piedmont had purchased firm transportation (FT) and spot gas at a savings of approximately $13.5 million compared to Transco CD-2 prices. After offsetting negotiated losses of $2.5 million, the net savings is over $11 million. Witness Curtis testified that there was roughly $15 million in the deferred account at the time of hearing, which indicates the deferred account is greater than the amount ($11 million) added over the past annual period. Under the current decrement, there is a lag between the time the savings are incurred and the time they are flowed back to the customers. Witness Curtis further observed that Piedmont has the opportunity to convert another 30,000 dekatherms of its CD-2 entitlement to FT in the upcoming winter, and that this will generate even more savings. He therefore recommended that the Company be required to estimate in advance how much savings will be available and reduce its rates in advance. Witness Curtis stated during cross-examination that the Company's own November PGA application proposed a decrement that would flow back some future gas cost savings as well as savings that were in the deferred account already. The Commission has issued an Order implementing the decrement proposed by Piedmont in its November PGA application.

Piedmont witness Schiefer opposed the Public Staff's decrement proposal on the grounds that it would be difficult to estimate the amount of savings in advance, that the true-ups could cause substantial swings in the rates, that this would risk rate shock to the customers, and that there may be legal obstacles to recovery of over-refunds. The Company has agreed, however, to attempt to place decrements in its rates sooner in order to avoid a large buildup of funds in the deferred account.

Based on the foregoing, the Commission concludes that the procedures approved in Docket No. G-9, Sub 257 should be continued as previously approved. The Commission does not believe that it would be appropriate at this time for the Company to be required to estimate the amount of savings which may, or may not, accrue in the future. Nevertheless, the Commission does believe that the Company should attempt to avoid a large buildup of savings in the deferred

account by placing decrements in its rates as appropriate. The Commission will continue to monitor this situation.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 23 AND 24

The evidence for these findings is contained in the testimony, and exhibits of Company witness Maxheim and Public Staff witness Daniel.

The issues to be resolved here relate to (1) the commissions or markup paid by Piedmont to its subsidiary PNG Energy Corporation (PNGE) on natural gas purchased from suppliers other than Transco or its subsidiaries, and (2) commissions paid to Enmar, Inc., (Enmar) on purchases from Transco's subsidiary (affiliate) TEMCO.

Company witness Maxheim testified that, as required by Commission Order in Docket No. G-9, Sub 257, Piedmont had deferred $421,556 of commissions paid to PNGE from November 1, 1985 through July 31, 1988. He added that witness Shiefer had testified in Docket No. G-9, Sub 257, that the commissions paid to PNGE are fair and reasonable and do not exceed commissions paid to other marketers for similar services. He stated that a recent South Carolina Commission order had prohibited Piedmont from paying commissions to PNGE on system supply gas from affiliates of Piedmont's interstate suppliers, but permitted commissions to PNGE on the purchase of any other gas supplies. He recommended that the North Carolina Commission issue a similar order.

Witness Maxheim stated that Public Staff witness Daniel's views on commissions paid to PNGE and Enmar were inconsistent with prior Commission Orders in Docket No. G-9, Subs 251 and 257. He observed that the Commission Orders stated that commissions paid to Enmar should not be added back to cost savings because Enmar is not affiliated with Piedmont or PNGE, and that the transactions with Enmar were at arms'-length while the transaction with PNGE were not. The Commission's earlier Order on this issue also stated that it should not be considered determinative for any transactions with Enmar other than those under specific review in the Order.

To show that the Enmar commissions are justified, witness Maxheim testified that Enmar meets with producers, independent and major, and interstate and intrastate pipelines who move gas from the wellhead to Piedmont's interstate supplier. Enmar also keeps track of the daily movement of the gas regardless of the supplier. As an example of the value of Enmar witness Maxheim cited Enmar's advice to purchase gas on a six months basis instead of a month to month basis at a time when many thought prices would decline. Prices went up and Piedmont saved $330,000.

Witness Maxheim stated that the commissions paid to Enmar for TEMCO purchases were appropriate because Piedmont requires a mix of short and long-term supplies from multiple suppliers. Enmar's activity with TEMCO is no different from other suppliers, and TEMCO operates independently of Transco and must be treated like any other producer or marketing company.

Witness Maxheim stated his understanding that the North Carolina Supreme Court has authorized utilities to deal with and pay their subsidiaries for services rendered if prices paid are comparable to those paid non-affiliated

firms for the same or similar services. He contended that the commissions paid to PNGE meet the Court's reasonableness test.

Witness Maxheim further stated that PNGE also provides a valuable service by constructing needed facilities to bring gas to Transco's system and by assuming the responsibility and liability of ownership for the gas until delivered to Piedmont. He anticipated that the purchase of intrastate pipelines and storage facilities would be a prime function of PNGE in the future which would not require funding by Piedmont.

Witness Maxheim also contended that Enmar commissions were appropriate because the Federal Energy Regulatory Commission (FERC) had apparently determined that pipeline marketing affiliates were separate operating entities which may sell gas to their customers at whatever price they negotiate. He stated that TEMCO is an independent marketing company. Therefore, PNGE should be considered a marketing affiliate of Piedmont. He noted that PNGE and Enmar have saved Piedmont customers $49 million since the last rate case.

On cross-examination witness Maxheim agreed that wellhead deregulation and the gas bubble were also important factors in the savings passed through to Piedmont's customers. He added that these factors plus Piedmont's storage capacity helped make the savings possible, whereas companies without storage have not been able to take advantage of the lower summer prices.

In response to a suggestion that Piedmont was capable of buying the gas from TEMCO itself, rather than through PNGE, witness Maxheim agreed that that was true in the beginning, but that the situation had changed since then. Nonetheless, he was not changing his recommendation that there be no commissions charged to ratepayers with respect to gas PNG Energy acquired from TEMCO.

Witness Maxheim agreed that Piedmont has had a business relationship with TEMCO for the three years that TEMCO has existed.

Witness Maxheim agreed that Piedmont owned 100% of PNGE. Witness Maxheim also agreed that the officers and employees of PNGE are also officers and employees of Piedmont. Witness Maxheim admitted that the gas acquired from sources other than TEMCO, on which Piedmont paid commission to PNGE, was negotiated and acquired by he and witness Schiefer and that he and witness Schiefer were officers and employees of Piedmont.

Witness Maxheim contended that for Piedmont to acquire the TEMCO gas from TEMCO without Enmar would require adding a tremendous staff to replace the 60 years of experience, capability, and connections possessed by Enmar. On redirect, he stated that if the Commission were to order Piedmont to stop using a broker for the purchase of any gas, Piedmont did not have the staff capable of acquiring gas to the extent Piedmont is on the open market.

Public Staff witness Daniel testified that concurrent with Transco becoming an interim open access carrier, Piedmont converted an additional amount of its Transco sales contract to firm transportation (FT), thereby increasing its FT contract from 10,000 dekatherms per day to 30,760 dekatherms per day. Piedmont also has acquired an additional 6,722 dekatherms of FT per day and intends to convert an additional 15% to FT in the 1988-89 winter

period. This new capacity will enable Piedmont to purchase up to 32% of its volumes from alternate sources of supply. Future conversion privileges plus Transco's Southern Expansion project will enable Piedmont to acquire up to 50% of its gas from alternate supply sources.

Witness Daniel testified that the reason Piedmont chose the subsidiary route (using PNG Energy) to alternate gas supplies was to avoid conflict with Transco rules, FERC rules, and other legal complications.

Witness Daniel stated that he did not believe that PNGE was a necessary middleman in acquiring alternate gas supplies. He said PNGE was a conduit whose only legitimate purpose was to satisfy legal requirements. He continued that PNGE has no employees or assets, other than current assets as shown on his Schedule 1, page 1. In addition, Piedmont is obligated under its franchise, under the public utility laws and under Commission Order in Docket No. G-9, Sub 251, to acquire its gas supplies at the lowest possible costs consistent with maintaining an adequate gas supply.

Witness Daniel noted that the other two major gas utilities operating in North Carolina use subsidiaries to acquire alternate gas supply, yet neither subsidiary is charging a commission on purchases for its parent and neither company is employing a non-affiliated agent to acquire volumes from TEMCO. He stated that both of these companies had converted 15% of their Transco sales contract to FT and plan to convert an additional 15% this winter. Thus, both NCNG and Public Service are in substantially the same position as Piedmont, yet neither pays commissions to obtain gas from their own subsidiaries.

Witness Daniel stated that the PNGE commission issue involved more dollars today than in Piedmont's last case because of the increased volumes being acquired from alternate supply sources.

Witness Daniel testified that he did not object to the use of PNGE to satisfy legal requirements, nor did he object to commissions being paid to PNGE for services provided to other customers. However, he did object to the retention of commissions by PNGE for functions which would, should, and in fact are being performed by Piedmont. He contended that Piedmont should not generate profits by spinning off functions essential to providing utility services to a non-regulated subsidiary, thereby siphoning off profits from the regulated operations.

Witness Daniel reiterated that PNGE had no assets, other than current assets, and no employees and that all salary-related costs of PNGE represent allocations of Piedmont costs.

Witness Daniel recommended that all commissions paid to PNGE and accumulated in Deferred Account 253 be refunded to Piedmont's customers and that no future commissions be paid to PNGE.

Witness Daniel also objected to commissions being paid to Enmar on TEMCO purchases. He perceives no legitimate purpose being served by Enmar in the purchase of TEMCO volumes. TEMCO is a subsidiary of Transco and Piedmont has a long-standing relationship with Transco. The other two major gas utilities in North Carolina both purchase substantial volumes from TEMCO through a subsidiary, yet neither is paying commissions to middlemen to acquire the

volumes. Both of these utilities treat the subsidiary as nothing more than a conduit through which the volumes flow without any markup to the subsidiary or other middlemen. Piedmont is operating in two states on Transco's system and is purchasing substantially more volumes so it should be able to get just as favorable, if not more favorable, prices than the other North Carolina gas companies receive from TEMCO.

Witness Daniel stated that he asked the Company why a commission was paid to Enmar, and the response that he received was that Piedmont did not want to penalize Enmar for purchasing gas from TEMCO. Witness Daniel argued that Piedmont's primary obligation was to its ratepayers, not Enmar. He recommended that the full amount of any cost of gas savings, excluding all commissions, be flowed through the procedures outlined in Docket No. G-9, Sub 257, and incorporated into the "billed versus filed" procedure.

In supplemental testimony witness Daniel recommended flowing through to customers all cost of gas savings on TEMCO volumes, without any reduction for commissions paid to Enmar. He did not recommend that commissions paid to Enmar, which were addressed in the Commission's Order in Docket No. G-9, Sub 257, dated May 8, 1986, be flowed through to customers of Piedmont. However, he recommended that the $746,769 of commissions paid to Enmar from April 1, 1986, through June 30, 1988, be flowed through to customers as outlined above. He also recommended that all subsequent commissions to Enmar on TEMCO purchases be flowed through to customers. Witness Daniel considered this to be appropriate since the Commission Order in Docket No. G-9, Sub 257, dated May 8, 1986, found that the commissions for the six-months' period ending March 31, 1986 were reasonable and should not be flowed through to customers.

Witness Daniel testified that he did not object to commissions being paid to Enmar or to any other middleman as long as the volumes are obtained from sources other than Piedmont's wholesale interstate pipelines or their subsidiaries, and that the cost, including commissions, is lower than the cost Piedmont, or PNGE, would otherwise incur.

The Commission agrees with the Public Staff that PNG Energy Company (PNGE) is nothing more than a paper corporation. There is uncontroverted evidence that PNGE has no assets, other than current assets, and no employees. It is also clear that Piedmont, through its employees, are negotiating the purchase of gas, other than TEMCO gas, on which PNGE is paid commissions. Even witness Maxheim agreed that he and witness Schiefer negotiate these purchases.

The argument that PNGE provides a valuable service by accepting title to and assuming the liability for the gas until it is delivered to Piedmont is not persuasive. There should be protection available against liability in the form of insurance and/or the company should have recourse against the pipeline in whose system the liability materialized. Nor is there any evidence that PNGE has constructed any facilities necessary to transport gas. Certainly such facilities are not reflected in PNGE's balance sheet.

The Commission also rejects the argument that the purchase of intrastate pipelines and storage facilities will be a prime function of PNGE in the future. No evidence exists that any pipelines or storage facilities have been purchased to date, and the Commission cannot rely on what may occur in the future.

The Commission also rejects the argument that the commissions are fair and reasonable and that the North Carolina Supreme Court has authorized utilities to deal with and pay their subsidiaries where the prices are reasonable. The issues before the Court concerned subsidiaries which were going concerns in their own right, with assets and employees distinctive from those of the parent. Further, the Commission has consistently made excess profits adjustments in those cases. This argument is not relevant to this case. PNGE is nothing more than a shell corporation and Piedmont employees are performing all of its functions.

The argument that PNGE should be treated as an independent marketing affiliate just as FERC may treat TEMCO, Transco's affiliate, fails for the reasons already stated.

Based on the foregoing and the record as a whole the Commission concludes that all commissions currently recorded in Deferred Account 253 should be flowed through to Piedmont's customers according to the procedures outlined in Docket No. G-9, Sub 257, and no future commissions should be paid to PNGE.

The Commission must also determine anew whether or not the transactions with Enmar are arms'-length transactions with a non-affiliate. The testimony in this proceeding and the joint venture contract between PNGE and Enmar show that PNGE and Enmar are joint venture partners, that the two share expenses and profits equally, and that neither can engage in business activities not prescribed in the contract without the written consent of the other. Since Piedmont and PNGE are essentially one and the same, Piedmont is a partner with Enmar even though the formal contract is between PNGE and Enmar.

It is the Commission's understanding that TEMCO is free to sell gas to whomever it wishes. It does not have to sell to customers of Transco and it does not have to give favored treatment to customers of Transco. There is nothing in the record of this docket to show that Enmar performs any less services in connection with the purchase of gas from TEMCO than it performs in connection with any other purchase of gas. Moreover, it is the uncontroverted testimony of Company witness Maxheim that Enmar's advice with respect to the purchase of gas from TEMCO this past summer saved Piedmont's ratepayers $330,000. The Commission, therefore, believes that commissions paid to Enmar for purchases of natural gas supplies on behalf of Piedmont are reasonable costs which have been prudently incurred by Piedmont in the providing of public utility services to its customers.

Based on the foregoing and all other evidence of record, the Commission finds and concludes that all commissions paid by Piedmont to Enmar related to TEMCO purchases are reasonable expenses properly incurred in the providing of public utility services.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont Natural Gas Company, Inc., be, and is hereby allowed to increase its rates and charges so as to produce an annual level of revenue of $264,941,170 (including other operating revenues of $773,673) from its North Carolina customers based on the Company's level of test year operations. Such amount represents an increase of $6,791,982 above the level of revenues that would have resulted from rates in effect during the test year.

2. That the base rates attached hereto as Appendix A be, and the same are hereby, approved effective for service rendered on and after the effective date of this Order.

3. That Piedmont shall file appropriate tariffs in accordance with the provisions of this Order, not later than ten (10) days from the effective date of this Order.

4. That Piedmont shall send appropriate notice concerning the rates approved herein to its customers as a bill insert in its next billing cycle, after the effective date of this Order.

5. That Piedmont shall be, and hereby is, ordered to terminate its practice of retaining a markup or paying a commission to its wholly owned subsidiary PNG Energy Company. Further, Piedmont is hereby ordered to refund to its customers all funds currently recorded in deferred accounts relating to or identified with said commissions and/or markups in a manner consistent with the findings and conclusions set forth herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of December 1988.

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

Commissioner Hipp concurs in part and dissents in part by separate decision.

APPENDIX A
BASE RATES
Docket No. G-9, Sub 278

Rate Schedule	
101 - Heating Only	
Facilities Charge	$ 7.00 per month
Winter (Nov. - Mar.)	.58948 per therm
Summer (Apr. - Oct.)	.53948 per therm
101 - Year Round	
Facilities Charge	$ 6.00 per month
Winter (Nov. - Mar.)	.57481 per therm
Summer (Apr. - Oct.)	.52481 per therm
101 - Public Housing	N/A
Winter (Nov. - Mar.)	.57481 per therm
Summer (Apr. - Oct.)	.52481 per therm
102 - Heating Only	
Facilities Charge	$ 10.00 per month
Winter (Nov. - Mar.)	.58378 per therm
Summer (Apr. - Oct.)	.53378 per therm
102 - Year Round	
Facilities Charge	$ 10.00 per month
Winter (Nov. - Mar.)	.55460 per therm
Summer (Apr. - Oct.)	.51460 per therm
102B - Air Conditioning	
Facilities Charge	$ 9.50 per month

Winter (Nov. - Mar.)	.56080 per therm
Summer (Apr. - Oct.)	.45110 per therm
102C - Compressed Motor Fuel	
Facilities Charge	$ 10.00 per month
Winter (Nov. - Mar.)	.55460 per therm
Summer (Apr. - Oct.)	.51460 per therm
103 - Facilities Charge	$100.00 per month
Winter (Nov. - Mar.)	.44279 per therm*
Summer (Apr. - Oct.)	.41779 per therm*
104 - Facilities Charge	$200.00 per month
First 15,000 therms - Winter (Nov. - Mar.)	.42263 per therm*
Next 30,000 therms - Winter (Nov. - Mar.)	.41263 per therm*
Next 90,000 therms - Winter (Nov. - Mar.)	.40263 per therm*
All Over 135,000 therms - Winter (Nov. - Mar.)	.39263 per therm*
First 15,000 therms - Summer (Apr. - Oct.)	.40263 per therm*
Next 30,000 therms - Summer (Apr. - Oct.)	.39263 per therm*
Next 90,000 therms - Summer (Apr. - Oct.)	.37763 per therm*
Next 165,000 therms - Summer (Apr. - Oct.)	.36763 per therm*
All Over 300,000 therms - Summer (Apr. - Oct.)	.35763 per therm*
105 - Each Fixture	$ 7.28 per month
106 - Off-Peak	.69345 per therm
On-Peak	.88335 per therm
107 - Facilities Charge	$200.00 per month
First 15,000 therms - Winter (Nov. - Mar.)	.10982 per therm*
Next 30,000 therms - Winter (Nov. - Mar.)	.09982 per therm*
Next 90,000 therms - Winter (Nov. - Mar.)	.08982 per therm*
All Over 135,000 therms - Winter (Nov. - Mar.)	.07982 per therm*
First 15,000 therms - Summer (Apr. - Oct.)	.08982 per therm*
Next 30,000 therms - Summer (Apr. - Oct.)	.07982 per therm*
Next 90,000 therms - Summer (Apr. - Oct.)	.06482 per therm*
Next 165,000 therms - Summer (Apr. - Oct.)	.05482 per therm*
All Over 300,000 therms - Summer (Apr. - Oct.)	.04482 per therm*

113 - Process Transportation Service

Facilities Charge	$100.00 per month
Winter (Nov. - Mar.)	.12998 per therm*
Summer (Apr. - Oct.)	.10498 per therm*

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*These rates may be negotiated downward only.

HIPP, COMMISSIONER, CONCURRING IN PART AND DISSENTING IN PART. I concur in the decision of the majority to cut Piedmont's increase to 64% of the amount requested, but I dissent from the rate design adopted by the majority assigning the entire 2.64% increase in the amount of $6,791,982 to the residential and commercial year-round class of customers, while reducing the rates of commercial (heat only) and industrial customers by $797,141, which is also assigned to the residential and commercial heat only customers for a total increase of $7,587,000 on these customers. I further dissent from the majority's rate design within the residential class in allocating $4,319,072 of the $6,791,982, or 64% of the residential increase to the customer charge by increasing this flat monthly charge from $4.50 a month to $7.00 a month (55% increase) on the residential heat only and $4.05 a month to $6.00 a month (48% increase) on the residential year round customers.

The majority rate design thus transforms an overall rate increase of 2.64% for Piedmont into much larger increases for the following customers:

	Increases
Residential year round	6.3%
Residential heat only	4.39%
Residential public housing	2.23%
Commercial year round	4.23%

The principal cause of the increase allowed was to support additional capital outlay by Piedmont during the test period of $81,000,000 for overall plant improvements, including additions to the transmission and distribution plant since the last rate case three years ago, including system betterment, cathodic protection, lines to new industrial customers, office equipment, computers, other system general development, and devices to help decrease operating expenses.

The Majority Order, in Finding of Fact 16, finds that it would be unjust and unreasonable to establish rates based solely upon equalized rates of return for all customer classes, as follows:

> "16. It would be unjust and unreasonable to establish rates in this proceeding based solely upon equalized rates of return for all customer rate classes. Other relevant factors which must be considered in setting rates in addition to the estimated cost of service included value of service, quantity of natural gas used, the time of use, the manner of use, the equipment which Piedmont must provide and maintain in order to meet the requirements of its customers, competitive conditions and consumption characteristics."

The Majority Order then sets forth in great detail on pages 31 through 35 the evidence and conclusions for Finding of Fact 16, and sets out eight specific grounds for assigning the rate increase between rate classes on the basis of equitable factors other than the cost of service studies. I subscribe fully to the findings and conclusions of the Majority Order in this regard, but differ from the majority in application of this finding, in that I believe the finding requires that the rate design spread the rate increase among all rate classes contributing to the $81,000,000 or utilizing the $81,000,000 of capital expenses which caused the rate increase, which would be essentially all of the customers of Piedmont.

None of the causes of the rate increase would apply more specifically to the residential customer charge than to the other rates. A flat rate monthly customer charge is not a reasonable or equitable way to allocate a rate increase attributable primarily to increased use among customers with great disparity in levels of use. The allocation of $4,319,072 of the increase to the residential customer charge is in direct conflict with the majority Finding of Fact 16 and the reasons and conclusions therefore in light of the causes underlying the Piedmont application for the increase.

Industrial rates have been reduced by 24% over the last three years, whereas residential rates have been reduced only 10%. Residential rates on a per dekatherm basis are now 39% higher than industrial rates, and will be 68% higher than the high volume block of the industrial rates under the Majority Order. In addition, the large industrial customers are authorized by tariff to negotiate further reductions where the cost of alternate fuel is less than the gas rates. The large industrial customers also utilize the Piedmont plant for large volumes of customer-owned gas at very low transportation rates. The reductions in the industrial and commercial rates are said to be based upon cost of service studies indicating a higher rate of return on sales to industrial and commercial customers. The rate design formula used in deriving this conclusion assigns only 8.11% of Piedmont's entire rate base to Schedule 104, 107 and 108 industrial class which uses 39% of Piedmont's total gas volumes transported. The formula assigns 68% of Piedmont's rate base to the residential class which buys only 27% of the Piedmont gas volumes. The formula developed at an earlier time appears to be urgently in need of review in light of current gas supply and demand conditions, equitable cost allocations, and the transportation of customer-owned gas. Many of the revenue and expense accounts and plant allocations do not appear to be made on a current basis in light of the changing conditions of the gas utility industry.

Under Section 62-140(a) Discrimination Prohibited, of the North Carolina General Statutes, any unreasonable difference in rates is discriminatory and preferential and is declared to be unlawful. The evidence offered here is based entirely upon allocations of cost which should be reviewed on a current basis.

The Majority Order approves an increase of $6,791,982, which is an increase of 2.64% in Piedmont's North Carolina revenue. An across-the-board increase of this 2.64% to all customer classes or an equitable assignment of the increase without any decreases would be a reasonable finding and conclusion. The actual rate design adopted in the Majority Order, placing a 6.3% increase on most residential customers to pay the most of the rate increase plus an additional $797,141 to provide a rate reduction for commercial

and industrial customers does not comply with Finding of Fact 16 of the Majority Order. The majority's rate design results in discriminatory rates against most residential customers and a preferential rate reduction for most commercial and industrial customers. The specific allocations of the cost of service formula relied on by the Majority Order were not examined or discussed in detail and were not in evidence until the last day of the hearing and do not constitute adequate proof of reasonableness to justify the exacerbation of the residential increase accomplished by the rate design. The rate design actually serves to mask the main cause of the rate increase based upon the capital additions to the plant since the last rate case, by allocating only 8% of the plant to the large industrial customer. Under such conditions, the rate design should spread the rate increase equally among all customers utilizing the plant improvements, on a volume usage basis.

Edward B. Hipp,

DOCKET NO. G-5, SUB 225

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Public Service Company	)	ORDER REVISING RATE
of North Carolina, Inc., for an	)	SCHEDULES 25 AND 30
Amendment of Rate Schedules 25 and 30	)	

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Friday, February 26, 1988, at 9:00 a.m.

BEFORE: Commissioner Robert K. Koger, presiding; Commissioners Sarah Lindsay Tate and Ruth E. Cook

APPEARANCES:

For the Applicant:

Kent Burns, Burns, Day & Presnell, P.A., Attorneys at Law, Post Office Box 2479, Raleigh, North Carolina 27062
For: Public Service Company

For the Public Staff:

David Drooz, 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:

Lorinzo W. Joyner, Associate Attorney General, Attorney General's Office, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenor:

Jerry B. Fruitt, Attorney, 1042 Washington Street, Post Office Box 12547, Raleigh, North Carolina 27605
For: Carolina Utility Customers Association, Inc.

BY THE COMMISSION: On December 30, 1987, Public Service Company of North Carolina, Inc. (Public Service), filed Revised Rate Schedules 25 and 30 to be effective February 1, 1988, for the purpose of clearing up confusion as to which large commercial and industrial customers are entitled to be served on Rate Schedules 25 and 30. Rate Schedule 25 applies to customers using in excess of 50 DT per day who have the installed capability to burn No. 2 fuel oil as an alternate fuel while Rate Schedule 30 applies to customers using in excess of 50 DT per day who have the installed capability to burn an alternate fuel other than No. 2 fuel oil or propane. Public Service states in its filing that customers who have the installed capability to burn No. 2 fuel oil automatically have the capability to burn No. 4 or No. 5 fuel oil, which would entitle them to be placed on Rate Schedule 30 even though they actually burn

No. 2 fuel oil. Public Service filed revised rate schedules which make Rate Schedule 25 applicable to customers who have the installed capability to burn Nos. 2, 4, or 5 fuel oil as an alternate fuel and make Rate Schedule 30 applicable to customers who have the installed capability to burn an alternate fuel other than Nos. 2, 4, or 5 fuel oil or propane.

The Commission issued an Order on February 3, 1988, suspending the Company's Revised Rate Schedules 25 and 30 and scheduling a hearing. The Order provided for the filing of testimony and for the giving of notice to the customers affected. The Commission's Order further provided that all customer requests for reclassification be held in abeyance pending Commission action in this docket.

On February 2, 1988, the Carolina Utility Customers Association, Inc. (CUCA), petitioned to intervene in this proceeding. The Commission allowed intervention by Order of February 4, 1988.

Prefiled testimony was filed by Public Service on February 17, 1988, by the Public Staff on February 22, 1988, and a statement was filed with the Commission by Parker L. Hatcher, Jr., President of L H Utility and Transportation Services, Inc., on February 25, 1988. There have also been filed in this docket letters from Mr. Hatcher of L H Utility and Transportation Services on January 25, 1988, from Gary Koshak of Scott Mills on February 17, 1988, and from Wayne Thomas Kearney of the Chemical Industry Institute of Toxicology (CIIT) on February 19, 1988.

The hearing came on as scheduled at the time and place indicated above. C. Marshall Dickey, Senior Vice President-Gas Supply and Transportation for Public Service, testified in support of the application. The Public Staff presented the testimony of Eugene H. Curtis, Jr., Utilities Engineer-Natural Gas Division. Mr. Hatcher of L H Utility and Transportation Services presented his statement to the Commission as a public witness. Mr. Kearney of CIIT testified as a public witness.

On the basis of the testimony presented and the Commission's own records, the Commission makes the following:

FINDINGS OF FACT

1. In Public Service's last general rate case, Docket No. G-5, Sub 207, Public Service proposed a major revision of its rate classifications for commercial and industrial customers using in excess of 50 DT per day based on their alternate fuels. The Company proposed separate rate classifications for (1) all customers who use residual fuel oil Nos. 4, 5, or 6 as an alternate fuel; (2) all customers who use distillate fuel oil No. 2 as an alternate fuel; and (3) all customers who either use propane as an alternate fuel or who have no capability to burn an alternate fuel.

2. The Commission adopted the rate classifications proposed by Public Service in its last general rate case. The Commission's Order of November 19, 1986, in Docket No. G-5, Sub 207, described Rate Schedule 25 as "Commercial and Industrial Using in Excess of 50 DT Per Day with No. 2 Fuel Oil as an Alternate Fuel." The Order described Rate Schedule 30 as "Commercial and Industrial Using in Excess of 50 DT Per Day with No. 4, No. 5, or No. 6 Fuel Oils as an

Alternate Fuel." Public Service was directed to file appropriate tariffs in conformity with the Order.

3. Public Service filed Rate Schedule 25 with the following language: "This rate schedule is available to large commercial and industrial customers who have the installed capability to burn No. 2 oil as an alternate fuel . . ."

4. Public Service filed Rate Schedule 30 with the following language: "This rate schedule is available to large commercial and industrial customers, subject to the availability of an adequate supply of natural gas, who have the installed capability to burn an alternate fuel other than No. 2 oil or propane."

5. Customers with the installed capability to burn No. 2 fuel oil may have the capability to burn heavier fuel oils as well. Generally it requires additional equipment to burn heavier grades of oil. No. 6 fuel oil requires preheating at the burner and also in-tank heaters. No. 5 fuel oil requires preheating at the burner. All customers who have the installed capability to burn the heavier fuel oils have the capability to burn No. 2 fuel oil.

6. Public Service has received letters from several industrial customers on Rate Schedule 25 seeking reclassification to Rate Schedule 30 and refunds based on their capability to burn the heavier fuel oils. The present language of Rate Schedules 25 and 30 would require such reclassifications. However, Public Service feels that it is inappropriate to reclassify a customer based on the capability to burn a grade of fuel oil that is not actually being burned by the customer, and Public Service therefore filed the application in the present proceeding.

7. The Commission's November 19, 1986, Order in Public Service's last general rate case intended that industrial customers be assigned to Rate Schedules 25 or 30 based on their actual use of alternate fuels, and the availability provisions of Rate Schedules 25 and 30 should be changed to reflect the customer's installed capability and predominant use of alternate fuels as hereinafter provided.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

Witness C. Marshall Dickey testified for Public Service that both the Company and the Public Staff based their rate design in the last general rate case on the actual alternate fuel being burned, not on capability, and that he felt certain that this was the Commission's understanding. Following the rate case, a questionnaire was sent to industrial customers requesting alternate fuel information, and customers were assigned to a rate schedule based on the actual alternate fuel use. Mr. Dickey testified that the majority of customers using No. 2 fuel oil have the capability to burn No. 4 and No. 5 fuel oil and that the Company has recently received letters from several industrial customers seeking reclassification to the lower Rate Schedule 30 based on their capability to burn No. 4 or No. 5 fuel oil even though they in fact currently burn No. 2 fuel oil as an alternate fuel. He testified that the proposed rate design did not contemplate this and that it is not logical to assign a customer to a rate schedule based on an alternate fuel that the customer does not in fact burn. The Company stands to lose $1.9 million should all customers on Rate Schedule 25 change to Rate Schedule 30. Mr. Dickey testified that the

"installed capability" language in Rate Schedules 25 and 30 was an unfortunate choice of words and should be changed. He testified that the Company considered changing the availability language to require actual use of the alternate fuel, but he was concerned that this might require burdensome routine checking of fuels or affidavits. The Company therefore proposed to move customers having the capability to burn No. 4 or No. 5 fuel oil to Rate Schedule 25, along with No. 2 fuel oil customers, and to leave Rate Schedule 30 for those having the installed capability to burn an alternate fuel other than No. 2, No. 4, No. 5, or propane. The Company proposes to grandfather existing customers actually using No. 4 or No. 5 fuel oil who are on Rate Schedule 30 in order to make the change fair to them and revenue neutral to the Company. On cross examination Mr. Dickey agreed "that the intent of the parties and the Commission in the last general rate case was to have customers actually using No. 2 oil on Rate 25 and customers actually using 4, 5, or 6 on Rate 30." Mr. Dickey testified on cross-examination that the "installed capability" language in question had been requested by Public Service but that what the Company had really wanted had been spelled out in his testimony. Mr. Dickey testified that he was "reasonably sure" that No. 4 oil does not require preheating to burn, that No. 5 oil does require preheating at the burner, and that No. 6 oil requires preheating and tank heaters as well. He agreed that Nos. 4, 5, and 6 fuel oils fit together more neatly and that No. 2 fuel oil is really in a class by itself. Mr. Dickey testified that the Company prefers its own recommendation but that it prefers the Public Staff's recommendation over the present tariff language. He testified that the Public Staff's recommendation would require that the Company put in place some monthly affidavit requirement regarding the customer's alternate fuel use.

Public Staff witness Curtis testified that Public Service's proposed changes are contrary to the intent of the parties and the Commission in Public Service's last general rate case to the effect that installed capability include actual use. In that case, Mr. Dickey testified as follows:

> We are recommending that separate rate classifications be established for those customers using in excess of 50 DT per day, as follows:
>
> 1. all customers who use residual fuel oil (#4, #5, and #6) as an alternate fuel
>
> 2. all customers who use distillate fuel oil (#2) as an alternate fuel
>
> 3. all customers who either use propane as an alternate fuel or who have no capability to burn an alternate fuel.

Witness Curtis testified that the test year data provided in the rate case assigned customers to Rate Schedule 25 if they were using No. 2 fuel oil and to Rate Schedule 30 if they were using something other than No. 2 fuel oil or propane. For that reason the Public Staff recommended that the tariffs in question be clarified to include a statement that would tie the rate schedule to the customer's alternate fuel usage. Mr. Curtis proposed that the rate schedule language "with the installed capability. . ." be changed to "with the installed capability and use of . . ." in order to reflect the Commission's intent. He testified that under the Public Staff's proposal the customer would advise the Company of any change in the type of alternate fuel being used and

that the fuel the customer has in storage should be considered. Mr. Curtis testified,

> If you're going to intend to burn No. 5 because it's cheaper; you've got No. 2 in your storage tank, then I don't believe you are authorized to go to Rate Schedule 30 because you intend to burn a lower priced fuel. . . . If he were to refill his storage tank and sign an affidavit with Public Service Company that he is burning No. 5, I think that's a proper time to consider moving him to Rate Schedule 30.

Mr. Curtis testified that the Public Staff does not have a real concern with the present tariff language but that clarification would certainly help.

Public witness Hatcher testified that a customer who can burn Nos. 4, 5, or 6 fuel oil can automatically burn No. 2 oil, but that the reverse is not true because it requires equipment modifications, such as preheating equipment and heavier duty pumps, to burn the heavier fuel oils. He testified that Public Service's application should be denied because (1) the requested changes add confusion and discriminate among customers, (2) the requested changes would prevent the correct classification of customers, (3) the requests are contrary to the intent of the last general rate case order, (4) "grandfathering" current Schedule 30 customers without a grace period for further reclassifications would be grossly unfair, (5) a customer should have the ability to upgrade his alternate fuel, realizing the impact of his decision on curtailment, (6) the requested changes would be detrimental to both Public Service and its ratepayers, and (7) the requested changes are contrary to the goal of attracting new industry into the state.

Public witness Kearney of CIIT, whose company has a pending complaint proceeding before the Commission dealing with its request to be reclassified to Rate Schedule 30, testified that Public Service's application should be denied in that it will cost his company and others more money in the cost and use of fuel. He testified that his company expended money to install additional equipment in order to be able to burn No. 4 and No. 5 fuel oils.

The Commission concludes that the present availability provisions of Rate Schedules 25 and 30 should be changed. These provisions are not in conformity with the Company's testimony and the intent of the Commission's Order of November 19, 1986. Both the testimony and the Commission's Order are cast in terms of a rate classification system based on the customers' <u>use</u> of various alternate fuels. Similarly, in determining the revenues that would be produced by the proposed and approved rates in that rate case, customers were assigned to industrial rate schedules by the alternate fuels they were using during the test year. The Commission therefore concludes that it intended to establish rate classifications based on actual use of alternate fuels, and that the presently worded availability provisions of Rate Schedules 25 and 30 should be changed accordingly.

The Commission concludes that the changes proposed by Public Service, as reflected in its Revised Rate Schedules 25 and 30, should not be adopted for three reasons. First, the Company's proposals are not in accord with the testimony and the Commission's Order in the Company's last general rate case. The distinction made therein is between customers using No. 2 fuel oil as an

alternate fuel and customers using other grades of fuel oil. Public Service's proposal would instead group No. 2, No. 4, and No. 5 fuel oils together. Second, Public Service's proposal groups fuel oils by grade in a way that is inconsistent with their physical properties. Public Service's own witness testified that No. 4, No. 5, and No. 6 fuel oils "fit neatly together" and that No. 2 fuel oil is in a class by itself. Third, Public Service's proposal does not achieve what it concedes to have been the Commission's intent in the last general rate case.

The Commission concludes that in order to achieve the intent of the November 19, 1986 Order, Rate Schedules 25 and 30 should be changed along the lines proposed by the Public Staff, but with certain modifications in order to address the questions raised at this hearing with respect to the Public Staff's proposal. The Public Staff proposes to change the availability provisions of Rate Schedules 25 and 30 by substituting the phrase "with the installed capability and use of . . ." instead of the phrase "with the installed capability . . ." Mr. Curtis argued that this would achieve the Commission's intent, and we agree. However, questions were raised at the hearing as to interpretation of the phrase "use of." Would a one-time use of a particular grade of fuel oil call for a reclassification of the customer? It was further pointed out that No. 4 and No. 5 fuel oils are blends of No. 2 and No. 6 fuel oils, that it is sometimes difficult to characterize a particular mixture without an analysis, and that customers could buy different grades of fuel oil and mix them on their own. The Commission does not believe that the classification of fuel oils will be as difficult as suggested. The only distinction that needs to be made is between No. 2 fuel oil and all other grades. The other grades need not be characterized more precisely. The Commission believes that the intent of the classification system based upon actual use of No. 2 fuel oil does not turn upon a one-time use of that grade, but instead should be determined on the basis of the predominant use, i.e., more than 50% use by volume, of No. 2 fuel oil over a significant period of time for each separately metered operation. We therefore conclude and order that Rate Schedules 25 and 30 should be changed to substitute the phrase "with the installed capability and predominant use of" in place of the phrase "with the installed capability . . . "

Questions were raised as to the manner in which Public Service would be able to monitor its customers' fuel oil usage if the Public Staff proposal were adopted. Both witnesses Dickey and Curtis testified that it may be necessary to obtain information regarding alternate fuel use on a monthly basis and that affidavits may be in order. The Commission believes that the administration of the Rate Schedules as revised herein is a matter of Public Service's responsibility. We suggest that some reporting requirement, whether by affidavit or otherwise, might be appropriate on a quarterly basis or more often, at the initiative of the customer, if the customer feels that his predominant alternate fuel usage justifies a rate reclassification. We will not, however, order any particular monitoring procedure at this time. This is a matter for Public Service to administer, subject of course to the Commission's oversight through our complaint practice.

As to the pending reclassification requests and complaints based thereon, the Commission feels that these should be handled either by Public Service or by the Commission on a case-by-case basis in accordance with the revisions ordered herein.

IT IS, THEREFORE, ORDERED as follows:

1. That Public Service should be, and hereby is, ordered to revise its Rate Schedules 25 and 30 as hereinabove provided;

2. That Public Service should be, and hereby is, directed to file appropriate tariffs in conformity with the provisions of this Order which shall be subject to approval by further Order of the Commission; and

3. That Public Service shall deliver a copy of the Notice attached hereto as Appendix A to all customers on Rate Schedules 25 and 30 and to all customers who would qualify under these schedules if they bought gas directly from Public Service.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of March 1988.

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

DOCKET NO. G-5, SUB 225

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Public Service Company)
of North Carolina, Inc., for an) NOTICE TO THE PUBLIC
Amendment of Rate Schedules 25 and 30)

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has entered an Order in the above-captioned docket which revises the availability provisions of Public Service Company's Rate Schedules 25 and 30. This Order was entered following a public hearing that was held in Raleigh on February 26, 1988.

Rate Schedule 25 is now available to large commercial and industrial customers who have the installed capability to burn and predominant use of No. 2 oil as an alternate fuel and who do not qualify for Priority 1.1 through 2.4 under the North Carolina Utilities Commission Rule R6-19.2.

Rate Schedule 30 is available to large commercial and industrial customers, subject to the availability of an adequate supply of natural gas, who have the installed capability to burn and predominant use of an alternate fuel other than No. 2 oil or propane.

This the 14th day of March 1988.

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

DOCKET NO. T-2969

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
SLP, Inc., d/b/a Same Day Delivery Service, 113 Hampshire Place, Chapel Hill, North Carolina 27514 - Application for Common Carrier Authority	FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

ORAL ARGUMENT HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, November 21, 1988, at 2:00 p.m.

BEFORE: Chairman Robert O. Wells, Presiding; and Commissioners Edward B. Hipp, Ruth E. Cook, J. A. Wright, and William W. Redman, Jr.

APPEARANCES:

For the Applicant:

Ralph McDonald, Bailey & Dixon, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605
For: SLP, Inc., d/b/a Same Day Delivery Service

For the Protestants:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605
For: KBD Services, Inc.
Charles P. Gould, d/b/a Triangle Express

BY THE COMMISSION: On October 14, 1988, Commission Hearing Examiner Barbara A. Sharpe entered a Recommended Order in this docket denying the application for common carrier operating authority filed by SLP, Inc., d/b/a Same Day Delivery Service (Applicant). On October 26, 1988, the Applicant filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

By Order dated November 7, 1988, the Commission scheduled an oral argument to consider the exceptions to the Recommended Order filed by the Applicant. Upon call of the matter for oral argument at the appointed time and place, counsel for the Applicant and the Protestants (KBD Services, Inc., and Charles P. Gould, d/b/a Triangle Express) offered oral argument on behalf of their clients.

Based upon a careful consideration of the Recommended Order of October 14, 1988, and the entire record in this proceeding, the Commission is of the opinion, finds, and concludes that all the findings, conclusions and ordering paragraphs contained in the Recommended Order of October 14, 1988, are fully supported by the record; that the Recommended Order should be affirmed and adopted as the Final Order of the Commission; and that each of the exceptions

thereto should be overruled and denied. The Commission believes this action to be entirely appropriate in view of the uncontroverted evidence that the Applicant engaged in unauthorized operations right up to the very day before the hearing in this matter. Assuming that the Applicant has in fact ceased all unauthorized operations, the Commission would not be inclined to further penalize the Applicant on the issue of fitness should a new application for common carrier authority be filed.

The Commission further concludes that good cause exists to construe for the benefit of the Applicant and the Protestants the extent to which the Applicant may perform transportation pursuant to its exemption certificate in the Research Triangle area. Commission Rule R2-28 defines the extent of commercial zones of municipalities for motor carriers of freight. A copy of Rule R2-28 is attached to this Order. Based on the best information currently available to us, we conclude that Rule R2-28 authorizes the Applicant to transport freight both ways between (1) Raleigh and Durham, (2) Durham and Chapel Hill, (3) Raleigh and the Research Triangle Park (RTP), and (4) Durham and the RTP. The Applicant cannot transport freight between Raleigh and Chapel Hill or between Chapel Hill and RTP pursuant to R2-28 because such transportation is outside of the scope of the commercial zones between those municipalities.

IT IS, THEREFORE, ORDERED as follows:

1. That each and every exception filed by the Applicant with respect to the Recommended Order of October 14, 1988, be, and the same are hereby, overruled and denied.

2. That the Recommended Order of October 14, 1988, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of November 1988.

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

(See Official Copy of Order in Chief Clerk's Office for Additional Attachments.)

DOCKET NO. T-2990

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Hugh Zimbelman and Donald Kenneth Ward, Jr., d/b/a Backwoods Mobile Home Service & Repair, 2512 Cedar Road, Chesapeake, Virginia 23323 - Application For Common Carrier Authority	) FINAL ORDER RULING ON EXCEPTIONS AND GRANTING APPLICATION, IN PART

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 24, 1988, at 11:00 a.m.

MOTOR TRUCKS - COMMON CARRIER - AUTHORITY

BEFORE: Chairman Robert O. Wells, Presiding; and Commissioners Sarah Lindsay Tate, Edward B. Hipp, Ruth B. Cook, J. A. Wright and William W. Redman, Jr.

APPEARANCES:

For the Applicants:

Mr. Theodore Brown, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605
For: Hugh Zimbelman and Donald Kenneth Ward, Jr., d/b/a Backwoods Mobile Home Service & Repair

For the Protestants:

Mr. Ralph McDonald, Bailey & Dixon, Attorneys at Law, P. O. Box 12865, Raleigh, North Carolina 27605
For: Norman Arlington Spruill and Jimmie Robert Council, d/b/a Jimmie Council

BY THE COMMISSION: By application filed with the Commission on July 5, 1988, and subsequently amended on July 11, 1988, common carrier authority is sought by the Applicants to transport Group 21, mobile homes and modular homes statewide.

On September 15, 1988, a Recommended Order was entered in this docket by Hearing Examiner Daniel Long wherein the amended application was granted. On September 30, 1988, Protestants filed exceptions to the Recommended Order. By Commission Order dated October 7, 1988, oral argument on Protestants' exceptions was scheduled for October 24, 1988.

The matter came on for oral argument as scheduled and Counsel for the Protestants and Applicants were present and made oral argument.

Upon careful consideration of the entire record in this proceeding and the oral argument of the parties before the Commission on October 24, 1988, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicants are residents of the State of Virginia, living in Chesapeake, Virginia, and presently engaged in the business of transporting and moving mobile homes and driving trucks and trailers.

2. By this application, Applicants propose to engage in the transportation of Group 21, mobile homes and modular homes, statewide.

3. Applicants are experienced in for-hire transportation by motor vehicles and in setting up and handling mobile home moves.

4. Applicants have authority in the State of Virginia to move mobile or modular homes and have had that authority for a year and a half.

5. Applicants have a set-up contractor license issued by the State of North Carolina to do set-ups in North Carolina with a $5,000 bond.

6. Applicants own a truck outfitted especially for moving mobile modular homes, also two service trucks, and two additional unregistered road tractors.

7. Applicants have assets which exceed liabilities and have the resources presently to furnish additional rolling equipment as needed in order to provide adequate and continuing service to the public.

8. Applicants have adequate liability and cargo insurance.

9. Roger's Mobile Offices, (Roger's), has one North Carolina office located in Kinston and sells and leases mobile, modular office units.

10. Roger's maintains a private fleet of seven trucks but uses outside carriers for overflow traffic. Time of delivery is very important to Roger's because of the highly competitive nature of its business. In recent months, Roger's has experienced difficulties in booking outside carriers.

11. Roger's has used Applicants' services in Virginia and has found them to be satisfactory.

12. Thurman Cook Chalk, with his father, operates a mobile home sales lot in Moyock, North Carolina. Mr. Chalk sometimes has need for the services of a common carrier to move mobile homes when he cannot move the mobile home for his customer.

13. Norman Arlington Spruill, who lives in Elizabeth City, is an authorized mobile home carrier operating under Certificate No. C-906 which authorizes transportation of mobile homes statewide.

14. Jimmy Robert Council, who lives in Williamston, is authorized by common carrier Certificate No. C-913 to transport mobile homes between points within 250 airline miles of Elizabeth City.

WHEREUPON, the Commission reaches the following:

CONCLUSIONS

Under the provisions of G.S. 62-262(e), Applicants have the burden of proof with respect to its application for common carrier operating authority to show to the satisfaction of the Commission:

1. That public convenience and necessity require the proposed service in addition to existing authorized transportation services; and

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.

The type of proof requrired to show public convenience and necessity within the meaning of G.S. 62-262 is further explained by Rule R2-15 of this Commission which provides that the Applicants must establish proof that a "public demand and need exists" for the proposed service in addition to existing authorized service. The Supreme Court of North Carolina and the Court of Appeals have in several decisions stated the elements which constitute "public convenience and necessity" pointing out that they include such questions as "whether there is a substantial public need for the service;" and "whether it would endanger or impair the operations of existing carriers contrary to the public interest." Utilities Commission v. Carolina Coach Company, 260 N.C. 43, 132 S. E. 2d 249 (1963); Utilities Commission v. Trucking Company, 223 N.C. 687, 28 S. E. 2d 201 (1943); Utilities Commission v. Southern Coach Company 19 N.C. App. 597, 199 S. E. 2d 731 (1973); and Utilities Commission v. Queen City Coach Company, 4 N. C. App. 116 S. E. 2d 441 (1969).

The evidence in this docket with respect to the first statutory criterion, public convenience and necessity, is conflicting. Considering first the threshold question of whether there is a public demand and need for the proposed service, it is noted that Applicants propose to transport mobile homes and modular homes statewide. The two supporting shippers testified only to the need for transportation of mobile or modular homes from their North Carolina locations of Moyock and Kinston. Accordingly, the Commission concludes that no evidence has been offered to support the need for service outside the gegeographic area as set forth in Exhibit B attached hereto.

The second element of public convenience and necessity which must be considered is whether the proposed operations would impair the operations of the Protestants and other existing carriers contrary to public interest. The Protestants are located in Elizabeth City and Williamston which is outside of the originating counties set forth in Exhibit B. Furthermore, neither of the supporting shippers currently use the services of the Protestants. Therefore, there is no evidence to support a finding that the service authorized in Exhibit B attached hereto would have a ruinous competitive effect upon authorized carriers.

With respect to the second and third statutory criteria, the evidence in the record reflects and the Commission concludes that the Applicants have experience in moving mobile and modular homes, have suitable equipment for transporting mobile and modular homes and are solvent and financially able to furnish adequate service on a continuing basis.

IT IS, THEREFORE, ORDERED:

1. That the exceptions to the Recommended Order filed in this docket by the Protestants on September 30, 1988, to the extent they are adopted by the Order herein, be, and the same are hereby, allowed.

2. That the Applicants are hereby granted the common carrier authority set forth in Exhibit B attached to this Order and made a part hereof.

3. That the Applicants shall file with the North Carolina Division of Motor Vehicles, Motor Carrier Safety Regulation Unit, evidence of the required liability and cargo insurance, a list of equipment and designation of process agent, and shall also file with the Commission's Transportation Rates Division

a tariff schedule of rates and charges and otherwise comply with the Rules and Regulations of the Commission prior to commencing operations under the authority granted herein.

4. That unless the Applicants comply with the requirements set forth in Ordering Paragraph (3) above and begin operating as herein authorized within thirty (30) days after the date of this Order, unless such time is extended by the Commission upon written request for such extension, the operating authority granted herein will cease.

5. That the Applicants shall maintain their books and records in such a manner that all of the applicable items of information required in its prescribed Annual Report to the Commission can be used by the Applicants in the preparation of such Annual Report. A copy of the Annual Report form shall be furnished upon request made to the Transportation Rates Division, Public Staff, North Carolina Utilities Commission.

6. That this Order shall constitute a certificate until a formal certificate has been issued and transmitted to the Applicants authorizing the common carrier transportation described and set forth in Exhibit B attached hereto.

ISSUED BY ORDER OF THE COMMISSION
This the 28th day of October 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J.Webster, Chief Clerk

(SEAL)

DOCKET NO. T-2990

BACKWOODS MOBILE HOME SERVICE & REPAIR
Hugh Zimbleman and
Donald Kenneth Ward, Jr., d/b/a
2512 Cedar Road
Chesapeake, Virginia 23323

IRREGULAR ROUTE COMMON CARRIER AUTHORITY

EXHIBIT B

Transportation of Group 21, mobile homes and modular homes:

(1) Between points in Currituck County, and from points in Currituck County to points in North Carolina, and from points in North Carolina to Currituck County.

(2) Between points in Lenoir County, and from points in Lenoir County to points in North Carolina, and from points in North Carolina to Lenoir County.

DOCKET NO. T-825, SUB 300

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Southern Motor Carriers Rate Conference, Inc.,)
Petition for Suspension and Investigation of) ORDER RULING
Tariff Filings by Con-Way Southern Express, Inc.) ON COMPLAINT

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 10, 1987, at 9:00 a.m.

BEFORE: Commissioner William W. Redman, Jr., Presiding, and Commissioners Ruth E. Cook and J. A. Wright

APPEARANCES:

For the Complainant:

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Attorneys at Law, 327 Hillsborough Street, Raleigh, North Carolina 27608
and
John W. Joyce, Southern Motor Carriers Rate Conference, Inc., 1307 Peachtree Street N.E., Post Office Box 7219, Atlanta, Georgia 30357
For: Southern Motor Carriers Rate Conference, Inc.

For the Respondent:

Ralph McDonald, Bailey & Dixon, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865
For: Con-Way Southern Express, Inc.

For the Public Staff:

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

BY THE COMMISSION: This proceeding has grown out of a controversy concerning the legality of the initial rating system published by Con-Way Southern Express, Inc. (CWSE or Respondent), a motor common carrier of general commodities with statewide operating authority, for application on North Carolina intrastate traffic. On or about April 7, 1987, CWSE filed a number of tariffs with the Commission which collectively comprised the initial rates for its North Carolina intrastate operations. These provisions subsequently became effective on April 8, 1987, on one day's notice to the public. On April 27, 1987, CWSE filed an additional discount tariff (NCUC CWSE 601) which became effective on May 4, 1987.

On June 1, 1987, the North Carolina Intrastate Rate Committee of the Southern Motor Carriers Rate Conference, Inc. (SMCRC), filed a petition with the Commission entitled "Petition for Suspension and Investigation or, Alternately, Motion to Strike Unlawful Tariff Matter." The issues raised in

the petition concerned (1) whether CWSE's class rate system violated an outstanding Order of the Commission in Docket No. T-825, Sub 20 (dated October 5, 1960); (2) whether the discounts set forth in Tariff NCUC CWSE 601 complied with the Commission's tariff regulations; and (3) whether the failure to publish rates applicable to all points in the state constituted abandonment of the carrier's operating authority.

The Commission subsequently determined that good cause existed to treat the petition for suspension and investigation as a formal complaint and by Order dated July 8, 1987, the matter was set for public hearing on August 6, 1987. By Order dated August 3, 1987, the public hearing was subsequently postponed to September 29, 1987.

On September 22, 1987, CWSE reissued its Class Rate Tariff NCUC CWSE 500 to comply with the Commission's Order in Docket No. T-825, Sub 20. In addition, the tariff was amended to provide rates on a statewide basis in accordance with CWSE's operating authority.

On September 25, 1987, the Commission rescheduled the public hearing to November 10, 1987. On October 27, 1987, CWSE filed a motion to dismiss and the Complainant filed a reply in opposition to that motion on November 4, 1987.

At the public hearing on November 10, 1987, the Complainant withdrew the complaint with respect to the alleged violation of the Commission's Order in Docket No. T-825, Sub 20, and CWSE's alleged failure to publish rates in accordance with its operating authority. In addition, CWSE renewed its motion to dismiss the complaint, and the Commission reserved ruling on the motion pending receipt of the evidence.

The Complainant presented the testimony of Raymond A. Hicks, Assistant Manager of SMCRC's Rate and Research Department, and John V. Luckadoo, Director of Government Sales and Exposition Sales for Thurston Motor Lines, Inc. (Thurston). Respondent presented the testimony of Earl G. Stevens, Jr., its Manager of Planning and Pricing Strategies.

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 Commission now makes the following

FINDINGS OF FACT

1. CWSE is a Delaware corporation with its headquarters located in Charlotte, North Carolina. It is one of four regional carriers which are wholly-owned subsidiaries of Consolidated Freightways, Incorporated.

2. SMCRC is a Georgia corporation headquartered in Atlanta. It has approximately 450 members. It is funded by membership dues and by the sale of tariffs and other products developed for carriers. It is a nonprofit corporation. SMCRC is a rate bureau whose purpose is to file rates, including collectively made rates, on behalf of its members.

3. CWSE is an authorized common carrier operating on an intrastate basis in North Carolina pursuant to Certificate No. C-1476 which authorizes the

statewide transportation of general commodities. Certificate No. C-1476 was issued by the Commission to CWSE on February 25, 1987, in Docket No. T-2770.

4. During April 1987, CWSE filed tariffs with the Commission containing its initial rates and charges for North Carolina intrastate transportation.

5. Tariffs NCUC CWSE 600 and NCUC CWSE 601 provide for discounts. Tariff CWSE 600 provides for an across-the-board discount of 17%. Tariff NCUC CWSE 601, which provides in separately-numbered items for discounts ranging from 17% to 40%, is at issue in this proceeding.

6. Discounts under Tariff NCUC CWSE 601 are negotiated between the carrier and shipper.

7. NCUC CWSE 601 is a participatory tariff. A percentage discount is negotiated with the shipper and is implemented by execution of a participation letter. The customer negotiates with an authorized representative of CWSE. The authorized representative completes a pricing adjustment request which is sent to CWSE's Pricing Department for analysis. The Pricing Committee reviews the analysis and sets the amount of the discount under an item of Tariff NCUC CWSE 601. Each of these steps is documented, and the documentation is retained in a CWSE file for the customer. The customer is then notified and provided a letter of participation which the customer signs. The effective date of participation is within ten working days of the date of the request and no earlier than the day following receipt of the written request. Discounts are not applied retroactively.

8. The amount of discount provided to a shipper under Tariff NCUC CWSE 601, except on outbound prepaid shipments, is shown on the freight bill. The discount is documented in CWSE's files, but that documentation is not filed with this Commission. Nor is that documentation made available to the shipping public.

9. An unlawful rebate is a secret or concealed pay back to a shipper from a carrier off the published tariff rate.

10. For outbound prepaid shipments only, the consignor has the option pursuant to NCUC CWSE 601 of not having the full discount appear on the freight bill. Although this provision may enable some consignors to conceal discounts from consignees, it does not technically result in the granting of unlawful rebates.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission has jurisdiction pursuant to Chapter 62 of the North Carolina General Statutes to hear and rule upon the allegations of a complaint regarding the justness or reasonableness or the discriminatory, prejudicial or preferential nature of any rate charged or collected by a motor common carrier, or regarding any allegedly unfair or destructive or competitive practice, or regarding any other practice made unlawful under the provisions of the Public Utilities Act. The burden of proof in this proceeding is on SMCRC.

The evidence in this proceeding indicates that Tariff NCUC CWSE 600 provides for a 17 percent discount on all shipments subject to minimum charges and class rates published in Tariff NCUC CWSE 500. This discount applies across-the-board and without limitation on all commodities between all points in North Carolina. The discount is shown on the carrier's freight bill as a deduction from the otherwise applicable charges.

Despite the fact that Tariff NCUC CWSE 600 provides that it is the only tariff naming discounts or allowances for the account of CWSE, CWSE also published a discount scheme in its Tariff NCUC CWSE 601. Complainant witness Hix testified that this tariff names discounts ranging from 17 percent to 40 percent, but the amount of discount applicable to a specific shipment cannot be determined from the tariff. Mr. Hix further testified that Item 150, Original Page 5, of this tariff provides that the amount of the discount will be determined by a private agreement between CWSE and the consignor or consignee, as the case may be. Under this tariff, the consignor or consignee must make a written request to the carrier for the application of a specific discount percentage which will be applicable to shipments commencing on the date as agreed by an authorized CWSE representative, but not earlier than the day following receipt of the written request and not later than ten (10) working days from the postmark on the letter of request. The tariff provides that participation in a specific discount amount may also be accomplished by an oral agreement between the shipper and an authorized representative of CWSE which will later be confirmed by the Pricing Manager of CWSE.

In addition to requesting a specific discount percentage, the shipper or consignee may also request that the discounts be shown on the freight bill as a deduction from the otherwise applicable charges or that the discount will be paid to the shipper upon presentation of a claim to be filed not later than 60 days from the last day of the month in which the service was performed.

Neither the consignor's or consignee's letter of request for participation in a specific discount nor the carrier's confirmation of the request, effective date, and method of payment of the discount are ever filed with the North Carolina Utilities Commission or made public. Accordingly, it is impossible to determine from the tariffs on file with the Commission the intrastate rates and charges to be assessed on a given shipment handled by CWSE. Consequently, the primary issue in this proceeding is whether the failure to publish and file a tariff with the Commission containing sufficient discount information to permit the tariff user to calculate the charges to be assessed by the carrier on any North Carolina intrastate shipment is in compliance with the regulatory statutes and the Commission's rules and regulations.

I. <u>Tariff NCUC CWSE 601 does not contain sufficient information to allow the shipping public to compute the transportation charges on any shipment. This tariff is in violation of N.C.G.S. 62-138(c)</u>.

The record in this proceeding shows that CWSE's rating scheme requires charges on North Carolina intrastate shipments to be determined by first rating the shipment under CWSE's class rate tariff to arrive at the full charges. This is identical to the practice followed by every other common carrier in the state. In addition, CWSE provides for a published discount (NCUC CWSE 600) of 17 percent to be applied against the full class rate charges unless a greater discount is provided in Tariff NCUC CWSE 601. The record shows that the

principle distinction between the two discount tariffs is that the former unequivocally provides a specific percentage of discount to be taken off the full class rate charges, while the latter provides a listing of the possible discount percentages which the carrier and shipper may by private contract agree to apply to the otherwise applicable class rates. The record also shows that nothing appears in Tariff NCUC CWSE 601 which would allow anyone other than the carrier and the shipper to determine the specific discount to be applicable to a given shipment.

N.C.G.S. 62-138(c) requires every irregular route common carrier of general commodities to file with the Commission, print, and keep open for public inspection schedules showing all rates for the transportation of property in intrastate commerce. Additionally, N.C.G.S. 62-3(24) defines a "rate" as "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."

In concert, these provisions leave little doubt that the law in North Carolina is intended to require carriers to publish and file with the Commission and keep open for public inspection not only the specific rates and charges applicable to a specific shipment, but also any contracts, circumstances, or conditions which could have a bearing upon the assessment of the charges. By the comprehensive definition of the word "rate," it is clear that the legislature of this State intended to require the complete public disclosure of every fact or factor necessary to the computation of the net charges on any shipment. Yet, even in the face of very specific statutory requirements for tariff publications, the Respondent insists that its discount tariff is in compliance with the regulatory statute.

At the outset, it is important to note that Respondent's discount plan, while filed with a number of other regulatory agencies, has been subjected to neither a formal investigation nor an administrative determination of its lawfulness in North Carolina. In fact, it appears that other regulatory agencies and the courts have consistently condemned such rating schemes. For example, in the leading case of Regular Common Carrier Conference, et. al. vs. United States, et. al., 793 F. 2d 376 (D.C. Cir 1986), the U. S. Court of Appeals considered the legality of a tariff rule which proposed to allow participating freight forwarders to privately agree with shippers on an unpublished rate determined by averaging prior charges for similar shipments from the involved shipper. The tariff did not provide any method for averaging; nor did it specify the facts on which averaging was to be based.

The court held that the tariff provision violated the regulatory statute which provided that a motor carrier shall provide transportation service only if the rate for the service is contained in a tariff. The court also held that the Interstate Commerce Commission (ICC) may not waive this statutory requirement because without it:

> "...it would be monumentally difficult to enforce the requirement that rates be reasonable and nondiscriminatory, ...and virtually impossible for the public to assert its right to challenge the lawfulness of existing or proposed rates,..."

In remanding the matter back to the ICC for further handling, the court adopted the logic of the ICC's dissenting opinion below as its own:

> "The essential question before us, then, is whether the FFTB rule produces a 'filed rate.' We think Chairman Taylor's dissent answered that correctly:
>
>> "What we have here...is not a tariff rule that sets forth a rate, but rather a rule that simply announces a pricing policy. Essentially, the rule contains nothing more than an offer to negotiate and agree with shippers upon an 'average rate.' Clearly, the agreed upon rate will neither be published in nor readily ascertainable from any tariff on file with the Commission....
>>
>> [T]he proffered rule has been cleverly crafted to permit the forwarder unfettered discretion to secretly propose whatever 'average rate' it wishes...[T]he filing is...patently unlawful..."

In its brief, SMCRC also cites subsequent decisions rendered by the ICC whereby that federal regulatory agency has taken steps to ensure that tariff rating plans have the desired degree of specificity.

Although this Commission generally agrees that innovative pricing should be encouraged to meet intense pressures of the marketplace, the need for flexible pricing may not lawfully be accomplished at the expense of the minimum statutory requirement of tariffs that adequately set forth methods of calculating charges. With respect to NCUC CWSE 601, no one outside of the carrier and the shipper has the ability to determine the charges on any given shipment, either before or after the shipment moves.

II. The maintenance by other carriers of volume incentive discount tariffs previously found lawful by this Commission and discount plans alleged to be similar cannot justify the continuation of tariff provisions which are in violation of N.C.G.S. 62-138(c).

In an effort to boost the credibility of its rating scheme, CWSE introduced into the record a number of tariffs maintained by other carriers on North Carolina intrastate traffic which were alleged to lack the degree of specificity to permit the computation of the charges by the shipping and receiving public. CWSE's Exhibits 4 and 5 consisted of facsimiles of tariff provisions maintained by USA Eastern, Inc., which purport to provide for the application of specific discounts applicable on shipments from specifically named locations but only for the account of customers identified by account numbers which appear in the tariff.

At the outset, it should be noted that these tariff provisions were not approved by this Commission after a formal investigation and, consequently,

their lawfulness should not be assumed. The federal Motor Carrier Act of 1980 precipitated a host of "innovative" pricing schemes which have been published on interstate traffic, but their lawfulness has not been tested. However, it would be irresponsible to permit the continued violation of the regulatory

statute in North Carolina on no more strength than the alleged presence of other violators. If other tariff provisions lack the degree of specificity required to allow the computation of the charges by the shipping public, the logical course of action would be to institute a complaint investigation to determine their lawfulness.

In a similar fashion, CWSE also attempted to rely upon the existence of the incentive discount tariffs maintained by Fredrickson Motor Express Corporation, Standard Trucking Company, and Thurston Motor Lines, Inc. (CWSE Exhibits 6, 7, and 8) as support for its conclusion that other tariffs on file with the Commission will not allow the shipping and receiving public to compute the charges on specific shipments. However, while CWSE's contention is correct, this conclusion derives from the nature of the transaction and not from any effort to determine prices outside public scrutiny.

Incentive discount tariffs are predicated upon providing a variable level of discounts which result in increasing the total volume of traffic which is tendered to the carrier by the shipper within a stated time frame. If the shipper tenders sufficient freight over the stated period, usually three months, the carrier then refunds a discount based upon the amount by which the total revenue exceeds the historical revenue levels of the shipper. Incentive discount tariffs are not concerned with pricing at the individual shipment level (shipments are rated in accordance with the otherwise applicable tariff provisions), but with refunding the savings resulting from incremental increases in traffic volume over time. Accordingly, incentive discount tariffs incorporate a sign-up feature in order to alert the carrier to program its computers to capture and retain over the incentive period the information necessary to compute the discount.

While both incentive discount tariffs and CWSE's discount plan require agreement between the carrier and shipper in order to effectuate participation, that is where the similarity ends. The principle underlying incentive discount programs was specifically approved by the Commission in Docket No. T-1287, Sub 37, Harper Trucking Company, Inc. - Complaint Against Fredrickson Motor Express Corporation and Standard Trucking Company, Order dated July 7, 1982; wherein the Commission concluded that "[T]here are substantial differences in the cost and conditions of service which result from increasing the total volume of revenue for a carrier or the volume of revenue from a single shipper, including reduced platform, pick-up and delivery and sales expenses, and also increased line-haul profitability and greater distribution of fixed cost." Consequently, incentive discount tariffs are no longer concerned with individual shipments, but rather, the total volume of shipments during the incentive period. The Commission hereby affirms its previous approval of incentive discount tariffs. This is in sharp contrast to CWSE's discount plan which is based upon private, non-public negotiation of discounts applicable to each individual shipment for movement in the future.

III. The discount procedure set forth in Tariff NCUC CWSE 601 embodies a competitive practice which could be utilized to engage in discriminatory pricing in violation of N.C.G.S. 62-140.

Under N.C.G.S. 62-140, it is unlawful for a public utility, as to rates or services, to make or grant any unreasonable preference or advantage to any person or to subject any person to any unreasonable prejudice or disadvantage.

In addition, it is unlawful for a public utility to establish or maintain any unreasonable difference as to rates or services as between localities or as between classes of service. All of these excesses fall under the general umbrella of price discrimination.

The prohibition of price discrimination is an integral part of the public policy on competition in the general economies of both the United States and North Carolina. N.C.G.S. 62-2(4) declares it to be the policy of the State of North Carolina 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..." The aim of such a prohibition is not to choke healthy competition but to prevent discriminatory excesses that may tend to undermine legitimate competition by influencing buy/sell decisions based on unjust, undue, or unfair preferences or advantages gained through inordinate bargaining strength. The statute's purpose is to ensure that both large and small shippers are accorded the same opportunity to compete for business based on substantive product considerations rather than the relative size or market clout of the purchasers of transportation service.

Price discrimination is not specifically defined in the regulatory statute which means that its existence must be determined from all the facts and circumstances surrounding the practice. To this end, N.C.G.S. 62-140 specifically empowers the Commission to determine any questions of fact concerning the practice. In addition, the legislature of this State has delegated to the Commission the authority to make reasonable and just rules and regulations to prevent unreasonable discrimination in the rates and services of public utilities.

The Commission's rules and regulations have heretofore essentially eliminated the potential for price discrimination in the motor common carrier industry in North Carolina. Commission Rule R2-16 entitled "Rates and Charges" requires that every common carrier by motor vehicle shall file with the Commission, publish and keep open for public inspection and strictly observe all tariffs showing all rates, charges and classifications for the transportation of property or passengers in intrastate commerce between all points within the area authorized to be served. In addition, Commission Rule R4-3 entitled "Filing and Posting" requires carriers to post and file in a place accessible to the public at each station or office where property is received for transportation, all of the tariffs containing rates, charges, classifications, and rules and other provisions applying from, or at, such station or office. Further, the rule requires employees of the carrier to give any desired information contained in such tariffs, to lend assistance to seekers of information therefrom, and to afford inquirers opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire.

Similarly, the publication of uniform rates and charges and rules and regulations under ratemaking agreements approved by the Commission pursuant to N.C.G.S. 62-152.1 entitled "Uniform rates; joint rate agreements among carriers" has assisted in preventing price discrimination. Shippers are not only provided with easily obtainable and specific price information, but they are also accorded public notice of proposed price changes and provided with the opportunity to participate in the ratemaking process. Potentially

discriminatory pricing situations can thus be disclosed and eliminated prior to tariff publication.

The common thread running throughout these antidiscrimination provisions is, of course, the requirement of public disclosure of all price information by tariff publication. This permits the party who may be disadvantaged by the price discrimination to first complain to the offending carrier and if unsuccessful to then seek redress from the regulatory agency. The dearth of price discrimination cases previously brought before this Commission is a monument to the success of the requirement of public disclosure of price information in preventing price discrimination.

The record in this proceeding discloses that CWSE's discounting tariff will not meet the minimum regulatory requirement of public disclosure of price information by tariff publication required by N.C.G.S. 62-138(c). Respondent witness Stevens testified that the only written evidence of the level of discount to be applied to a shipment is a document called a "pricing adjustment request" (CWSE Exhibit 1), a document called a "letter of participation" (CWSE Exhibit 2), and the carrier's freight bill (CWSE Exhibit 3). The first document represents the shipper's request for a specific level of discount, the second is the carrier's professed agreement to the discount and its effective date, and the third is a record of shipment. These three documents comprise the sole agreement as to the rate levels to be assessed and they exist only in the files of the involved shipper and the carrier. No copies are ever filed with this Commission or made available to the shipping public. What this means is that rate levels may vary anywhere between 60 percent and 83 percent of Respondent's class rate levels on file with the Commission based on no more formality than a simple private agreement between the carrier and shipper.

IV. The partial payment of discounts by post-shipment claim pursuant to Tariff NCUC CWSE 601 does not technically result in the granting of unlawful rebates in violation of G.S. 62-318. This procedure is objectionable, however, as a matter of sound public and regulatory policy.

In addition to reaching agreement as to the amount of the discount to be paid under CWSE's Tariff NCUC CWSE 601, the tariff also includes a method for electing how the discount is to be paid. Each discount percentage has four payment alternatives. For example, by selecting Item 1350 of the discount tariff in its participation letter to the carrier (CWSE Exhibit 1), the shipper is soliciting a 35 percent discount to be paid on outbound prepaid shipments with the discount shown on the carrier's freight bill as a reduction from the otherwise applicable charges. Consequently, under this provision, the shipper simply pays the carrier an amount equal to the fully discounted charges.

Similarly, by selecting Item 1350-1, the 35 percent discount is to be paid on outbound collect shipments with the discount shown on the carrier's freight bill as a reduction from the otherwise applicable charges. Under this provision, the consignee pays the carrier an amount equal to the fully discounted charges.

By selecting Item 1350-2, the 35 percent discount will be applicable to inbound collect shipments with the discount shown on the freight bill as a reduction from the otherwise applicable charges. As with Item 1350-1, the consignee pays the carrier an amount equal to the fully discounted charges.

The Complainant asserts that the potential problem occurs in connection with the selection of the payment arrangement provided in Item 1350-3 (and similar items for each percentage of discounts). This item provides that the 35 percent discount will be applied on outbound prepaid shipments upon presentation of a claim to be filed by the shipper within 60 days from the last day of the month in which the service was performed. However, under the provisions of Tariff NCUC CWSE 600, every shipment handled by CWSE in North Carolina intrastate service is automatically accorded a 17 percent discount which is shown as a deduction from the charges on the carrier's freight bill. Consequently, the carrier's freight bill reflects a discount of 17 percent which the shipper pays, and the shipper subsequently files a claim with the carrier within the time-frame set forth above for recovery of an amount equal to the difference between the 17 percent discount and the 35 percent discount.

For a variety of reasons, many shippers will agree with purchasers of their products to pay the transportation charges and include that amount on the subsequent invoice to the customer. A copy of the carrier's prepaid freight bill is usually provided by the shipper as proof of the transportation charges.

The Complainant asserts that the potential for an unlawful rebate occurs when the shipper later recovers the balance of the discount by filing a claim with the carrier and then fails to remit that amount to the consignee who paid 83 percent of the full charges. The result is that the consignee pays 18 percent higher charges than the carrier receives for the transportation service and the shipper earns 18 percent of the charges by simply agreeing with the consignee to act as an accommodation payor of the transportation charges.

According to the Complainant, this scenario is made possible simply because the application of the discount is not published in Tariff NCUC CWSE 601; that information exists solely in the files of the carrier and the shipper. Consequently, the Complainant asserts that without the opportunity to determine the discount arrangement between the shipper and the carrier, many unsuspecting consignees may pay higher freight charges which in turn would be passed on to an equally unsuspecting consuming public. The shipper would profit from this transaction just as surely as if he offered to sell his freight to the carrier for 18 percent of the freight charges.

The Complainant specifically states that it is not accusing CWSE of participating in an unlawful rebating scheme; nor does SMCRC have any knowledge that the above scenario has ever occurred on North Carolina intrastate traffic. SMCRC states that the issue is being raised in this proceeding for the sole purpose of emphasizing that the failure to require the publication and filing of discounts with the Commission so as to permit the computation of the charges by all parties carries with it the potential for abuse of the pricing mechanism.

The Public Utilities Act, N.C.G.S. 62-1, et. seq., does not define the term "rebate." Nor does any court decision in North Carolina adequately define the term. Federal cases, decided under the federal statutes and regulations of the Interstate Commerce Commission, define "rebate" as "a secret or concealed pay back to a shipper from a carrier off the published tariff rate." United States v. U.S. Steel Corp., 645 F. 2d 285 (Sixth Cir. 1981). Dicta in an early North Carolina Supreme Court decision is in accord with this definition. In the Rail Road Discrimination Case, 136 N.C. 348 (1904), the

Supreme Court stated that it is "[a] secret rebate...prohibited by statute and by all the decisions of the courts..." (Emphasis added). See also Atlantic Coast Line R.R. v. West Paving Co., 228 N.C. 94, 44 S.E. 2d 523 (1947).

Under this universally-accepted definition of rebates in the regulated transportation industry, the CWSE discounts cannot technically be considered rebates. The discounts are provided for in the published tariff. By giving a customer the discount, CWSE is not giving a rebate, but rather is complying with its tariff provisions as required by law. N.C.G.S. 62-139; 62-140(c).

In the U.S. Steel case cited above, the Sixth Circuit Court of Appeals reversed a finding by the Federal District Court that U.S. Steel had been paid a rebate by the Chesapeake and Ohio Railroad (C & O) when U.S. Steel received a refund from C & O on the rate paid to ship coal from mines in Kentucky to Toledo, Ohio. C & O's tariffs provided for the refund on the condition that U.S. Steel would use C & O to transport the coal, after its journey from Toledo to Duluth, Minnesota, on a lake barge, from the docks at Duluth to its ultimate destination at U.S. Steel's plants. The Sixth Circuit held that the refund was not a "rebate" because the refund was provided for in the tariff published by C & O. The court ruled that so long as the parties comply with the published tariff, there is no illegal rebate.

The courts of other states which have addressed the issue of rebates have also consistently held that rebates are knowing and intentional charges which are less then the rates stated in the tariff. See, e.g., Time-DC, Inc. v. Tappins, Inc., 126 N.J. Super. 179, 313 A. 2d 234 (1973); Union Transfer Co. v. Renstrom, 151 Neb. 326, 37 N.W. 2d 383 (1949). As applied to the case at hand, this uniform interpretation of the term "rebate" means that so long as CWSE complies with the limits on the discount scheme set forth in the published tariffs, the discounts provided for in the tariffs will not constitute illegal rebates.

Additionally, the question of whether a rebate has been paid or accepted must be determined on a case-by-case basis. United States v. Key Line Freight Lines, Inc., 570 F. 2d 97 (Sixth Cir. 1978). An entire tariff should not be stricken merely because of a concern over rebates. Rebates may be allowed or accepted under any tariff and may take a variety of forms. For example, in Key Line the defendant was convicted of the criminal charge of granting rebates for offering expense paid trips to the Kentucky Derby to high-level employees of a customer. In that case, the Sixth Circuit specifically held that, in determining whether a shipper has paid or received a rebate, the court must engage in a case-by-case analysis for each transaction. Such an analysis is necessary because, in order to prove that a rebate was granted, it must be shown that there was a knowing and intentional charge of less than the rate stated in the published tariff. Therefore, it is virtually impossible for a tariff to be invalid on the grounds that it provides for "rebates," as, by definition, a "rebate" is a secret variance from the rates chargeable under the published tariffs.

In a prior decision, this Commission adhered to the universally-applied definition of rebates. In In re: Harper Trucking Co. Complainant against Fredrickson Motor Express Corp. and Standard Trucking Co., Docket No. T-1287, Sub 37 (1983), the Commission affirmed the recommended order of the Hearing

Examiner on the issue of rebates in a case very similar to the one at hand. In the Harper Trucking case, Fredrickson Motor Express Corporation and Standard Trucking Company had filed tariffs with the North Carolina Utilities Commission which provided for revenue and volume incentive tariffs. Harper filed a complaint challenging the Fredrickson and Standard tariffs on largely the same grounds which SMCRC has asserted against the CWSE discount tariff, including the allegation that the discount program actually constituted rebates.

The Hearing Examiner concluded as a matter of law in his recommended order that the discounts were not rebates. The Hearing Examiner stated:

> "The payment...of discounts pursuant to Tariff...does not constitute, directly or indirectly, the allowance or payment of rébates on freight within the meaning of N.C. Gen. Stat. § 62-318, since such payments are made in accordance with effective tariffs published by the carrier and filed with this Commission. Indeed, the failure to pay the discounts due a participating shipper under said tariffs would constitute illegal rebating."

The full Commission affirmed this conclusion of law in its final Order in the Harper case, filed December 23, 1983. A similar conclusion is warranted in the case at hand.

One final concern specifically raised at the hearing in this case was whether a consignor would be able to hide a discount received from CWSE while charging the consignee the full rate for the shipment. Such a scenario may well be possible in a situation involving outbound prepaid shipments.

Nevertheless, CWSE asserts that it should not be required to draft its tariffs in such a way to anticipate and thwart another person's wrongdoing in every conceivable situation, particularly since a consignee is bound by CWSE's tariff filings, just as a consignor is. R.R. v. Paving Co., supra, 228 N.C. at 97. Which of those two parties pays the carrier's charges is a matter of contract between them. Id. Thus, CWSE asserts that if a consignee suspects a consignor of receiving an undisclosed discount, the consignee could confront the consignor directly as to the discount received on a particular shipment. CWSE also takes the position that the contractual dealings between a consignor and consignee are outside the scope of Commission regulations and should not bear upon the validity of a carrier's tariff containing an innovative discount plan.

Notwithstanding the arguments advanced by CWSE, the Commission concludes that those portions of Tariff NCUC CWSE 601 which could be used by a consignor to conceal a discount received from CWSE to the detriment of the consignee are objectionable as a matter of sound public and regulatory policy.

V. SMCRC has carried the burden of proof in this proceeding in support of its request that Tariff NCUC CWSE 601 should be cancelled.

For all of the reasons set forth hereinabove, the Commission concludes that SMCRC has carried the burden of proof in this proceeding in support of its request that Tariff CWSE 601 should be disapproved and cancelled. This being the case, the Commission concludes that any tariff which CWSE may hereafter file to replace Tariff NCUC CWSE 601 shall fully disclose all discounts or

reductions from the otherwise applicable rates, so as to permit the using and consuming public to determine the net charges on any North Carolina intrastate shipment handled by CWSE. In addition, any such discount tariff shall be structured so as to either (1) eliminate the ability of the consignor to request the option of not having the full discount appear on the freight bill or (2) make it clear on the freight bill that the consignor may receive a further discount from CWSE based upon a post-shipment claim.

IT IS, THEREFORE, ORDERED as follows:

1. That for the reasons set forth hereinabove Tariff NCUC CWSE 601 be, and the same is hereby, disapproved and cancelled.

2. That any tariff which CWSE shall file to replace Tariff NCUC CWSE 601 shall fully disclose all discounts or reductions from the otherwise applicable rates, so as to permit the using and consuming public to determine the net charges on any North Carolina intrastate shipment handled by CWSE. Any such tariff shall also either (a) eliminate the ability of the consignor to request the option of not having the fully discount appear on the freight bill or (b) make it clear on the freight bill that the consignor may receive a further discount from CWSE based upon a post-shipment claim.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of March 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. T-825, SUB 300

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Southern Motor Carriers Rate Conference, Inc. - Petition for Suspension and Investigation of Tariff Filings by Con-Way Southern Express, Inc.) FINAL ORDER DENYING EXCEPTIONS AND MOTION FOR RECONSIDERATION

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, March 28, 1988, at 11:00 a.m.

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

APPEARANCES:

For the Complainant:

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Attorneys at Law, 327 Hillsborough Street, Raleigh, North Carolina 27608
and
John W. Joyce, Southern Motor Carriers Rate Conference, Inc., 1307 Peachtree Street, N.E., Post Office Box 7219, Atlanta, Georgia 30357
For: Southern Motor Carriers Rate Conference, Inc.

For the Respondent:

Ralph McDonald, Bailey & Dixon, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865
For: Con-Way Southern Express, Inc.

BY THE COMMISSION: On March 7, 1988, a three-member Commission Hearing Panel entered an Order in this docket ruling on the complaint filed by the Southern Motor Carriers Rate Conference, Inc. (SMCRC), against Con-Way Southern Express, Inc. (CWSE).

On March 9, 1988, CWSE filed certain exceptions to the Commission Order ruling on SMCRC's complaint and requested the full Commission to schedule an oral argument to consider those exceptions. By separate motion, CWSE also requested that the Order entered in this docket on March 7, 1988, be reconsidered and rescinded pursuant to G.S. 62-80; that the effective date of cancellation of Tariff NCUC CWSE 601 and the time for compliance with the Order be postponed for at least 30 days pursuant to G.S. 62-79(b); and that the time for filing exceptions and notice of appeal be extended pursuant to G.S. 62-90.

On March 14, 1988, the Commission found good cause to enter an Order in this docket which (1) scheduled an oral argument to consider the exceptions and motion for reconsideration filed by CWSE; (2) extended the effective date for the cancellation of Tariff NCUC CWSE 601 for a period of time not to exceed 30 days from the date of that Order; (3) granted a 30-day extension of time to CWSE to otherwise comply with the provisions of the Order entered in this docket on March 7, 1988; and (4) granted CWSE a 30-day extension of time to file exceptions and notice of appeal.

The oral argument to consider the exceptions filed by CWSE was held as scheduled. Counsel for CWSE and SMCRC were present and presented oral argument to the Commission on behalf of their clients. The Public Staff did not participate in the oral argument. During the course of the oral argument, counsel for CWSE requested the Commission to provide some guidance to Con-Way as to what the Company needs to do to comply with the terms of the Order entered in this docket on March 7, 1988, if the Company's exceptions and motion for reconsideration are not granted.

On April 11, 1988, CWSE filed a letter in this docket requesting an additional extension of time with respect to (1) the effective date of cancellation of Tariff NCUC CWSE 601 and (2) the time to comply with the Order of March 7, 1988. CWSE proposed that this extension of time extend until seven

days after the Commission enters a Final Order in this docket. That motion was granted by Commission Order dated April 15, 1988.

On April 20, 1988, the Public Staff filed certain comments in response to the request by CWSE's counsel for guidance as to how the Company may comply with the provisions of the Order entered in this docket on March 7, 1988. The Public Staff also advised the Commission that it supports the Order entered in this docket on March 7, 1988, and believes that Tariff NCUC CWSE 601 should be disapproved and cancelled.

Based upon a careful consideration of the Order entered in this docket on March 7, 1988, the exceptions and motion for reconsideration filed by CWSE, the oral argument of the parties before the full Commission on March 28, 1988, and the entire record in this proceeding, the Commission is of the opinion, finds, and concludes that all the findings of fact, conclusions, and decretal paragraphs set forth in Order of March 7, 1988, are fully supported by the record; that said Order should be affirmed and adopted as the Final Order of the Commission; that each of the exceptions thereto should be overruled and denied; and the CWSE's motion for reconsideration should also be denied. In addition, the Commission has reviewed the comments filed by the Public Staff and concludes that those comments and the tariff form attached thereto, if adopted by CWSE, would enable CWSE to comply with the provisions of the Order of March 7, 1988.

IT IS, THEREFORE, ORDERED as follows:

1. That the Order entered in this docket on March 7, 1988, be, and the same is hereby, affirmed.

2. That the exceptions and motion for reconsideration filed in this docket by CWSE on March 9, 1988, be, and the same are hereby, denied.

3. That Tariff NCUC CWSE 601 shall be, and the same is hereby, cancelled not later than seven (7) days after the date of this Final Order.

4. That CWSE shall, not later than seven (7) days after the date of this Final Order, otherwise comply with the provisions of the Order heretofore entered in this docket on March 7, 1988.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of May 1988.

NORTH CAROLINA UTILITIES COMMISSION
Gail Lambert Mount, Deputy Clerk

(SEAL)

DOCKET NO. P-89, SUB 32

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Consolidated Directories, Inc., Complainant v. Central Telephone Company, Carolina Telephone and Telegraph Company, Southern Bell Telephone and Telegraph Company, Mebane Home Phone, ALLTEL, Randolph Cooperative, G.T.E., Surry County Cooperative, Star Membership Cooperative, and Yadkin Valley Cooperative, Respondents	)	ORDER DISMISSING COMPLAINT

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 11, 1988

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

APPEARANCES:

For Consolidated Directories, Inc.:

Paul Edward Marth, Forman and Marth, P.A., Post Office Drawer X-1, Greensboro, North Carolina 27402

For Central Telephone Company:

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

For Southern Bell Telephone and Telegraph Company:

Edward L. Rankin III, General Attorney, Southern Bell Legal Department, Post Office Box 30188, Charlotte, North Carolina 28230

For ALLTEL Carolina, Inc., and Mebane Home Telephone Company:

F. Kent Burns, Burns, Day & Presnell, P.A., Post Office Box 2479 Raleigh, North Carolina 27602

For Carolina Telephone and Telegraph Company:

Robert Carl Voigt, Senior Attorney, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For General Telephone Company of the South:

Mary U. Musacchia, General Telephone Company of the South, 4100 North Roxboro Road, Durham, North Carolina 27702

For The Public Staff:

A. W. Turner, Jr., 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:

Lorinzo L. Joyner, Associate Attorney General, North Carolina Department of Justice, Utilities Division, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On August 17, 1987, Consolidated Directories, Inc. (CDI), filed a complaint in Docket No. P-89, Sub 32, against Central Telephone Company, Carolina Telephone and Telegraph Company, Southern Bell Telephone and Telegraph Company, Mebane Home Phone, ALLTEL, Randolph Co-op, GTE, Surry County Co-op, Star Membership Co-op and Yadkin Valley Co-op, regarding the availability and charges for the alphabetical directory listings from the telephone companies to Consolidated Directories.

On September 21, 1987, Central Telephone Company filed a request for additional information and also a motion for extension of time to answer complaint.

Upon consideration of Central Telephone's request and upon further consideration of an oral motion by Southern Bell for additional time to file answer, on September 23, 1987, the Commission granted Central Telephone, Southern Bell, and all other respondents additional time to file an answer in this docket.

On October 7, 1987, Consolidated Directories, Inc., filed a response to the inquiries of Central Telephone Company. Answers and motions to dismiss the complaint were filed in a timely manner by all respondents.

By Order issued October 16, 1987, the Commission attempted to serve upon the Complainant the Respondent's answers and motions to dismiss and set the Respondents' motion to dismiss for oral argument before the Commission on November 23, 1987.

On November 20, 1987, the Attorney General filed a motion of intervention and comments in response to Southern Bell's motion to dismiss.

At the scheduled oral argument on November 20, 1987, it was brought to the Commission's attention that counsel for the Complainant had not been served with the Order of October 16, 1987. As a result, the Commission issued a further Order rescheduling the oral argument for January 11, 1988.

Oral argument was held as scheduled on January 11, 1988, and all of the parties were present and represented by counsel.

In its complaint, Consolidated Directories, Inc., alleged in part as follows: CDI is a North Carolina corporation and is engaged in the private publication of telephone directories; CDI was incorporated on January 12, 1984, for the purpose of selling, compiling, and publishing yellow page listings as a part of a complete telephone directory containing both white and yellow page listings; CDI is not a public utility and provides no telecommunication services; Respondents, who are public utilities providing telecommunications services, also publish telephone directories for the areas they serve in competition with the Complainant; Respondents are privy to and control the dissemination of new listings and maintain a current data base of such numbers; Complainant, to insure accuracy of its listings, has requested each of the Respondents to sell it such data base in exchange for payment by Complainant of the reasonable value and cost of such listings; each year when Complainant republishes its directories in a particular market area, it has asked Respondents that their listings be sold. CDI further alleged the varying arrangements that it has had with the Respondents for the purchase of directory listings. CDI further alleged:

> "15. Respondents conduct in refusing to sell listings, in charging high prices per listing which are under their sole control, and by refusing to sell updated listings separately, is designed to and/or has the effect of, suppressing competition by pricing Complainant out of the market or forcing it to solicit and survey individuals for listings which results in substantial inaccurancy and omission. Such conduct threatens the public interest by denying it viable advertising alternatives and maintaining high advertising costs.
>
> "16. CDI has incurred expenses of several hundred thousand dollars for listings over and above a reasonable tariff for such listings."

In its Prayer for Relief, CDI requests that the Commission:

> "1. Provide for the mandatory sale of telephone listings by Respondents and all other telecommunication companies in North Carolina subject to regulation by the Commission.
>
> "2. That the Commission establish a reasonable uniform tariff for the sale of listings by all telecommunication companies and that the Commission order Respondents to rebate to Complainant all sums paid by it in excess of such reasonable tariff.
>
> "3. That the Commission order Respondents to sell updated listings at an established tariff after taking into account the additional cost, if any, to Respondents for providing such listings.
>
> "4. For such other and further relief as the Commission may deem just and proper."

All of the Respondents filed Answers and Motions to Dismiss for lack of jurisdiction by the Commission over the subject matter of the complaint. In support of their argument, they cite and rely upon WCOG, Inc., v. Southern Bell, Docket No. P-89, 56 Report of the NCUC 493, 64 PUR 3d 314 (1966).

Star Telephone Membership Corporation, Surry Telephone Membership Corporation, and Randolph Telephone Membership Corporation in their pleadings moved the Commission to dismiss the complaint as to them because they are organized under Chapter 117 of the General Statutes and as such exist as a political subdivision of the State and are not therefore regulated by the Commission with respect to this complaint.

The Attorney General in its comments requested the Commission to deny Southern Bell's Motion to Dismiss for lack of subject matter jurisdiction. The Attorney General further submitted that the "critical focus" of any Motion to Dismiss is whether or not the public interest requires the Commission to exercise its jurisdiction over Respondents' directory listings in the manner sought by the Complainant. In support of its position the Attorney General cites Town of Warrenton v. Carolina Telephone and Telegraph Company, Docket No. P-7, Sub 353, 65 PUR 3d 130.

Upon consideration of the complaint, the Motions to Dismiss of the Respondent telephone companies, and the oral argument of the parties, the Commission is of the opinion, and so finds and concludes, that the complaint should be dismissed for the reasons hereinafter set forth.

The Commission has jurisdiction generally over telephone directory listings--both white and yellow pages--particularly as they affect the rates and service of a telephone company regulated by the Commission. In the Commission's opinion, the critical issue that must be addressed in this proceeding is whether it is in the public interest for the Commission to exercise its jurisdiction by mandating that directory listings be sold at uniform rates established by tariff, as requested by Complainant.

The Commission is of the opinion, and so concludes, that the public interest does not require the Commission to exercise its jurisdiction over telephone listings in the manner sought by the Complainant.

G. S. 62-32(b) vests the Commission with "all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service of the kind it undertakes to furnish . . ." The service that Southern Bell and the other Respondents undertake to provide to the public is described in G.S. 62-3(23)(a)(6) as "conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation." To facilitate the public's use of this service, the Respondents are obligated to compile, publish, and disseminate to their subscribers telephone directories consisting of both white and yellow pages listings, and such activity of the Respondents comes within the scope of their franchise obligation and this Commission's jurisdiction with respect to rates and service. Not every part of the Respondents' directory operations, however, merit regulation or supervision by this Commission. The Commission has generally declined to exercise jurisdiction or control over the day-to-day management decisions relating to directory operations except to the extent necessary to protect the public

interest with respect to rates and services. (For examples where the Commission has exercised its jurisdiction over directory operations, see State ex rel Utilities Commission v. Southern Bell, 307 N.C. 541 (1983): the Commission included revenues and expenses relating to directory advertising operations in a telephone company ratemaking proceeding; see also Boulevard Florist v. Southern Bell and BAPCO, Docket No. P-89, Sub 24: Commission exercised its jurisdiction to hear the complaint of a directory customer about its yellow pages advertisement.)

Attention is called to the controlling case of the Town of Warrenton v. Carolina Telephone and Telegraph Company, Docket No. P-7, Sub 353, where the telephone company's decision to close an office in the Town of Warrenton was protested by the Town. In dismissing the complaint and authorizing the Company to close its Warrenton office, the Commission recognized its general supervisory jurisdiction over the rates and service of all public utilities in this State. G.S. 62-32. However, the Commission further held:

> "This does not necessarily mean that the regulatory body has the authority nor is required to supplant company management judgment with its own judgment. It does not mean that every proposition that arises within the efficient management of the company shall be subject to judgment of the regulatory body. It does mean, however, as we view it, that in matters affecting the public interest to a degree that the customers of the company might be definitely inconvenienced and their substantive rights affected thereby the regulatory body may act to protect such public interest."

The Commission's conclusion that it would not supplant management's judgment with its own judgment in those cases where the public interest is not adversely affected by management decisions is supported, if not mandated, by the decisions of our appellate courts. The Supreme Court has held that public utilities retain the right to enter into contracts between themselves or with others, free from the control or supervision of the State, so long as such contracts are not unlawful or do not impair the obligation of the utility to discharge its public duties. Halifax Paper Company vs. Roanoke Rapids Sanitary District, 232 N.C. 421 (1950).

The Commission concludes that the public interest does not require this Commission to regulate and supervise the sale of subscriber or directory listings by the Respondent telephone companies to the Complainant. Such activity properly lies within the discretion of the Respondents' management, free from Commission supervision, provided that such activity does not impair the obligation of the Respondent telephone companies to discharge their public utility obligation to their subscribers. This public utility obligation is discharged by the Respondents when they compile, publish, and disseminate telephone directories to their subscribers. The sale of subscriber listings to the Complainant pursuant to private contract is merely incidental to the Respondents' directory obligation and does not affect the public interest to such a degree that requires regulation and supervision by the Commission. Therefore, the Commission declines to exercise its jurisdiction in this matter.

The Commission having determined that the matters alleged in the complaint are not matters affecting the public interest, the Commission will issue this Order dismissing the complaint. Town of Warrenton v. Carolina Telephone, supra.

The Commission must address one further matter. In their responses, the telephone membership corporations moved that the Commission dismiss the complaint as to them since they are created and organized under Chapter 117 of the General Statutes and exist as a political subdivision of the State and are not regulated by the Commission with respect to the matters at issue in this proceeding. The Commission is of the opinion that the complaint should be dismissed as to the telephone membership corporations on the ground that the Commission does not have jurisdiction over them with respect to the matters at issue in this docket.

IT IS, THEREFORE, ORDERED that the complaint be, and the same is hereby, dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of June 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-7, SUB 717

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Carolina Telephone and Telegraph Company -	)	ORDER AUTHORIZING
Dunn to Fayetteville Extended Area Service	)	EAS POLL

BY THE COMMISSION: This matter was initially presented to the Commission by the Public Staff during the Regular Commission Conference held on Monday, March 7, 1988. Over the past several years, the Public Staff stated that it has received petitions signed by telephone subscribers in the Dunn exchange and letters and resolutions from businesses, school systems, state legislators and city and county officials demonstrating interest and support for two-way EAS between Carolina Telephone Company's Dunn and Fayetteville exchanges. A significant portion of the Dunn exchange serves Cumberland County, including the communities of Linden, Godwin and Falcon. The subscribers in these communities have expressed strong support for two-way EAS to the Fayetteville exchange, their county seat, in order to have local calling access to schools, emergency services, other county government services, hospitals and other points of interest located in Cumberland County. In addition, development and growth is extending from the Fayetteville service area into the Dunn service area creating greater pressure for local calling between the two exchanges.

The Public Staff stated that this matter was held in abeyance during the moratorium on new EAS proposals instituted by the Commission in late September 1986. Upon lifting of the moratorium in October 1987, there has been a resurgence of interest in the EAS. On January 19, 1988, members of the Public Staff and Carolina Telephone Company met with approximately 100 Dunn subscribers who strongly expressed interest in local calling between the Dunn and Fayetteville exchanges.

The Public Staff believes that sufficient interest and support have been demonstrated to justify a poll of the Dunn exchange subscribers with regard to the establishment of EAS between Dunn and Fayetteville. Based on the application of Carolina's EAS matrix plan, the rate increases applicable at Dunn are as follows:

Residence			Business			
1-Party	2-Party	4-Party	1-Party	2-Party	Key Lines	PBX Trunks
$2.30	$2.12	$2.08	$5.56	$5.11	$8.34	$11.12

The Public Staff also believes that the Commission's decision to authorize EAS between Dunn and Fayetteville should be based on the results of the Dunn poll only and that there should not be a poll or a rate increase at the Fayetteville exchange. The Public Staff's conclusion is based on the fact that this is a typical small exchange (Dunn) - large exchange (Fayetteville) situation in which the greater interest and need for the EAS is on the part of the small exchange. Since the Fayetteville subscribers already have local calling to their schools, county government services and other points of socioeconomic interest, the Public Staff asserts that it is obvious that a poll of the Fayetteville subscribers would produce a negative vote and that such a

poll would only serve as an obstacle to the EAS proposal and would undermine the efforts of the Dunn subscribers to have local calling to Fayetteville. The Public Staff further stated that the problem of polling the Fayetteville subscribers is amplified by the magnitude of the Fayetteville local rate increases that result from application of Carolina's EAS matrix plan. The local rate increases for Fayetteville to have EAS to Dunn would be $0.67 for residence service and $1.61 for business service.

The Public Staff recommended that the question of EAS between the Dunn and Fayetteville exchanges should be decided by a poll of only the Dunn subscribers; that no rate increases should be applied to the Fayetteville subscribers if the EAS in question is approved; and that Carolina should proceed to poll the Dunn subscribers.

Renny W. Deese, Attorney at Law; Charles Collier, retired rural mail carrier; Alex Warner, member of the North Carolina House of Representatives; Dr. Willis Gaines, Presbyterian minister; Mary Emily Royal, resident of Godwin; Tryon D. Lancaster, Associate Superintendent of Cumberland County Schools, appeared at the Regular Commission Conference in support of the Public Staff's recommendation.

Dwight W. Allen, Vice President - General Counsel and Secretary, appeared at the Regular Commission Conference on behalf of Carolina Telephone and Telegraph Company in opposition to that portion of the Public Staff's recommendation that Fayetteville subscribers not be assessed the applicable EAS matrix tariff charges if the EAS in question is finally approved and implemented.

The Commission concludes that good cause exists to poll all affected subscribers in both the Dunn and Fayetteville exchanges regarding their desire for and support of the EAS in question. The poll should be conducted on the basis of the monthly EAS charges which result from application of Carolina's EAS matrix tariff. This procedure complies with the provisions of Commission Rule R9-7, notwithstanding the stated position and interpretation of the Public Staff to the contrary.

In conducting this EAS poll, Carolina may, if the leaders and organizers from the Dunn exchange so desire, proceed first with a poll of only the Dunn subscribers to determine their interest in EAS to Fayetteville. Once the results of that poll are tabulated, the Company should then proceed to poll its Fayetteville subscribers. In view of the fact that most, if not all, of the support for this EAS appears to be coming from subscribers living in the Cumberland County portion of the Dunn exchange, including the communities of Linden, Godwin, and Falcon, Carolina is hereby requested to conduct this EAS poll in such a manner that the ballots returned by interested subscribers can be tabulated to reflect the results of the vote in each county and also between business and residential customers.

IT IS, THEREFORE, ORDERED that Carolina Telephone and Telegraph Company shall, in conformity with the procedures specified by this Order, proceed with a poll of its affected subscribers in the Dunn and Fayetteville exchanges to

determine their interest in and support of two-way, nonoptional EAS between the Dunn exchange and the Fayetteville exchange.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of March 1988.

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

Commissioner Edward B. Hipp dissents.
Commissioner Ruth E. Cook dissents.

HIPP, COMMISSIONER, DISSENTING. I dissent from the majority Order because I believe the evidence of the special needs of the customers of the Dunn exchange who reside in Cumberland County shows sufficiently unusual and extenuating circumstances under Rule R9-7(e)(1) of the Commission's Rules for Extended Area Service (EAS) to justify a separate cost of service study for the Cumberland County portion of the Dunn exchange separate from the application of the matrix cost utilized in the majority Order.

The customers appearing at the March 7, 1988, Regular Commission Staff Conference indicated a strong community of interest between the Cumberland County customers of the Dunn exchange and the Fayetteville exchange, including all the needs of residents of one exchange who work in a larger, exchange and all the needs for communication from such an area to the county seat in Fayetteville. All of the matters referred to in the majority Order as supporting an EAS poll apply with even greater emphasis for the customers of the Dunn exchange who live in Cumberland County as compared to the customers of the Dunn exchange who live in Harnett County. The majority decision does provide for tallying the vote of the Cumberland County residents separately, but it does not have separate costs prepared for the limited EAS to the Cumberland County customers as compared to the matrix cost it applies to the entire Dunn exchange. If the EAS poll authorized by the majority decision should be passed by both the Dunn exchange and the Fayetteville exchange, this dissent would become moot, but the chances of the Petitioners being successful in the EAS poll are substantially reduced under the majority Order based on the matrix cost and the Harnett County customers voting in the Dunn ballot and the Fayetteville customers voting on costs which include the Harnett portion of the Dunn exchange.

If the EAS poll as authorized should not receive a favorable vote, then the Commission will have the option of then providing for a new separate EAS poll for the Cumberland County customers of the Dunn exchange, but to be meaningful and fair to the Petitioners, it then can and should be based upon a separate cost of service study ordered for the reduced scope of the EAS.

Improvements in exchange technology have made EAS available from a specific portion of an exchange, based upon the capabilities of modern electronic central office switches and the software controlling those switches. An example of such limited EAS is the successful service for the Carteret County customers of the Swansboro exchange to the Morehead City exchange of Carolina Telephone and Telegraph Company.

A separate cost of service study for Cumberland County customers of the Dunn exchange may well develop EAS costs and options which are far more practical and attractive to the customers of both the Dunn exchange and the Fayetteville exchange. Providing customers with the service they want and need should be the first priority of business for both the Commission and the telephone company.

Edward B. Hipp

COMMISSIONER RUTH E. COOK, DISSENTING. I hereby dissent from the Majority's decision to proceed in this case with a poll of both Dunn and Fayetteville subscribers to determine their interest in EAS. I believe the Commission should, prior to conducting any poll, require Carolina Telephone Company to conduct appropriate cost studies to determine the incremental equipment costs, as defined by Commission Rule R9-7(e), which the Company will incur if this EAS should be approved.

In this instance, I believe the Commission should follow the same procedures which it followed with respect to the investigation of the need for EAS between Raeford and Fayetteville in Docket No. P-7, Sub 688. In that case, the Commission required Carolina Telephone Company to conduct cost studies. The results of those cost studies led the Commission to find that if the matrix rates were applied to both Raeford and Fayetteville subscribers, Carolina would have dramatically overcollected the incremental cost of providing that EAS and that if the matrix rates were applied to Raeford subscribers only, the Company would recover the total cost of providing the service to both Raeford and Fayetteville.

On the basis of those findings, the Commission ordered Carolina Telephone Company to implement EAS between Raeford and Fayetteville with the matrix charges to be initially imposed only on Raeford subscribers. The Company was directed to establish a deferred account to track the revenues that would have been collected had the matrix charges been imposed on Fayetteville subscribers. During the Company's next general rate case, the Commission will decide to what extent, if any, such accruals should be recovered from ratepayers and the extent to which, if any, such recovery should be assigned to Fayetteville subscribers.

I see no reason to treat Dunn subscribers who desire EAS to Fayetteville any differently than Raeford subscribers were treated. The Majority's action in this case raises the specter of unreasonable discrimination. At a minimum, Carolina should be required to conduct appropriate cost studies before any EAS poll is conducted.

This case also serves to point out with much clarity the problems which frequently arise under Carolina's EAS matrix tariff whenever the Commission must address a request for EAS where the public interest and need involving two exchanges is dominant primarily in one direction, which is generally the case when the EAS request involves a large exchange and a small exchange. I firmly believe that the results of a poll of Fayetteville subscribers using the matrix charges will doom the request for two-way EAS to failure. I find this procedure to be extremely frustrating and contrary to the legitimate public benefits which generally accrue from the implementation of EAS.

For that reason, I heartily encourage Carolina Telephone Company, the Public Staff, the Attorney General, and any other interested parties to study this matter and proposed amendments to Carolina's EAS matrix tariff, if any such amendments are possible, which will alleviate the problems which arise whenever EAS is requested between a large exchange and a small exchange. I believe that the time has come to either (1) modify Carolina's EAS matrix tariff to render it more flexible and less uncompromising in those instances where the public interest and need for EAS is dominant in one direction or (2) abolish it altogether and follow the cost study approach in all cases.

Commissioner Ruth E. Cook

DOCKET NO. P-7, SUB 718

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Carolina Telephone and Telegraph Company - Halifax and Northampton Counties Extended Area Service) ORDER APPROVING IMPLEMENTATION OF EXTENDED AREA SERVICE

BY THE COMMISSION: By letter dated February 16, 1988, Carolina Telephone and Telegraph Company (Carolina) requested authority to conduct a poll of its subscribers in the Halifax County and Northampton County exchanges to determine their desire for the following extended area service (EAS):

HALIFAX COUNTY EXCHANGES	EXISTING EAS	PROPOSED EAS
Halifax	Littleton, Roanoke Rapids, Weldon	Enfield, Scotland Neck, Conway, Jackson, Rich Square, Seaboard, Woodland
Roanoke Rapids	Halifax, Littleton, Weldon	Enfield, Scotland Neck, Conway, Jackson, Rich Square, Seaboard, Woodland
Weldon	Halifax, Littleton, Roanoke Rapids	Enfield, Scotland Neck, Conway, Jackson, Rich Square, Seaboard, Woodland
Littleton	Halifax, Roanoke Rapids, Weldon	Enfield, Scotland Neck
Scotland Neck	None	Halifax, Enfield, Littleton, Roanoke Rapids, Weldon

Enfield	Rocky Mount, Whitakers	Halifax, Scotland Neck, Littleton, Roanoke Rapids, Weldon

NORTHAMPTON COUNTY EXCHANGES	EXISTING EAS	PROPOSED EAS
Conway	Jackson, Rich Square, Seaboard, Woodland	Halifax, Roanoke Rapids, Weldon
Jackson	Conway, Rich Square, Seaboard, Woodland	Halifax, Roanoke Rapids, Weldon

NORTHAMPTON COUNTY EXCHANGES	EXISTING EAS	PROPOSED EAS
Rich Square	Conway, Jackson, Seaboard, Woodland	Halifax, Roanoke Rapids, Weldon
Seaboard	Conway, Jackson, Rich Square, Woodland	Halifax, Roanoke Rapids, Weldon
Woodland	Ahoskie, Aulander, Conway, Jackson, Murfreesboro, Rich Square, Seaboard, Winton	Halifax, Roanoke Rapids, Weldon

In support of the requested EAS, Carolina received numerous petitions and letters from subscribers in the two counties. Representatives of Carolina also met with several groups expressing interest in the EAS.

Based on the application of Carolina's EAS matrix plan, the following local rate increases would apply for purposes of polling each exchange:

	RESIDENCE			BUSINESS		
EXCHANGE	1-Pty	2-Pty	4 Pty	1-Pty	2-Pty	4-Pty
Halifax	$1.47	$1.47	$1.42	$ 3.52	$3.43	$3.39
Roanoke Rapids	$1.82	-	-	$ 4.36	-	-
Weldon	$1.82	-	-	$ 4.36	-	-
Littleton	$0.77	-	-	$ 1.88	-	-
Enfield	$1.51	$1.47	$1.47	$ 3.70	$3.60	$3.57
Scotland Neck	$5.17	-	-	$12.42	-	-
Conway	$1.54	$1.36	$1.31	$ 3.62	-	-
Jackson	$1.54	$1.36	$1.31	$ 3.62	$3.26	$3.13
Rich Square	$1.54	$1.36	-	$ 3.62	-	-
Seaboard	$1.54	$1.36	-	$ 3.62	-	-
Woodland	$0.81	$0.71	$0.66	$ 1.82	$1.64	-

This matter was initially considered by the Commission at the Regular Commission Staff Conference held on March 14, 1988. The Public Staff recommended that the Commission authorize Carolina to poll its subscribers in the Halifax County and Northampton County exchanges to determine their desire for the proposed EAS. By letter dated March 16, 1988, the Commission approved the Public Staff's recommendation and authorized the EAS poll.

On May 23, 1988, Carolina submitted the results of the EAS poll in question. The results of the poll are presented below by exchange, by county, and on a total basis:

Exchange	No. of Ballots Mailed	No. of Ballots Returned	Percent Ballots Returned	Ballots Returned Voting In Favor	Percent Ballots Returned Voting In Favor
HALIFAX COUNTY					
Enfield	2,770	1,321	47.7%	1,150	87.1%
Halifax	819	399	48.7%	354	88.7%
Littleton	3,477	1,260	36.2%	578	45.9%
Roanoke Rapids	12,483	3,921	31.4%	1,752	44.7%
Scotland Neck	2,680	1,260	47.0%	541	42.9%
Weldon	2,537	951	37.5%	679	71.4%
TOTAL HALIFAX COUNTY	24,766	9,112	36.8%	5,054	55.5%
NORTHAMPTON COUNTY					
Conway	1,527	769	50.4%	576	74.9%
Jackson	907	460	50.7%	422	91.7%
Rich Square	1,032	487	47.2%	359	73.7%
Seaboard	636	397	62.4%	387	97.5%
Woodland	830	403	48.6%	309	76.7%
TOTAL NORTHAMPTON COUNTY	4,932	2,516	51.0%	2,053	81.6%
TOTAL BOTH COUNTIES	29,698	11,628	39.2%	7,107	61.1%

In its filing of May 23, 1988, Carolina also made the following recommendation regarding this matter:

> "While the Scotland Neck, Roanoke Rapids and Littleton exchanges did not individually support this proposal in Halifax County, the overall county-wide vote, was favorable. Based on these results, we recommend the Commission authorize the provision of this service."

The above-summarized results of the EAS poll were formally considered by the Commission during the Regular Staff Conference held on June 13, 1988. As noted, the subscribers in three of the exchanges (all in Halifax County) voted against the proposal. To address this concern, the Public Staff stated that it had contacted a government representative in Halifax County who assured the Staff that the County Commissioners in both counties strongly support approval of the EAS as a total package. Carolina again recommended that the EAS should be approved as proposed. Based on these considerations along with the fact that 61.1% of the total subscribers voting in both counties favored the proposal, the Public Staff recommended that the Commission authorize Carolina Telephone Company to establish the proposed EAS for each of the 11 exchanges serving Halifax and Northampton Counties.

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Messers Neal C. Phillips, County Manager for Halifax County, and Henry Moncure, Northampton County Commissioner, appeared at the Commission Conference in support of the Public Staff's recommendation.

The only person to appear at the Commission Conference in opposition to the recommendation of the Public Staff was Mr. Ferd Harrison, the Mayor of Scotland Neck.

On the basis of the polling results regarding the EAS in question, the Commission concludes that good cause exists to approve the EAS in its totality. The Commission believes this action to be appropriate in view of the fact that 55.5% of the ballots returned by Halifax County subscribers were in favor of the EAS, that 81.6% of the ballots returned by Northampton County subscribers were in favor of the EAS, and that 61.1% of the total ballots returned were in favor of the EAS in question. Therefore, the Commission believes that good cause exists to approve this EAS notwithstanding the fact that slightly less than a majority of the voting subscribers in the Littleton, Roanoke Rapids, and Scotland Neck exchanges voted in favor of the EAS. In reaching this decision, the Commission has been greatly influenced by the statements made by Messers. Phillips and Moncure in support of the total EAS package during the Regular Commission Conference held on June 13, 1988, as well as the many letters reflecting strong support that are contained in our Official File.

The Commission recognizes that implementation of the EAS in question will result in a rather significant rate increase for Scotland Neck subscribers in particular. The current rates for one-party residential and business service for Scotland Neck customers are $6.60 and $16.08, respectively. Upon implementation of the EAS, the new corresponding rates will be $11.77 and $28.50. While this is undoubtedly a rather large rate increase on a percentage basis, we believe that implementation of the EAS is justified based upon the greatly increased calling scope that Scotland Neck customers will have. Today, customers in Scotland Neck enjoy no EAS. Their calling scope is limited to the 2,781 local access lines in Scotland Neck. They cannot call their county seat in Halifax without incurring long distance charges. Once EAS is implemented, the residents of Scotland Neck will enjoy a greatly increased ability to make local calls to friends, businesses, and governmental agencies in the towns of Halifax, Enfield, Littleton, Roanoke Rapids, and Weldon; i.e., they will then have the ability to make local calls to approximately 22,400 more access lines. Their local calling scope will be increased almost ten-fold. In reaching our decision, we were impressed by the fact that almost 43% of the subscribers in Scotland Neck who voted in the EAS poll were in favor of the EAS notwithstanding the rather significant rate increase that will accompany that service.

The rate increases in the Roanoke Rapids and Littleton exchanges, although significant, are considerably less than those for Scotland Neck. One-party residential and business rates in Roanoke Rapids would increase from $10.26 and $24.80 to $12.08 and $29.16, respectively. One-party residential and business rates in Littleton would increase from $11.00 and $26.62 to $11.77 and $28.50, respectively. As with Scotland Neck, however, customers in these two exchanges would also see a very significant increase in their local calling scopes. Customers in Roanoke Rapids will be able to make local calls to approximately 10,600 more access lines in the seven additional EAS exchanges in Halifax and Northampton Counties. Customers in Littleton will be able to make local calls

to more than 5,600 additional access lines. Here again, the benefits of the additional local calling scope which the residents of Roanoke Rapids and Littleton will enjoy upon implementation of the EAS justify its approval notwithstanding the less than majority votes in those exchanges.

Accordingly, we conclude that the total benefits to be enjoyed and realized by telephone customers in Halifax and Northampton Counties upon implementation of the EAS in question justify its approval notwithstanding the negative votes in three of the 11 affected exchanges. The favorable votes cast by over 61% of the voting customers in the two counties fully support this action.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Telephone and Telegraph Company shall take the necessary action to provide and implement EAS in Halifax and Northampton Counties and that a time schedule for establishing this service shall be submitted to the Commission not later than 30 days from the date of this Order.

2. That Carolina shall file the necessary tariffs with the Commission, to be effective upon the in-service date of the EAS, reflecting the EAS matrix rates then in effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of August 1988.

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

Commissioner Sarah Lindsay Tate dissents.
Commissioner J. A. Wright dissents.

COMMISSIONER TATE, DISSENTING: I dissent from this Order because I believe that the three exchanges which voted against EAS should be excluded from having to pay for a service they do not want. When the ballots went out in Halifax County, it appeared to subscribers that they could either choose to vote for extended area service or they could vote "no" and not receive it. In Roanoke Rapids, only 31% of the eligible ballots were returned and 55.3% voted against paying an additional $1.82 per month to obtain EAS. In Scotland Neck, 47% of the eligible ballots were returned and 57.1% of those subscribers voted against paying an additional $5.17 for EAS. In the Littleton Exchange, 37% of the eligible ballots were returned with 54.1% voting against paying even $.77 for EAS.

At the Staff Conference when the Public Staff recommended that the Commission order EAS in all of the exchanges of Northampton and Halifax Counties, the Mayor of Scotland Neck, Mr. Ferd Harrison, appeared before the Commission and requested that Scotland Neck be excluded. It should be noted that residential subscribers in the Scotland Neck Exchange will be assessed an additional $5.17 per month and business subscribers must pay $12.42 for a service that they have voted down. The Majority extolls the advantages that the residents in Scotland Neck will "enjoy" as a result of EAS; however, by a very clear vote of 57.1% these same residents voted that they did not choose to "enjoy" such a service. It is true that when all of the exchanges in

DOCKET NO. P-140, SUB 17
DOCKET NO. P-140, SUB 9 (Remanded)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-140, SUB 17

In the Matter of Tariff Filing by AT&T Communications of the Southern States, Inc., to Restructure its Private Line and Foreign Exchange Offerings DOCKET NO. P-140, SUB 9 (Remanded) In the Matter of Application of AT&T Communications of the Southern States, Inc., for an Adjustment in Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina	)	ORDER AUTHORIZING RATE RESTRUCTURING EFFECTIVE SEPTEMBER 30, 1988

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, January 26, 1988, at 9:30 a.m.

BEFORE: Commissioner William W. Redman, Jr., Presiding; and Commissioners Robert K. Koger and Julius A. Wright

APPEARANCES:

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

Gene V. Coker, General Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30309
and
C. Mark Holt, Tharrington, Smith & Hargrove, Attorneys at Law, Post Office Box 1151, Raleigh, North Carolina 27602

For Carolina Telephone and Telegraph Company:

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

For Carolina Utility Customers Association, Inc:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605

For First Union Corporation:

Sam Behrends IV, LeBoeuf, Lamb, Leiby & MacRae, Attorneys at Law, 400 Cross Pointe Plaza, Raleigh, North Carolina 27609

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, and Robert B. Cauthen, Jr., Staff Attorney, Public Staff, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: This matter arose upon the filing of an application on September 21, 1987, by AT&T Communications of the Southern States, Inc. (AT&T, the Company or the Applicant), in Docket No. P-140, Sub 17, seeking to restructure its private line and foreign exchange (FX) service offerings effective September 30, 1988. The proposed changes include: (1) disaggregating station terminal rates; (2) measuring interLATA mileage between the Company's central offices rather than from LEC rate center to LEC rate center; (3) withdrawing the Series 5000 offering (Telpak); (4) establishing a charge to recover the special access surcharge; and (5) eliminating the separate reseller rate and regulation section, except for the open-end access of FX service. By Order entered in Docket No. P-140, Sub 17, on October 30, 1987, the Commission suspended the proposed tariffs, scheduled a public hearing and required public notice. Petitions to intervene were subsequently received and allowed for Carolina Utility Customers Association, Inc., Carolina Telephone and Telegraph Company, Central Telephone Company, and First Union Corporation. The Attorney General filed a notice of intervention pursuant to G.S. 62-20. The Public Staff's appearance was made and noted at the hearing.

At the hearing, AT&T offered the testimony and exhibit of Charles E. Willis, a manager in the Marketing Plans Implementation organization of AT&T. The Public Staff offered the testimony of John T. Garrison, Jr., a Public Utilities Engineer with the Communications Division of the Public Staff.

On February 3, 1988, the Supreme Court of the State of North Carolina entered a per curium opinion vacating the Order entered by the Commission in Docket No. P-140, Sub 9, on December 23, 1986, and remanding the cause to the Commission for further proceedings not inconsistent with the Court's opinion. State of North Carolina ex rel. Utilities Commission v. AT&T Communications, 321 N.C. 586 (1988). In the Order which was the subject of the appeal taken by AT&T, the Commission prescribed different rates for private line services subscribed to by AT&T's nonreseller or end-user customers and the Company's customers who resell the services to end-users. The Supreme Court held as follows with respect to the Commission's Order:

> "We conclude that upon the face of the order dated 23 December 1986 the rates established are discriminatory. There may be legally adequate reasons why the order is not unjustly discriminatory within the meaning of N.C.G.S. § 62-2(4). However, such reasons, if any, do not appear in the order. The Commission has the duty to enter final orders that are sufficient in detail to enable this Court on appeal to determine the controverted issues. N.C.G.S. § 62-79(a) (1982);

State ex rel. Utilities Comm. v. Conservation Council, 312 N.C. 59, 320 S.E. 2d 679 (1984). This the Commission has failed to do. The order must be sufficient within itself to comply with the statute. Failure to include all necessary findings of fact and details is an error of law and a basis for remand under N.C.G.S. § 62-94(b)(4) because it frustrates appellate review. State ex rel. Utilities Comm. v. The Public Staff, 317 N.C. 26, 343 S.E. 2d 898 (1986). Therefore, the order of the Commission is vacated and this cause is remanded to the Commission for further proceedings not inconsistent with this opinion." Id. at p. 588.

On February 18, 1988, AT&T filed a motion in Docket No. P-140, Sub 9 (Remanded), whereby the Commission was requested to consolidate that docket with Docket No. P-140, Sub 17, and to prescribe that the rates currently in effect for AT&T's private line services shall continue in effect pending further Order in the consolidated dockets.

On February 19, 1988, the Public Staff filed a response to AT&T's motion stating that the Public Staff has no objection to consolidation of the two dockets in question and that the Public Staff agrees that the private line rates authorized in Docket No. P-140, Sub 9 (Remanded), should continue to be charged pending further Commission Order in the consolidated dockets.

On February 23, 1988, the Commission entered an Order in Docket No. P-140, Sub 9 (Remanded) and Docket No. P-140, Sub 17, consolidating those dockets and authorizing AT&T to continue to charge the private line rates approved in Docket No. P-140, Sub 9, on an interim basis effective February 23, 1988. The Commission further stated that such action would maintain the status quo, would avoid unnecessary rate instability, and would provide certainty regarding private line rates until the Commission entered a final Order in the consolidated dockets.

Based upon the foregoing and the entire record in this docket, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant, AT&T Communications of the Southern States, Inc., is a public utility duly authorized to do business in North Carolina. The Applicant is providing intrastate telecommunications service in North Carolina and is subject to the jurisdiction of this Commission. AT&T is properly before the Commission in this proceeding for a determination of the justness and reasonableness of its proposed rates and charges.

2. The current rate structure for AT&T's private line and FX service offerings predates the divestiture of the Bell System and does not reflect the manner in which the services are provided and costs are incurred today.

3. AT&T has proposed to restructure and reprice its intrastate interLATA private line and FX service rates to bring them more in line with the costs incurred in providing the services in the post-divestiture environment and to price its services more competitively. The proposed interexchange channel rates apply to both reseller and non-reseller customers of AT&T.

4. The rates proposed by AT&T will have a substantial impact on customer bills. Some customers would see their bills increase by more than 100%, while 50% of the present customers would experience a decrease in their bills.

5. The proposed rates are supported by cost studies which were filed with the application; the largest cost component is special access charges paid by AT&T to the LECs.

6. Disaggregating station terminal rates, measuring the interLATA mileage between the Company's central offices, and establishing a charge to recover the special access surcharge are (a) consistent with the manner in which channel services are provided, (b) just and reasonable, and (c) should be allowed.

7. AT&T shall take the initiative to contact all of its private line customers to ensure that those customers are made aware of the rate changes approved by this Order in time to take appropriate action to minimize any adverse affects.

8. The proposed zone charges for Type 1009 and Type 1010 channel services shall be limited to 50% of the proposed rates. The remainder of the proposed zone charges shall be implemented by AT&T on September 30, 1989.

9. The elimination of Series 5000 Telpak is just and reasonable and should be made effective September 30, 1988, except that (a) Telpak D shall be restructured the same as all other channel services, (b) the total revenues for Telpak D shall be increased by 25%, and (c) Telpak D shall not be eliminated by the Company until September 30, 1989.

10. Resellers shall continue to access AT&T's points of presence (POPs) for the resale of channel services by using facilities obtained directly from the local exchange companies (LECs).

11. The rate revisions approved by this Order will produce a net annual revenue increase to AT&T, based on existing special access rate levels. AT&T shall reduce its rates for intrastate interLATA switched services effective September 30, 1988, by an amount equal to the net revenue increase that the Company will experience as a result of implementation of the provisions of this Order.

12. The rates for channel services which AT&T is presently charging shall continue in effect until September 30, 1988, when the new rates approved by this Order will take effect.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding of fact is contained in the verified application, the Commission's records, the Order Setting Hearing, and the record as a whole. This finding of fact is essentially informational, procedural and jurisdictional in nature and is uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 2 - 7

The evidence for these findings of fact is contained in the verified application and in the testimony and exhibits of AT&T witness Willis and Public Staff witness Garrison.

AT&T's proposal includes the following changes: measuring interLATA mileage between AT&T's points of presence rather than between the local exchange companies' rate centers; disaggregating station terminal rates and charging zone mileage rates when the customer's local serving office (LSO) is different from the LSO that serves AT&T's POP; withdrawing the Series 5000 (Telpak) offering ; establishing a charge to recover the LECs' special access surcharge; and eliminating the separate reseller rate and regulation section except as it relates to FX service and Feature Group A switched access service for the dial-tone end or open-end.

AT&T witness Willis presented the results of a study which show that the Company's proposals are estimated to have the following impact:

% Change	% Customers
Over 50% Decrease	0
20% to 49% Decrease	27
0% to 19% Decrease	24
1% to 10% Increase	9
11% to 20% Increase	6
21% to 50% Increase	14
51% to 100% Increase	15
Over 100% Increase	5

AT&T witness Willis further stated that the Company requests that it be allowed to change its prices for the station terminal components if the LECs' special access charges change as a result of the Commission's decision in Docket Nos. P-100, Subs 65 and 72. According to witness Willis, if the LECs are allowed to mirror their interstate special access charges, AT&T will experience an increase in its access charges of $2 million.

Mr. Willis described the Company's proposal to change the minimum service period for private line rate elements that are related to special access rate elements and to offer a new multipoint service option for Series 1000 and 2000 and FX Services. He also described AT&T's proposed adjustments to rates for DATAPHONE Digital Service (DDS).

Mr. Willis testified that the estimated annual net revenue impact on AT&T of the proposed changes is $1.32 million in the first year after repression (an $887,000 increase plus access expense savings) and that the Company will reduce its switched service rates by the amount of any increase that results from this case. Finally, witness Willis testified that AT&T sales personnel have been instructed to contact all affected customers prior to the effective date of the proposed tariffs to work out any service rearrangements those customers may want to make.

Public Staff witness Garrison recommended three alternatives or modifications to AT&T's rate proposals: (1) that the monthly recurring zone

mileage charges for the obsoleted Series 1000 station terminals should be set at 50% of the amounts proposed; (2) that the channel rates for obsoleted Series 5000 (Type 5800) or Telpak D should not be eliminated but should instead be increased by no more than 25%; and (3) that reseller customers should continue to access AT&T's POPs using facilities obtained directly from the LECs. Witness Garrison testified that, because of its bulk nature, the elimination of Telpak D would have a dramatic impact on the one customer still receiving service pursuant to that tariff. Mr. Willis testified that AT&T does not object to the Public Staff's recommendation regarding resellers and would not object to the other recommendations made by witness Garrison if the Commission would establish a date in the near future for the withdrawal of Telpak D and the implementation of the remaining 50% of the zone charges. Mr. Garrison opposed the establishment of a date certain given the uncertainties regarding special access and other communications matters.

AT&T's current channel service offerings are based upon a rate center to rate center pricing structure. This pricing structure is a carry-over from the era before divestiture and before the Commission approved access charges. Under the existing tariffs, there is a significant difference between the manner in which AT&T's channel services are priced and the manner in which they are provisioned. AT&T witness Willis provided an exhibit in conjunction with his testimony which illustrated this difference. The current rate structure, including the aggregate nature of the station terminals and the lack of a special access surcharge, masks large differences in the costs of serving different customers and does not enable them to adequately evaluate competitive alternatives. The testimony of Mr. Willis demonstrates that the proposed pricing structure will produce rates that more closely reflect the costs incurred in provisioning the service and permit customers to make an appropriate choice for their service needs based on true economic factors and performance characteristics. The current rate structure, including the aggregate nature of the station terminals and the lack of a special access surcharge, masks large differences in the costs of serving different customers and does not enable those customers to adequately evaluate competitive alternatives. Therefore, the Commission concludes that the proposed rate structure is consistent with the manner in which channel services are provided and that such a structure is fair and reasonable and should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

AT&T proposed station terminal zone charges that reflect the special access (special transport) costs that AT&T incurs in providing channel services to customers. The Public Staff objects to the full amount of the zone charges for Type 1009 and Type 1010 channel services on the basis that the proposed zone charges would have an adverse impact on some customers. The Public Staff recommends that the zone charges for Type 1009 and Type 1010 channel services should be limited to 50% of the proposed rates.

AT&T witness Willis testified that the Company was aware of the customer impact of its proposal and that such impact was one of the reasons why AT&T had proposed such a lengthy time before the effective date. Mr. Willis also stated that AT&T would not object to the Public Staff's recommendation if a specific date is set for implementing the remainder of the proposed change.

The Commission concludes that the access costs incurred by the Company in conjunction with Type 1009 and Type 1010 channel services are costs which should be recovered in the price of the service to customers and that the rates proposed by AT&T are fair and reasonable. However, in order to avoid and mitigate the possibility of any undue customer impact, the Commission will require that only 50% of the proposed rates shall be implemented on September 30, 1988, with the remainder of the proposed rates to be made effective on September 30, 1989.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Telpak is the more common name for the Series 5000 channel service offerings in AT&T's channel services tariff. Telpak offers a channel service customer four base capacities, which are equivalent to twelve (12), twenty-four (24), sixty (60), and two hundred forty (240) single channels. The base capacities represent the facilities which connect the Company's central offices and are utilized in conjunction with station terminals. AT&T has proposed to eliminate the Telpak offering. The Public Staff does not oppose the withdrawal of Telpak A, B, and C, but contends that other considerations warrant the continuation of Telpak D.

In order for a Telpak customer to use each of the equivalent Telpak channels subscribed to, the Company must provision the individual channels the same as it provisions non-Telpak channels. Additionally, each of the individual channels, just like non-Telpak channels, requires individual end-link access facilities to connect them to the customer's premises. AT&T witness Willis testified that because there is no cost difference in provisioning Telpak and non-Telpak channels, there should be no difference in the rates that customers pay for these individual services of a like nature.

The Public Staff contends that the withdrawal of Telpak D will have a greater customer impact than will the withdrawal of Telpak A, B, and C. It is the Public Staff's position that the Commission should give consideration to the impact on the one remaining Telpak D customer by continuing indefinitely the Telpak D offering and by allowing a rate increase for that service not to exceed 25%. AT&T does not object to the Public Staff's recommendation to continue Telpak D, provided the Commission establishes a date certain for its future withdrawal.

The Commission notes that Telpak channel offerings were withdrawn from the interstate tariff in May 1981. The Florida Public Service Commission has approved the phasing-out of Telpak and the service has been withdrawn altogether in Virginia, Georgia, South Carolina, and all of the south central states. Indeed, Telpak exists only on a grandfathered basis in four (4) other states. At the present time, AT&T has only nine remaining Telpak customers in North Carolina. Each of these nine customers may subscribe to more than one type of Telpak service. Four customers have Telpak A. Three customers have Telpak B. Nine customers have Telpak C. Only one customer has Telpak D. Witness Garrison testified that "...the Telpak A, B, and C customers would not be adversely affected by the elimination of Telpak service. Only the Telpak D customers would." Mr. Garrison further testified that the Telpak D customer who must switch to another type channel service "...is going to see a rather dramatic increase in his rates on average..."

On the basis of the evidence, the Commission finds that the reasons supporting the withdrawal of Telpak A, B, and C also justify the withdrawal of Telpak D. However, we also believe and agree with the Public Staff that customer impact should not be ignored. Therefore, the Commission concludes that the Public Staff's recommendation to continue the Telpak D offering and to increase the rate for that service by 25% is fair and reasonable, but that a date of September 30, 1989, should be set for the withdrawal of that service. This approach will lessen any rate shock that might otherwise occur and will allow the one affected customer sufficient planning time to arrange for other services.

For the reasons set forth above, the Commission concludes that this action does not result in "...any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage..." and, therefore, is not prohibited by G.S. 62-140(a) as asserted by First Union Corporation in its legal brief. This conclusion is based primarily on the testimony offered by Public Staff witness Garrison concerning the adverse impact that withdrawal of Telpak D effective September 30, 1988, would have on the one remaining customer. The rate for Telpak D service for that one remaining customer will be significantly increased as a result of this Order; i.e., the rate for Telpak D service will be increased by 25% as of September 30, 1988. The fact that the Commission has established a date certain for the elimination of Telpak D service also serves to undercut any assertion of unreasonable preference or prejudice in this case, either in favor of the one remaining Telpak D customer or against the remaining Telpak A, B, and C customers. Simply stated, the Commission has considered the evidence in this case and has ordered changes which affect all Telpak services in a manner which we consider and find to be "reasonable," rather than "unreasonable" as First Union Corporation has asserted. The testimony offered by Public Staff witness Garrison regarding customer impact, when considered in combination with our decision to allow AT&T to withdraw its Telpak D offering by September 30, 1989, and in the interim to significantly increase the rate for that service, constitutes a reasonable, rather than unreasonable, exercise of our regulatory authority when measured against the standards set forth in G.S. 62-140(a) and the applicable case law.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

In Docket No. P-140, Sub 9 (Order dated December 23, 1986), the Commission required resellers of channel services to obtain special access directly from the local exchange companies. The Commission also ordered lower interLATA interoffice mileage rates for resellers compared to the mileage rates applicable to nonresellers. AT&T initially proposed to charge the reseller customers the same station terminal rates and interoffice mileage rates as nonreseller customers. The Public Staff's position is that there should be no change from the current requirement that resellers must access AT&T's POP using facilities obtained directly from the LECs.

AT&T witness Willis testified that AT&T does not object to the Public Staff's recommendation regarding this issue. Therefore, the Commission finds good cause to adopt the recommendation made by the Public Staff on this point.

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

As a result of its proposed rate changes, AT&T witness Willis testified that his Company would realize an estimated annual impact, after recognizing demand changes, of $1.32 million if all of its proposals were approved. The Company has made a commitment to reduce its rates for switched services in an amount equal to the impact of any net revenue increase that results from this Order. The Commission finds such a reduction to be fair and reasonable and will require AT&T to file tariffs reflecting appropriate changes in intrastate interLATA switched services with the same effective date as the new channel service tariffs.

The estimated impact to AT&T and its customers is based upon the existing interLATA special access rates. By a separate Order which was today entered in Docket Nos. P-100, Subs 65 and 72, the Commission has authorized the LECs to mirror their interstate special access rates effective July 1, 1988, for purposes of billing intrastate interLATA special access charges. AT&T witness Willis testified that this action will result in an increase in interLATA special access charges to AT&T of approximately $2 million on an annual basis. AT&T has requested the Commission to authorize the Company to further revise its channel service rates to reflect the impact of this increase in special access charges.

The Commission concludes that AT&T's request to further revise its channel service rates to reflect the impact of our decision to allow the LECs to mirror their interstate special access rates effective July 1, 1988, must be denied at the present time. To allow AT&T to further reprice its interLATA channel services would undoubtedly promote a rather serious degree of rate shock to many of the Company's customers in North Carolina. The evidence in this case indicates that almost 50% of AT&T's current channel service customers will experience a rate increase as a result of this Order, even without the further changes sought by AT&T. AT&T will not be harmed by the Commission's decision to deny the Company's request to further restructure its rates for channel services to reflect the changes in special access charges which will flow from our decision in Docket Nos. P-100, Subs 65 and 72, since the total level of intrastate interLATA access charges to be paid by interexchange carriers, including AT&T, was restructured and capped at 1987 levels. Therefore, the Commission finds good cause to deny AT&T's request on this point. If AT&T desires to further pursue this matter at some point in the future, the Commission suggests that no further rate restructuring for intrastate interLATA channel services should be proposed before September 30, 1988, when the rate changes approved by this Order will take effect.

By the Order which the Commission entered in these dockets on February 23, 1988, AT&T was authorized to continue to charge the private line rates approved in Docket No. P-140, Sub 9, on an interim basis. The Commission agrees with AT&T that the channel service rates approved by this Order effective September 30, 1988, will put all private line users on an equal footing and will eliminate any remaining concerns over rate discrimination. The Public Staff and AT&T both take the position that there is no need for further proceedings on the remanded legal issues in Docket No. P-140; Sub 9. The Commission agrees and so finds and concludes. No party to these proceedings has taken a contrary position.

IT IS, THEREFORE, ORDERED, as follows:

1. That AT&T's proposal to restructure its channel services offering is hereby approved as filed, subject to the following exceptions:

a. The zone charge rates for Type 1009 and Type 1010 channel services shall be initially set at 50% of the rates proposed by the Company. The remaining 50% of the proposed zone charge rates shall be implemented by AT&T effective September 30, 1989.

b. The Telpak D offering, as restructured herein, shall remain in effect until September 30, 1989, at which time the service shall be withdrawn. Effective September 30, 1988, a 25% increase in rates for Telpak D is hereby approved.

3. That resellers utilizing the private line services of AT&T shall continue to obtain access directly from the local exchange companies.

4. That AT&T shall contact each of its private line and foreign exchange customers to ensure that the effects of the rate changes authorized herein are made known to those customers.

5. That the channel service rates which AT&T is presently charging shall continue in effect until September 30, 1988, when the new rates approved by this Order shall take effect.

6. That AT&T shall file revised tariffs in accordance with the provisions of this Order to become effective on September 30, 1988. The revised tariffs shall be filed not later than 15 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of April 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-55, SUB 892

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Tariff Filing by Southern Bell Telephone and Telegraph Company to Revise the Company's 976 Service Tariff and to Reduce Charges for Blocking of 976 Calls	) ORDER REQUIRING FREE BLOCKING OF 976 CALLS

BY THE COMMISSION: Southern Bell presently offers an optional service which enables a subscriber to have all 976, 1+900, and 1+976 calls to points within the subscriber's area code blocked in the Company's central offices. Effective January 20, 1988, the Commission authorized Southern Bell to reduce its monthly rates and nonrecurring charge for blocking service. The recurring rates for blocking are now $1.00 per month for residence customers and $2.00 per month for business and PBX trunk customers. A secondary service order charge also applies on separate orders for addition of the blocking feature to existing service. No nonrecurring charge currently applies if the blocking feature is ordered when service is initially established or on an order where a service order charge would otherwise apply.

On March 18, 1988, Southern Bell made a proposed tariff filing with the Commission whereby the Company proposed to eliminate the monthly rates and the secondary service order charge and, in lieu thereof, establish a nonrecurring charge of $5.00 for the service. In addition, Southern Bell has proposed to allow customers to receive blocking service at no charge if they order the service prior to July 31, 1988. Customers served by central offices that currently lack blocking capability would be allowed to subscribe to this service at no charge for a period of 30 days following conversion of the serving office.

Southern Bell is planning to provide notice of the elimination of the monthly rates and the periods during which the proposed $5.00 nonrecurring charge would be waived through use of bill inserts.

Southern Bell has also proposed to make retroactive adjustments to reflect elimination of the monthly rates effective January 20, 1988. At present, there are approximately 400 subscribers to the blocking service.

The Public Staff presented this matter to the Commission during the Regular Commission Staff Conference held on Monday, April 4, 1988. The Public Staff set forth the following statements in its written Agenda item regarding Southern Bell's proposed tariff filing:

> "When the blocking service is requested on an order for initial establishment of service or for a subsequent change in the service, the proposed $5.00 charge would apply in addition to the regular service order charge in these cases. Under the existing tariff, no additional charge would apply. The proposed $5.00 charge, therefore, represents an increase in the applicable nonrecurring charges.
>
> "The free sign-up periods are intended to address the needs of existing subscribers. However, the needs of subscribers who

initially establish service or move or recognize the need to reduce their liability from 976 associated charges after termination of the free sign-up periods are not addressed. Certainly, those subscribers are entitled to the same consideration as existing subscribers. Under Southern Bell's proposal, those subscribers would be assessed the $5.00 nonrecurring charge.

"Another deficiency in Southern Bell's proposal involves the lack of notice to subscribers during the order taking process. Southern Bell does not plan to advise new subscribers during the order taking process of the availability of the service. Therefore, subscribers who move or establish new service during the free sign-up periods may not receive notice of the availability of blocking service without charge.

"Southern Bell's 976 service has caused subscriber complaints in the last 12 months. With the recent introduction of the service in the Raleigh area, the potential for complaints will increase. The Public Staff welcomes the elimination of the monthly rate for blocking but believes that the nonrecurring charge should be eliminated as well. Any costs incurred by Southern Bell for blocking should ultimately be recovered in charges billed to the 976 vendors."

The Public Staff recommended that Southern Bell should be required to modify this tariff filing to eliminate all nonrecurring charges for the establishment of 976 blocking service and to provide notice to its subscribers of the availability of blocking service.

Don Hathcock appeared at the Regular Commission Staff Conference on behalf of Southern Bell in support of the Company's proposed tariff filing and in opposition to the recommendation of the Public Staff.

Lemuel Hinton appeared on behalf of the Attorney General in support of the recommendation of the Public Staff.

Based upon a careful consideration of the foregoing, the Commission concludes that good cause exists to approve the recommendation of the Public Staff and to require Southern Bell to revise its proposed tariff filing to eliminate all charges for the establishment of 976 blocking service.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell be, and the same is hereby, required to revise its 976 service tariff to eliminate all charges for the establishment of 976 blocking service.

2. That Southern Bell shall provide notice to its subscribers of the availability of 976 blocking service in the manner proposed by the Company.

3. That Southern Bell shall make retroactive billing adjustments in the manner proposed by the Company to reflect elimination of the monthly recurring rates for blocking service effective January 20, 1988.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of April 1988.

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

DOCKET NO. P-7, SUB 723

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Carolina Telephone and Telegraph Company -	)	ORDER APPROVING
Request to Amortize the Reserve Deficiency	)	AMORTIZATION OF RESERVE
in Outside Plant Cable Accounts	)	DEFICIENCY IN OUTSIDE
	)	PLANT CABLE ACCOUNTS

BY THE COMMISSION: By letter dated July 20, 1988, Carolina Telephone and Telegraph Company requested the Commission to authorize the Company to amortize a portion of the reserve deficiency in its aerial, underground and buried cable accounts in 1988 and 1989.

In reviewing the adequacy of its capital recovery program, Carolina determined that a reserve deficiency presently exists. The Company's study indicates a reserve deficit (combined jurisdictional basis) of $9,202,054 for the aerial cable account, $3,203,763 for the underground cable account and $34,126,763 for the buried cable account at December 31, 1987.

To help remedy this situation, the Company proposes to amortize a portion of the reserve imbalance during 1988 and 1989. Specifically, Carolina requests authority to amortize $13,000,000 of the deficiency in 1988 and $9,000,000 in 1989.

This matter was considered by the Commission during the Regular Commission Conference held on August 8, 1988. The Public Staff recommended that a letter be sent to Carolina approving the Company's proposal without prejudice to the right of any party to take issue with said proposal in a general rate case. Representatives of AT&T Communications of the Southern States, Inc., Carolina Utility Customers Association, Inc. (CUCA), and MCI Telecommunications Corporation appeared at the Commission Conference in opposition to Carolina's filing and the Public Staff's recommendation.

Written responses in opposition to Carolina's filing were subsequently filed by CUCA and SouthernNet Services, Inc., on August 9, 1988. On August 12, 1988, Carolina filed a response in opposition to the written pleadings filed by CUCA and SouthernNet.

The Commission has carefully reviewed the entire record in this proceeding and concludes that good cause exists to approve as filed Carolina's request to amortize a portion the reserve deficiency in its outside plant cable accounts. The Commission believes this action to be appropriate for the reasons generally given by the Company in support of its filing, particularly those reasons set forth by Carolina in its written pleading filed in this docket on August 12, 1988.

The parties opposed to Carolina's proposal take the position that the Commission should either approve further reductions in intrastate access charges or reduce intraLATA toll rates rather than approving the Company's proposal. We disagree with this position. The Commission has an orderly process in place whereby we have systematically reviewed and reduced the level of intrastate access charges for several years. In fact, the local exchange

companies (LECs) have already been required to reduce the level of intrastate access charges by approximately $61.5 million on an annual basis. Further reductions will follow. Most recently, we entered an Order in Docket Nos. P-100, Subs 65 and 72, which established a plan whereby the LECs began to bill and keep company-specific interLATA access charges effective July 1, 1988. The LECs no longer pool interLATA access charges. We have also capped the non-traffic sensitive revenue requirement for each LEC at their 1987 levels and have provided for a plan whereby the interLATA originating carrier common line charge (CCLC) for each LEC will decline to zero over a reasonable period of time. As a result, Carolina now has an originating interLATA CCLC which is among the lowest in the State. We find no compelling justification to further reduce the level of Carolina's intrastate access charges at this point.

The Commission also finds good cause to reject the proposal to reduce intraLATA toll rates rather than approving Carolina's proposal. At the present time, all LECs continue to have uniform intraLATA toll rates. They are also continuing to pool those revenues. We find no reason to depart from uniform intraLATA toll rates or pooling at this time. We have announced our intention to revisit the question of scheduling a hearing on intraLATA facilities-based competition during the first calendar quarter of 1989. It would be entirely premature and unworkable to reduce intraLATA toll rates for only Carolina Telephone Company at this point in time. Issues related to the depooling of intraLATA toll revenues and non-uniform intraLATA toll rates are best left for resolution at the time the Commission conducts further generic hearings in Docket Nos. P-100, Subs 65 and 72. We believe that it would be counterproductive and confusing to reduce intraLATA toll rates for only Carolina Telephone Company.

Furthermore, contrary to the assertions made by certain parties, our approval of Carolina's request does not violate procedural due process. Until such time as capital recovery changes produce rate impacts, we do not believe that other parties are aggrieved. This Order clearly reserves the rights of other parties to raise capital recovery issues in Carolina's next general rate case which is appropriate, fair and reasonable.

The Commission has also been greatly influenced in this matter by the fact that Carolina's filing has the strong support of the Public Staff. The Commission recognizes that the filing in question was largely the result of extensive discussions conducted by the Public Staff and the Company. The Commission wishes to hereby commend both the Company and the Public Staff for their efforts regarding this matter.

IT IS, THEREFORE, ORDERED that the depreciation reserve deficiency amortization filing made by Carolina Telephone and Telegraph Company in this docket be, and the same is hereby, approved as filed, subject to and without prejudice to the right of any party to take issue with said amortization in a general rate proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of August 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Edward B. Hipp dissents.

HIPP, COMMISSIONER, DISSENTING. I dissent from the majority Order because (1) I do not believe the Commission followed appropriate procedure in allowing Carolina to write off $19,000,000 of earnings in excess of its authorized rate of return without a public notice and hearing, and (2) I believe the Commission should have accepted the first choice of both Carolina and the Public Staff for use of such earnings to reduce intraLATA long distance rates rather than their second choice of a super accelerated amortization of cable and wire plant with no real evidence of record to support such second choice allowed by the Commission.

The uncontested facts in this record supporting the above positions are as follows (from the transcript of the Commission Staff Conference of August 8, 1988, in Docket No. P-7, Sub 723):

1. The first choice of both Carolina and the Public Staff was to reduce intraLATA toll. (TR. pp. 9, 10.).

2. The reason for the filing was, in part, because of negotiations on earnings with the Public Staff. (Tr. p. 7).

3. The source of the high earnings of Carolina is the revenue from intraLATA toll. (Tr. p. 14).

4. North Carolina intrastate toll rates are 20% higher than interstate toll rates because North Carolina intrastate access charges are 30% higher than interstate access charges and very high and out of line. North Carolina subscribers spent more money on long distance than any of the thirteen southeastern states. (Tr. p. 3).

5. For families in North Carolina with income less than $15,000, toll charges are one-half of their telephone bill. (Tr. p. 3).

6. If the Commission does not reduce intraLATA toll rates by 1989, Carolina will not have any intraLATA toll business. (Tr. p. 15). If anything needs fixing, it is intraLATA toll. (Tr. p. 14).

The effect of the majority Order is to allow Carolina to keep all of the present high revenue without reporting it as excessive earnings. It effectively relabels and dissipates excessive earnings by allowing Carolina to keep the same revenue.

This thwarts two outstanding decisions of the Commission long postponed because of an estimated adverse effect they might have on earnings and thus on local rates, i.e., (1) the decision that full intraLATA competition was in the public interest and should be allowed if it did not cause an increase in local rates, and (2) that intrastate long distance rates were too high due to excess local access rates and should be reduced except for the effect of local rates.

The Commission has found both decisions to be advances in long distance service and in the public interest, but both await implementation until a way can be found to do so without increasing local rates. In addition, other higher public needs constantly face the Commission, including expansion of calling scope of local exchanges to county-wide calling. The way was rapidly being provided to meet these priorities from the excess earnings reported by

Carolina and many other telephone companies in North Carolina. The majority Order allows this way to be dissipated on depreciation reserves without a public hearing.

I fear it is only the first case of such authorization, with the numerous other telephone companies with excess earnings to follow, also by summary decision without hearings.

The normal procedure in a case of reported excess earnings should be to set a general rate case complaint to investigate the earnings and to give rate relief to the customers whose rates are producing higher earnings than anticipated in the last case fixing such rates. A cursory examination of Carolina's financial reports indicates its excess revenues are coming in large part from higher access and toll revenues than anticipated in the last rate case.

The normal way to correct the deficiency in Carolina's aerial underground and buried cable accounts would be to increase to allow depreciation expense for such property accounts, to be apportioned to the cost of service accounts. The customers utilizing these plant services would then pay rates based on their cost of service. I have no objection to correcting depreciation rates, and the Commission has uniformly done so when a deficiency develops.

Amortization of the company's report of a reserve deficiency in 1988 and 1989 is an extraordinary remedy. It is a paper method of writing off Carolina's excess earnings which should go to higher priorities to implement the Commission's outstanding policy decisions. It should not be allowed without a full public hearing with alternative uses of the excess earnings fully explored.

AT&T, CUCA, MCI, and SouthernNet have opposed the amortization plan, but have not been allowed to present evidence to test the plan. To say the Commission has reached its conclusion on the record in this proceeding is to say that Carolina has prevailed on the pleadings without any need for evidence or proof or testing of the allegations and that no one else could possibly develop any better use of Carolina's excessive earnings. Excess earnings belong to the utility's customers, at least prospectively. Carolina has no real right to continue collecting them, except for delay in the reduction of rates or the application of the excess earnings to the customers' interest.

The results of the majority action is a summary judgment on unsworn pleadings, without notice to the customers.

The only evidence in the case is in the form of admissions of counsel found in oral presentation in Commission Staff Conference and letters to the Commission. The Carolina "pleading" referred to by the majority as filed on August 12, 1988, is a letter from counsel with no indication it was subscribed as a pleading. There is no affidavit or any other evidence given under oath (the company's request opening the docket is described as a "letter of July 20, 1988.")

But, the admissions from the oral presentation show the negotiations with the Public Staff over excess earnings as the origin of the filing and that the first choice of Carolina and the Public Staff was to apply such earnings to

reduce high intraLATA long distance rates. The only reason given for going to the second choice of rapid amortization of the plant was a fear that it would affect the Commission approved intraLATA pool which they did not believe they should change.

This drastic shift from the first choice which would give rate relief from the vast body of low-income customers overpaying for essential intraLATA toll, to a second choice of no benefit to such customers should not be approved without notice and hearing.

The one redeeming feature of the present Order is that Carolina's amortization plan is approved "subject to and without prejudice to the right of any party to take issue with said amortization in a general rate proceeding," which it now appears that the customers themselves will have to file a complaint to get such a proceeding. If it is to be truly without prejudice, the Commission should at least then place the burden on Carolina to prove its present rates are just and reasonable.

If there are good reasons not to reduce intraLATA toll, they should be fully explored in a public hearing.

The majority Order fails to disclose the real issues which are present and fully discussed in the record of the Commission Staff Conference. To read the majority Order one would conclude only that this is an administrative accounting process with no public interest and no public issue. The fast turn around from the July 20, 1988, filing date to the August 8, 1988, Commission Staff Conference and the August 24, 1988, majority Order supports this.

The second choice of Carolina in amortizing cable plant is said to offer eventual relief to consumers in reducing the rate base and the revenue requirement. If there were automatic rate reductions in excess earnings, this would be true, but with the same revenues coming in and the rate base reduced by accelerated amortization, Carolina's excess earnings will simply increase further to the sole advantage of the company. There is nothing in this record of excess earnings to indicate the Commission will initiate proceedings to bring such relief for the consumers.

The recital in the majority Order that the Commission will revisit the further scheduling of intraLATA competition in the first quarter of 1989 means decreasingly little if the excess earnings which would be vital to an affirmative solution to the prolonged deferral of implementation of that decision had been wiped out in the paper transaction authorized in the majority Order.

The term "LATA" is the acronym for Local Access Transport Area. The Federal Court looks upon the two LATAs established by Carolina based upon Rocky Mount and Fayetteville which are regarded as Local Access Transport Areas in terms of the national telephone network. The very term "local areas' should show a need to allow customers in a LATA a more reasonable and affordable means of calling within their "Local Access Transport Area."

I urge the majority to reconsider the Order in this docket and set the case for public hearing.

Edward B. Hipp

DOCKET NO. P-35, SUB 83

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Mebane Home Telephone Company - Request to Amortize Depreciation Reserve Imbalances and to Accelerate Amortization of COE-Analog Switching and Embedded Inside Wire	)	ORDER APPROVING AMORTIZATION OF DEPRECIATION RESERVE IMBALANCES AND ACCELERATION OF COE-ANALOG SWITCHING AND EMBEDDED INSIDE WIRE AMORTIZATION

BY THE COMMISSION: By letter dated September 23, 1988, Mebane Home Telephone Company (Mebane or Company) requested Commission approval to amortize depreciation reserve imbalances and thus achieve more representative levels of its depreciation reserves for certain plant accounts. The special amortizations would apply to the following accounts in the amounts shown:

COE-subscriber carrier	$143,898
COE-digital switching	$132,343
COE-toll carrier	$ 12,776
Furniture and computers	$ 51,571
Other work equipment	$ 4,760

The Company also proposes to accelerate existing amortizations of Embedded Inside Wire in the amount of $41,134 and COE-analog switching in the amount of $51,518.

These amortizations are to be effective retroactive to January 1, 1988, for a period of one year. Mebane's proposal increases the Company's total amortization expenses (combined basis) by $438,000 for 1988.

This matter was considered by the Commission during the Regular Commission Staff Conference held on Monday, October 10, 1988. The Public Staff recommended that a letter should be sent to Mebane approving the Company's proposal without prejudice to the right of any party to take issue with the proposal in a general rate case.

The Commission has carefully reviewed the entire record in this proceeding and concludes that good cause exists to approve Mebane's request as filed. The Commission believes this action to be appropriate for the reasons generally given by the Company in support of its filing and for the reasons generally set forth in the Commission's August 24, 1988, and September 9, 1988, Orders in Docket Nos. P-7, Sub 723, and P-10, Sub 433, which involve similar requests filed by Carolina Telephone Company and Central Telephone Company.

The Commission has also been greatly influenced in this matter by the fact that Mebane's filing has the strong support of the Public Staff. The Commission recognizes that the filing in question was largely the result of extensive discussions conducted by the Public Staff and the Company. The Commission wishes to hereby commend both the Company and the Public Staff for their efforts regarding this matter.

IT IS, THEREFORE, ORDERED that the request by Mebane Home Telephone Company to amortize depreciation reserve imbalances and to accelerate amortization of COE-Analog switching and embedded inside wire be, and the same is hereby, approved as filed subject to and without prejudice to the right of any party to take issue with said amortization in a general rate case proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of October 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Hipp concurring in part and dissenting in part.

I concur in that portion of the Majority Order which applies Mebane's 1988 earnings in excess of its authorized return to amortize depreciation imbalances, but I dissent from the failure of the Commission to set a time in this Order to consider all uses of such earnings in 1989, including expanded service to Mebane's customers, or in lieu thereof, reductions in Mebane's rates.

Amortization of depreciation imbalances is hardly the most reasonable application of excess earnings from the customer's standpoint, but it may be the only practical application for 1988 earnings at this late date in recognizing such earnings. Other uses more advantageous to Mebane's customers should be made available for 1989 and thereafter.

Edward B. Hipp, Commissioner

DOCKET NO. P-55, SUB 888

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation into the Request of the Triangle J Council of Governments for Toll-Free Calling in the Triangle J Region) ORDER

HEARD IN: Commission Hearing Room, Raleigh, North Carolina, on December 7-11, 1987

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

APPEARANCES:

For Triangle J Council of Governments:

David H. Permar, Hatch, Little, Bunn, Few & Berry, Attorneys at Law, 327 Hillsborough Street, Raleigh, North Carolina 27603

For Carolina Telephone and Telegraph Company:

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

For Central Telephone Company:

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

For General Telephone Company of the South:

Joe W. Foster, Senior Attorney, General Telephone Company of the South, Post Office Box 1412, Durham, North Carolina 27702

For Heins Telephone Company and Mebane Home Telephone Company:

F. Kent Burns, Burns, Day & Presnell, P. A., Attorneys at Law, Box 2479, Raleigh, North Carolina 27602

For Southern Bell Telephone and Telegraph Company:

William J. Ellenberg II, Southern Bell Telephone and Telegraph Company, 4300 SBC, 675 West Peachtree Street, N.E., Atlanta, Georgia 30375

and

J. Billie Ray, Jr., General Attorney, Southern Bell Telephone and Telegraph Company Legal Department, 1012 Southern National Center, Charlotte, North Carolina 28301

For the Public Staff:

Antoinette R. Wike, Chief Counsel, and A. W. Turner, Jr., and Robin B. Cauthen, Jr., Staff Attorneys, Public Staff, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, and Karen E. Long and Lorinzo L. Joyner, Deputy Attorneys General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On September 2, 1987, the Triangle J Council of Governments (TJCOG) filed a resolution with the Commission requesting the Commission "to implement a unified metropolitan local telephone service for Durham, Wake and Orange Counties within a year and to study the feasibility and means by which the surrounding communities may join this network." By Order dated September 4, 1987, the Commission scheduled this matter for public hearing on December 1, 1987. TJCOG, the Public Staff, Southern Bell Telephone and Telegraph Company (Southern Bell), General Telephone Company of the South

(GTE), Carolina Telephone and Telegraph Company (Carolina), and Central Telephone Company (Central) were made parties and ordered to file proposed plans to implement extended service within the Triangle J Region. TJCOG filed a motion on September 24, 1987, requesting that Mebane Home Telephone Company (Mebane) be made a party to this proceeding. That motion was granted by Commission Order of October 8, 1987. Heins Telephone Company (Heins) filed a motion on October 2, 1987, seeking leave to intervene, which motion was granted on October 7, 1987. Megan & Clark Associates, Ltd., filed a motion to intervene on November 25, 1987, which was granted on December 1, 1987.

The Commission held hearings during the period December 7-11, 1987, and received testimony from representatives of TJCOG, the involved telephone companies, residents, and civic and business leaders of the region involved in this request, and the Public Staff. On the basis of the evidence and testimony in the record, the Commission makes the following

FINDINGS OF FACT

1. That a sufficient public interest has been demonstrated to justify (a) cost studies of and proposed rates for flat rate, two-way, non-optional extended area service (EAS) in the Triangle area and (b) the implementation of experimental optional calling plans in selected Triangle exchanges to end automatically by a date certain, unless continued by further action of the Commission.

2. As to data concerning flat-rate, two-way, non-optional area-wide EAS:

(a) That the data should be collected by Carolina, Central, GTE, Mebane, and Southern Bell and be submitted to the Commission no later than 8 months from the date of the issuance of this Order covering the following exchanges: Apex, Cary, Chapel Hill, Creedmoor, Durham (including Research Triangle Park), Fuquay-Varina, Hillsborough, Knightdale, Mebane (Orange County service area only), Raleigh, Wake Forest, Wendell, and Zebulon.

(b) That Central, GTE, Southern Bell, and Mebane should perform and submit incremental cost studies and proposed rates. The incremental cost study should include, cumulatively and separately, incremental equipment costs; embedded costs supporting investments which have previously been used to provide toll service but which under EAS would be used for EAS rather than toll services; the net toll settlement loss; and the billed toll revenue loss (MTS, WATS, FX) that would be experienced as a result of EAS. A rate schedule should be developed by Central, GTE, Southern Bell, and Mebane which would produce the revenue necessary to recover costs associated with establishing the EAS network plus net toll revenue loss associated with establishing the EAS.

(c) That Carolina should submit proposed rates. It may submit rates derived from its matrix plans or it may submit incremental cost studies and rates along the design set out in Finding of Fact No. 2(b), or it may submit both sets of such data. Central may submit matrix-based rates in addition to an incremental cost study and proposed rates.

3. As to experimental optional calling plans:

(a) That there exists sufficient basis in the area of Wake, Durham, and Orange Counties for Southern Bell, Central, and GTE to implement and study on an experimental basis the optional service plans they have previously proposed in this docket, modified as necessary to encompass the following experimental areas:

(1) Southern Bell

Originating	Terminating
Raleigh to	Chapel Hill, Durham
Cary to	Chapel Hill, Durham
Chapel Hill to	Cary, Durham, Hillsborough, Raleigh, Mebane (Orange County service area only)

(2) GTE

Originating	Terminating
Durham to	Cary, Chapel Hill, Hillsborough, Raleigh

(3) Central

Originating	Terminating
Hillsborough to	Chapel Hill, Durham, Mebane (Orange County service area only)

(b) That there exists sufficient basis to require that Mebane investigate the experimental optional calling plans offered by Central, Southern Bell, and General, and select one for implementation from its Orange County service area to Hillsborough and Chapel Hill no later than four months from the issuance of this Order. Mebane should submit the data referred to in Finding of Fact No. 3(c) below contemporaneously with the reports of the other phone companies.

(c) That GTE, Southern Bell, and Central should each submit an interim report to the Commission six months after the effective date of the tariffs and an interim report one year after the effective date of the tariffs detailing with respect to its experimental plan: (1) toll minutes of use and revenue for calls to points in the experimental area, (2) forecasted minutes of use and revenue absent the experimental plan, (3) toll minutes of use for corresponding months prior to implementation of experimental plan, (4) actual revenue from experimental plan, (5) toll network cost savings, (6) minutes of use for flat rate customers (Southern Bell only), and (7) such other factors as the LECs deem relevant. The experimental plans should terminate 18 months from the effective date of the tariffs for the experimental plans, unless continued by further action by the Commission.

4. That Central, GTE, Mebane, and Southern Bell should submit an incremental cost study and proposed rates along the design set out in Finding of Fact No. 2(b) for their respective experimental areas and for such other sets of exchanges as the LEC may wish to select. Central may also perform and submit a study and rates based on its matrix plan. Such reports are due no later than eight months from the issuance of this Order.

5. That GTE and Southern Bell should study the requirements necessary to expand the Research Triangle Park (RTP) district of the Durham exchange and the

Raleigh-Durham Airport (RDU Airport) district of the Raleigh exchange to the Wake-Durham County lines, such that those districts become contiguous.

6. That GTE, Southern Bell, and Central should study the Washington, D. C. metropolitan area phone service plan and report to the Commission regarding its advisability as a model for implementation in the Wake, Durham, and Orange County area.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Questions relating to extended area service are some of the most perplexing with which the Commission deals. On the one hand, subscribers wish to enjoy the convenience of toll-free calling over a larger service area but this additional service often comes with a higher price tag. Local exchange companies (LECs) stand to lose profitable toll revenue and must make financial outlays to construct the new EAS network.

These trade-offs, difficult enough on the comparatively simple level of a small exchange hooking up with a larger exchange, become magnified many times when an EAS of the proportion of the Triangle J region is proposed. Instead of one or two telephone companies, there are five telephone companies involved. Numerous telephone exchanges are involved, and there is substantial potential for toll revenue loss with ultimate effects on ratepayers statewide.

The Commission has adopted a rule to guide EAS applications pursuant to a generic proceeding (Docket No. P-100, Sub 89; Rule R9-7; adopted October 28, 1987). The purpose of this rule was to distill the lengthy experience of the Commission in dealing with EAS proceedings while giving the Commission a flexible instrument to deal with the numerous problems which arise.

North Carolina is not a state dominated by a single large city but an urban state with several agglomerations of medium-sized cities. One such agglomeration is the Raleigh-Durham-Chapel Hill area uniting Wake, Durham, and Orange counties within the larger Triangle J region consisting of Wake, Durham, Orange, Johnston, Lee, and Chatham. However, TJCOG's final proposal encompasses the narrower core area of Wake, Durham, and Orange Counties (consisting of the exchanges of Apex, Cary, Chapel Hill, Durham, Fuquay-Varina, Hillsborough, Knightdale, Mebane, Raleigh, Wake Forest, Wendell, and Zebulon) together with the outlying exchanges of Creedmoor in Granville County, Pittsboro in Chatham County, Angier in Harnett and Johnston Counties, and Clayton in Johnston County.

The threshold question that the Commission must face in any determination of the appropriateness of EAS is whether there is sufficient public interest first to initiate and then to proceed with an inquiry. Rule R9-7(c)(1) states that an entity or group requesting EAS must have demonstrated "broad-based" support for it. Such support can be shown by "resolutions and letters from civic groups, institutions, local governments, elected officials and petitions signed by affected subscribers." A public hearing may be necessary to determine the public interest question (Rule R9-7(c)(2)) and in fact a public hearing has been held.

The Commission finds that the TJCOG and other supporters of EAS have presented sufficient evidence from a variety of sources to indicate

"broad-based support" for EAS to justify further cost-studies of flat-rate EAS. Furthermore, sufficient public interest has been demonstrated to implement experimental plans. However, it is not possible to make a finding that sufficient public interest exists to order immediate implementation of EAS in the absence of cost studies and polling.

The gist of TJCOG's argument is that the core area is in many respects a "single metropolitan area" with significant community of interest.[1] The lack of EAS has, according to TJCOG, hampered economic growth and interfered with the optimal provision of educational, medical, and governmental services. Raleigh and Durham are growing together and the boundaries of Chapel Hill and Durham actually touch. The area is bound together in water resource issues, has a common interest in the development of I-85 and I-40 corridors, and shares a growing regional airport and nationally renouned research park. TJCOG maintains that telecommunications is an important part of infrastructure, the transportation network for information. Removing barriers to easier communications would increase the utility of the communications network both individually and collectively.

At the hearings held in December 1987, TJCOG put forward approximately 40 witnesses to testify in favor of Triangle EAS. These witnesses included many civic leaders, academic officials, business persons, government officials, and elected officials. Various local governments in the Triangle J region have passed resolutions favoring EAS. Several witnesses focused on special needs. For example, school and mental health officials noted the difficulties of getting in touch with their students or clients spread over several phone systems. The Commission has also received numerous letters and petitions favoring EAS, many signed by residential customers. These facts constitute impressive evidence that the idea of EAS enjoys broad-based support.

Not surprisingly, the LECs were skeptical of area-wide EAS. Significantly, however, GTE stated in its brief that there was a demonstrated need for an area-wide calling arrangement, even though it was in favor of its own alternative calling plan for that purpose. Both Southern Bell and Central appeared to sense some degree of need, since they proposed alternative calling arrangements for their own customers. Even so, Southern Bell, in particular, vigorously argued that TJCOG's evidence at best established only "pockets of interest," which should be dealt with through other means than EAS.

The Commission is more inclined to view these "pockets of interest" as being in the process of merging into a whole. Southern Bell was undoubtedly correct, however, when it pointed out that there was no unanimity among the proponents of EAS as to exactly how much, if any, they were willing to pay for EAS and what options might desirable. Not unnaturally, EAS proponents wished to have rate increases due to EAS kept as low as possible. But, there was also sentiment among some of TJCOG's witnesses to have alternative calling options available. The Commission has to grapple with substantial equity questions relating to the distribution of any additional EAS rate burden as between, for instance, residential and business customers or rich and poor or local

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1 For a list of now-existing EAS arrangements in the Triangle J area, see Appendix A. For a list of studies required by this Order, see Appendix B.

ratepayers and ratepayers statewide. It is precisely in order to answer these many questions that the Commission is instituting cost studies and to settle the desirability of options that the Commission is instituting the experimental plans.

In sum, the proposal for Triangle EAS is fraught with complexity. The Wake-Durham-Orange County area is fusing together rapidly and it is very possible that EAS in this area would confer many benefits. At the same time, there are many unanswered questions regarding costs and how these costs should be distributed. The prudent course of action is to gather the necessary information and in the meantime enable Triangle citizens to sample the potential benefits of alternative calling arrangements.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

There are two major issues that arise with respect to this finding of fact. First, there is the question of geographical extent--i.e., what exchanges should be included in the study. Second, there is the question of study and rate design--i.e., what type of data should the LECs report to the Commission and on what basis should they formulate their rates.

After careful consideration, the Commission has elected to include the following exchanges in the study: Apex, Cary, Chapel Hill, Creedmoor, Durham (including Research Triangle Park), Fuquay-Varina, Hillsborough, Knightdale, Mebane (Orange County service area only), Raleigh, Wake Forest, Wendell, and Zebulon. These exchanges represent the core area of Wake, Durham, and Orange Counties. Thus, the companies that would be involved in the study are Southern Bell, GTE, Central, Mebane, and Carolina. In selecting these exchanges for study, the Commission is following the recommendation of the Public Staff and the Attorney General. TJCOG also recommended that these exchanges be studied but in addition included in their recommendations the exchanges of Angier, Clayton, and Pittsboro. These exchanges are more toward the periphery of the Triangle area, and for this reason the Commission is of the opinion that they should not be included in the present study. Creedmoor in Granville County is included in the study area because of its proximity to Durham and because its inclusion rounds out GTE's territory.

The second major question is that of cost study and rate design. The Commission is of the opinion that Central, GTE, Southern Bell, and Mebane should perform incremental cost studies which would include data concerning incremental equipment costs, embedded costs supporting investment previously used to support toll service but now to be used for EAS, net toll settlement loss, and the billed toll revenue loss (MTS, WATS, FX) that would be experienced as a result of EAS. These LECs would then develop a rate schedule designed to produce the revenue necessary to recover costs associated with establishing the EAS network plus the net toll revenue loss associated with the EAS. Carolina should have the option of using either its approved matrix plans to arrive at rate figures or of using the methodology above.

Several points should be noted about these conclusions regarding cost study and rate design. First, the Commission is willing to consider toll loss both as an informational item in the cost study and as an element in rate design. While there is nothing unusual about receiving toll loss figures for information, including toll loss in rate design is not the usual practice, and

the presumption in the rules is against it (Rule R9-7(d)). However, Rule R9-7(e)(1) also provides that toll loss can be considered if failure to consider lost toll revenues would result in serious financial distress to the LEC and, in turn, to its remaining local customers. The Commission concludes that it has been demonstrated that failure to consider toll loss may result in serious financial hardships to the LECs, considering the size of the EAS proposal. Large toll losses should not be ignored either as to their potential impact on the local ratepayers or their possible ultimate impact on ratepayers statewide. By receiving the toll loss figures separately and seeing how they are figured in the rates, the Commission retains maximum flexibility to make the decisions that will best serve the public interest.

The second point to be noted is that the Commission is allowing Carolina the option of using its matrix plans or using the incremental cost methodology. This is accord with Rule R9-7(f) and Rule R9-7(e)(1). These rules indicate that incremental costs studies will not generally be required of matrix telephone companies except under "unusual and extenuating circumstances." Although the EAS request is unusual in its scope, Carolina's role is essentially marginal and the use of matrix results would not be false or misleading. Nevertheless, Carolina should have the option of using either or both methodologies. By contrast, Central must use incremental cost methodology but may also present matrix data.

The last point to be noted concerns the contents of the incremental costs study. Rule R9-7(e)(2) indicates that such studies will be deemed to include additional equipment costs applicable to EAS plus certain embedded costs. On the recommendation of the Public Staff, the Commission is also requesting information regarding net toll settlement loss and the billed toll revenue loss (MTS, WATS, FX). The billed toll revenue loss is in accord with the Commission's decision to allow rate design utilizing toll revenue loss, and is a proper subject for inquiry in any event. Net toll settlement loss is simply another item which will assist the Commission in getting a truer picture of the impact of EAS.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

While the LECs are engaged in cost studies of area-wide EAS, the Commission does not see any reason to deprive area residents of the potential benefits of alternative calling plans. Several TJCOG witnesses expressed interest in alternative arrangements. Moreover, the results of these experiments will provide the Commission with valuable information to assess Triangle calling needs in general. Southern Bell, Central, and GTE have all presented alternative calling plans, differing substantially among themselves in concept and detail. This diversity, far from being a drawback, is actually a great help; for it will allow the Commission to test experimentally several different ideas at the same time.

The major issue with which the Commission is faced regarding the alternative plan is that of geographical scope. The Commission is of the opinion that the LEC alternative plans, if implemented as originally proposed, would be too large and unwieldy. It is preferable that the scope be narrowed to focus on the core Triangle region. In this, the Commission has in a broad sense been guided by existing calling patterns. For example, there will be alternative calling by Hillsborough subscribers to Durham and Chapel Hill, and

vice versa, but not between Hillsborough and Raleigh and Cary. Also, since it is more peripheral to the core region, Carolina will not be participating in these experiments.

Mebane presented a special situation to the Commission. Mebane did not present an alternative plan, yet Mebane's Orange County territory represents a significant slice of that County. Inclusion of Mebane's Orange County territory would give virtually all Orange County residents some opportunity to subscribe to an alternate plan. Accordingly, the Commission will allow Mebane to study and select one of the other company's alternate plans and implement it within four months.

GTE, Southern Bell, and Central are to make reports after six months and a year and, absent positive Commission action, the experiments will terminate automatically after 18 months.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

This finding of fact is, in a sense, a hybrid. The Commission is seeking information about EAS costs in the experimental areas and for such other sets of exchanges as the LECs may wish to select.

Accordingly, this provision applies to Central, Mebane, Southern Bell, and GTE. The object of the requirement is to multiply the EAS options which are available to the Commission and obtain as much information as possible for the Commission to make public policy choices. Central is to perform an incremental cost study but it may also submit matrix data. Reports are due eight months after the issuance of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Two districts that are virtually at the geographic center of the Wake, Durham, and Orange County core area are RTP and the RDU Airport. Although RTP is part of GTE's Durham exchange and RDU Airport is part of Southern Bell's Raleigh exchange, they both enjoy a greater calling scope than either of the larger exchanges. As noted in Appendix A, RDU Airport has EAS to all points in the Raleigh exchange plus EAS to Chapel Hill, Durham, and Creedmoor. RTP has EAS to Durham, Chapel Hill, Raleigh, Apex, Cary, Knightdale, Wendell, and Zebulon. However, the RDU Airport and RTP districts are not contiguous to each other. GTE's and Southern Bell's territory meet partly at the Wake and Durham County line.

The RTP-RDU Airport area is a high growth area, the attractiveness of which has been increased by an advantageous phone situation. Both Raleigh and Durham have annexed lands or extended their jurisdiction in the vicinity. A variety of new developments and major new roads are projected for the area. An expansion of these districts toward each other so that they would become contiguous appears to the Commission that it may be a relatively quick and inexpensive way to create a miniature EAS in the Triangle core area. Now would be the time to consider such a move while the area is relatively less developed than it is sure to become.

The Commission is therefore asking GTE and Southern Bell to study the requirements necessary to expand the RTP and RDU districts so that they become

contiguous to each other at or near the county line. This study should include an examination of lands north of I-40 to and near Highway 70, especially lands recently annexed by Raleigh and Durham. Such a study should include, but not be limited to, a detailed map showing current and projected districts, costs related to expansion (including lost toll revenue), and such other items of information as the companies may wish to submit.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

In the course of this docket, the Commission has become aware of the outlines of calling plans in other metropolitan areas. One such plan which the Commission finds particularly intriguing is that of the Washington, D. C. metropolitan area. This plan appears to offer several optional calling scopes and mixture of flat rate and measured service features at relatively low rates. The Commission would like to receive more detailed information from Southern Bell, GTE, and Central on this plan together with a detailed assessment regarding its advisability as a model for implementation in the Wake, Durham, and Orange County Area.

IT IS, THEREFORE, ORDERED as follows:

1. As to data concerning flat rate, two-way, nonoptional, area-wide EAS:

(a) Carolina, Central, GTE, Mebane, and Southern Bell shall gather and submit to the Commission, no later than eight months from the date of the issuance of this Order, data covering the following exchanges: Apex, Cary, Chapel Hill, Creedmoor, Durham (including Research Triangle Park), Fuquay-Varina, Hillsborough, Knightdale, Mebane (Orange County service area only), Raleigh, Wake Forest, Wendell, and Zebulon.

(b) Central, GTE, Southern Bell, and Mebane shall perform and submit incremental cost studies and proposed rates. The incremental cost study shall include, cumulatively and separately, incremental equipment costs; embedded costs supporting investments which have previously been used to provide toll service but which under EAS would be used for EAS rather than toll services; the net toll settlement loss; and the billed toll revenue loss (MTS, WATS, FX) that would be experienced as a result of EAS. Each LEC shall develop a rate schedule which would produce the revenue necessary to recover the costs associated with establishing the EAS network plus net toll revenue loss associated with establishing the EAS.

(c) Carolina may submit proposed rates derived from its matrix plans or it may submit cost studies and rates along with design set out in ordering paragraph 1(b) or it may submit both sets of data. Central may also submit matrix data in addition to the required incremental cost data.

(d) All cost studies and proposed rates are due no later than eight months from the issuance of this Order.

2. As to experimental optional calling plans:

(a) Southern Bell, Central, and GTE shall implement and study on an experimental basis the optional service plans that they have previously

proposed in this docket modified as necessary to encompass the following experimental areas:

(1) Southern Bell

Originating	Terminating
Raleigh to	Chapel Hill, Durham
Cary to	Chapel Hill, Durham
Chapel Hill to	Cary, Durham, Hillsborough, Raleigh, Mebane (Orange County service area only)

(2) GTE

Originating	Terminating
Durham to	Cary, Chapel Hill, Hillsborough, Raleigh

(3) Central

Originating	Terminating
Hillsborough to	Chapel Hill, Durham, Mebane (Orange County service area only)

(b) Mebane shall study the experimental optional calling plans proposed by GTE, Southern Bell, and Central, and shall select one for implementation from its Orange County service area only to Hillsborough and Chapel Hill no later than four months from the date of the issuance of this Order. Mebane shall submit the interim and final reports set out in ordering paragraph 2(c) below contemporaneously with the other companies.

(c) That GTE, Southern Bell, and Central shall each submit an interim report to the Commission six months after the effective date of the tariffs and an interim report one year after the effective date of the tariffs detailing with respect to its experimental plan: (1) toll minutes of use and revenue for calls to points on the experimental area, (2) forecasted minutes of use and revenue absent the experimental plan, (3) toll minutes of use for corresponding months prior to implementation of experimental plan, (4) actual revenue from experimental plan, (5) toll network cost savings, (6) minutes of use for flat rate customers (Southern Bell only), and (7) such other factors as the LECs deem relevant.

(d) GTE, Southern Bell, and Central shall have 60 days from the issuance of this Order to develop and submit tariffs for their alternative plans. The LECs shall coordinate among themselves such that these tariffs become effective simultaneously on a date certain as soon as possible after submission. The experimental plans shall terminate 18 months from the date such tariffs become effective.

3. Central, GTE, Mebane, and Southern Bell shall submit an EAS incremental cost study and proposed rates along the design set out in ordering paragraph 1(b) for their respective experimental areas and for such other sets of exchanges as each LEC may wish to select. Central may also submit rates based on its matrix plan. Such reports are due no later than eight months from the issuance of this Order.

4. That GTE and Southern Bell shall study the requirements necessary to expand the Research Triangle Park district of the Durham exchange and the Raleigh-Durham Airport district of the Raleigh exchange to or near the Wake-Durham County line, such that those districts become contiguous. The study shall include an examination of lands north of I-40 to and near Highway 70, especially lands recently annexed by Raleigh and Durham. Such study shall include, but not be limited to, a detailed map showing current and projected districts, costs related to expansion (including lost toll revenue), and such other items of information as the companies may wish to submit. The study shall be submitted to the Commission no later than six months from the date of the issuance of this Order.

5. That Southern Bell, GTE, and Central shall coordinate among themselves to study the Washington, D. C. metropolitan area phone calling plan and submit a report to the Commission no later than two months from the date of the issuance of this Order detailing their assessment regarding its advisability as a model for implementation in the Wake, Durham, and Orange County area.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of April 1988.

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

Commissioner Tate dissents.

COMMISSIONER TATE, DISSENTING: This Commission has used Extended Area Service (EAS) as a useful device for connecting two neighboring towns with a "community of interest" without charging toll rates. The plan presented to us by Triangle J can in no way be squeezed into the concept of an EAS. In fact Triangle J seeks a regional calling plan and it should be labeled as such and governed by an entirely different set of standards than is used in a conventional EAS situation. I dissent from this decision because I believe it to be far too broad.

I concur in the majority's decision to provide for various experiments in order to provide us with calling data and consumer acceptance of the various plans being offered. I agree that all experimental services should be optional. However, I would have limited the scope of cost studies and experiments to the counties of Wake, Durham and Orange. This is the core of the Triangle and would eliminate at least initially the Pittsboro Exchange in Chatham County, the Mebane Exchange in Alamance County and the Selma Exchange in Johnston County. Even a tri-county calling plan is quite an extensive undertaking, but it would be far more manageable to begin with a limited scope and enlarge it as more knowledge and experience is gained. The core plan would prevent unnecessary cost studies by companies that have only one exchange included in this vast area, eliminate the need for a waiver from Judge Green, and avoid the possibility of having to take back service from consumers at a later point in time.

No one can estimate the potential loss of toll to the settlement pool if local calling is allowed throughout the Triangle J and Triad areas. But everyone knows that this loss would be very substantial and the effect on the settlement pool could adversely affect consumers throughout the State who

would receive no benefits from either plan. On the other hand, if the lost toll is included in the "EAS" rates, many consumers will find that their bills for local service have become exorbitant. We must continue to offer choices to consumers (which EAS does not do) and we ought to proceed cautiously.

The recent report from Southern Bell, Central and General on the Washington, D. C., plan seems to offer an affordable alternative for regions seeking a large calling area. That plan does offer choices and appears to ameliorate toll losses. We should study the Washington Plan and incorporate it into the cost studies already ordered.

The Majority seems to hold out hope that long distance calls can be offered "for free" throughout the Triangle. I do not believe it and I therefore dissent.

Sarah Lindsay Tate, Commissioner

APPENDIX A

CURRENT EAS ARRANGEMENTS IN TRIANGLE J AREA

Wake County

Exchange	EAS
Raleigh	Angier, Apex, Cary, Clayton, Fuquay-Varina, Knightdale, Research Triangle Park, Wake Forest, Wendell, Zebulon (RDU Airport in Raleigh exchange)
Cary, Apex, Knightdale, Wendell, Zebulon	These exchanges can all call each other as well as Raleigh and Research Triangle Park (Cary and Apex to Fuquay-Varina EAS has been approved)
Raleigh-Durham Airport	EAS to all points as Raleigh exchange plus EAS to Chapel Hill, Durham, and Creedmoor
Wake Forest	Raleigh
Fuquay-Varina	Raleigh, Angier (Harnett County)

Durham County

Exchange	EAS
Durham	Research Triangle Park (part of Durham exchange), RDU Airport, Creedmoor

Research Triangle Park	Durham, Chapel Hill, Raleigh, (including RDU Airport), Apex, Cary, Knightdale, Wendell, Zebulon
Creedmoor (Part in Wake County and part in Granville County)	Durham, RDU Airport, Oxford (Granville County)

Orange County

Chapel Hill	Research Triangle Park, RDU Airport, Pittsboro (Chatham County) has been approved

Chatham County

Siler City, Pittsboro, Bonlee, Goldston, and Bennett (TMC) can all call each other.

Pittsboro has EAS approved to	Chapel Hill
Bennett	High Falls in Moore County and Coleridge in Randolph County

Lee County

Sanford, Broadway, and Olivia all call each other

Johnston County

Clayton, Benson, Four Oaks, Smithfield, Selma, Kenly, and Princeton all call each other

Clayton	Raleigh
Kenly	Wilson (Wilson County)
Benson	Dunn (Harnett County)

APPENDIX B

STUDIES REQUIRED BY THIS ORDER

Company	Type of Study	Due Date
Carolina	EAS areawide	8 months from Order
Central	EAS areawide	8 months from Order
	Experimental Plan	6 months and 1 year from tariff effective date
	EAS experimental area	8 months from Order
	Washington, D. C. Plan	2 months from Order

GTE	EAS areawide Experimental Plan	8 months from Order 6 months and 1 year from tariff effective date
	EAS experimental area	8 months from Order
	RTP-RDU Airport	6 months from Order
	Washington, D. C. Plan	2 months from Order
Mebane	EAS areawide Experimental Plan	8 months from Order 6 months and 1 year from GTE-Central-Southern Bell tariff effective date. (Mebane to implement within 4 months of Order).
	EAS experimental area	8 months from Order
Southern Bell	EAS areawide Experimental Plan	8 months from Order 6 months and 1 year from tariff effective date
	EAS experimental area	8 months from Order
	RTP-RDU Airport	6 months from Order
	Washington, D. C. Plan	2 months from Order

DOCKET NO. P-55, SUB 898

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
An Investigation Into a Request by the Triad Telephone Committee for Toll-Free Calling in the Triad Region) ORDER REQUIRING EAS STUDIES

BY THE COMMISSION: In October of 1986, the Triad Telephone Committee (TTC) was formed by the Triad Chambers of Commerce to look into the matter of improving telephone communications among the communities of Guilford and Forsyth Counties, an area known as the Triad with a population of approximately 561,000. Since that time, the TTC has devoted considerable effort to ascertaining the interests and needs of the various communities within the Triad with regard to expanded local telephone calling. During the past year, the TTC made a number of contacts with the Public Staff to discuss the TTC's work and to provide evidence of support for its efforts. The TTC's work included a survey conducted by the Chambers of Commerce of the business community in the Triad area and presentations by the TTC before all of the governmental bodies in the Triad area. Resolutions of support have been received from the Guilford and Forsyth County Commissioners and from various towns and cities involved. These resolutions and survey results as well as other individual letters of support were provided to the Public Staff. During the course of its study, the TTC considered various approaches to improving telephone communications within the Triad. The approaches which have been considered by the TTC include optional calling plans as well as conventional extended area service (EAS). By letter of March 14, 1988, the TTC transmitted a resolution to the Public Staff which suspended its support for Triad optional

calling plans and indicated the TTC's position that a determination of the costs and public support for EAS within Forsyth/Guilford Counties should be made.

On April 18, 1988, approximately 14 representatives of the TTC appeared before the Commission at its regular Commission Conference to argue on behalf of cost studies for Triad EAS. Representatives from Carolina Telephone and Telegraph Company (Carolina), Southern Bell Telephone and Telegraph Company (Southern Bell), North State Telephone Company (North State), and ALLTEL Carolina also appeared. The representative from Carolina stated that his Company should not be required to perform a cost study but should be permitted to utilize its matrix plan.

Based on its meetings with the TTC and the documents of support to it by the TTC, the Public Staff stated its belief that sufficient interest has been demonstrated to justify a request that cost studies be made by the telephone companies serving the Triad area to determine the incremental equipment costs, the net toll settlement loss, the billed toll revenue loss (MTS, WATS, FX) and local rate increases necessary to recover the costs resulting from the establishment of flat-rate, two-way, non-optional EAS among the following exchanges which serve the Triad area:

TELEPHONE COMPANY	EXCHANGES
ALLTEL Carolina	King, Lewisville, Old Town, Rural Hall, Stanleyville
Carolina	Gibsonville, Kernersville
Central	Walkertown
North State	High Point
Southern Bell	Greensboro, Julian, Monticello, Summerfield, Winston-Salem

On March 4, 1988, Southern Bell filed tariffs with an effective date of May 1, 1988, to provide extended local calling options in the Triad area on a two-year trial basis. Also on April 4, 1988, North State filed a tariff which is essentially the same as that filed by Southern Bell. These filings were apparently made in response to the TTC's ongoing efforts to effect improved communications for subscribers in the Triad area. Both companies indicated that they would require up to 12 months from Commission approval of the tariff filing to implement the optional plans. This time period would be needed to make facilities additions and equipment upgrades and to educate and inform the subscribers of the availability and use of the optional plans. Since the TTC has suspended its support for optional calling plans and has requested that conventional EAS for the Triad area be pursued, the Public Staff asked that Southern Bell's and North State's tariff filings be suspended until an investigation into conventional EAS for the Triad area could be completed. Furthermore, the Public Staff stated its opinion that simultaneously pursuing optional calling plans and conventional EAS is not in the public interest since economic inefficiencies and confusion among the affected subscribers will occur from such an approach.

Based upon a careful consideration of the evidence and filings in this docket, the Commission finds and concludes that:

1. Sufficient public interest has been demonstrated to justify cost studies of and proposed rates for flat-rate, two-way, non-optional EAS among the exchanges listed in ordering paragraph 1(a) below.

Rule R9-6(c) requires that entities seeking the Commission to open a docket to investigate the need for EAS must demonstrate "broad-based support" for such EAS. Such support can be proved by "resolutions and letters from civic groups, institutions, local governments, elected officials and petitions signed by affected subscribers." The submissions of the TTC, including the appearance of 14 TTC representatives before the Commission, have demonstrated such "broad-based support." In addition, the Public Staff has pronounced itself satisfied that there has been sufficient interest demonstrated to justify requiring the affected telephone companies to perform cost studies. The question of geographical extent was settled on by the Commission on the basis of the recommendations of the TTC and the Public Staff.

2. As to the data concerning flat-rate, two-way, non-optional Triad EAS:

(a) Data should be collected by ALLTEL Carolina, Carolina, Central, North State, and Southern Bell and submitted to the Commission no later than eight months from the date of the issuance of this Order covering the exchanges listed in Ordering Paragraph No. 1(a) below.

(b) ALLTEL Carolina, North State, and Southern Bell should perform and submit incremental cost studies and proposed rates. The incremental cost study should include cumulatively and separately, incremental equipment costs; embedded costs supporting investments which have previously been used to provide toll service but which under EAS would be used for EAS rather than toll services; the net toll settlement loss; and the billed toll revenue loss (MTS, WATS, FX) that would be experienced as a result of EAS. A rate schedule should be developed by the companies which would produce the revenue necessary to recover costs associated with establishing the EAS network plus net toll revenue loss associated with establishing the EAS network.

(c) Carolina and Central should submit proposed rates. They may submit rates derived from their matrix plan or they may submit incremental cost studies along the design set out above, or they may submit both sets of data.

(d) All the companies should coordinate their efforts in making cost studies to ensure that a compatible and efficient network design is used.

Several points should be noted about these findings and conclusions regarding cost study and rate design. First, the Commission is willing to consider toll loss both as an informational item in the cost study and as an element in rate design. While there is nothing unusual about receiving toll loss figures for information, including toll loss in rate design is not the usual practice, and the presumption in the rules is against it (Rule R9-7(d)). However, Rule R9-7(e)(1) also provides that toll loss can be considered if failure to consider lost toll revenues would result in serious financial distress to the LEC and, in turn, to its remaining local customers. The Commission concludes that it has been demonstrated that failure to consider toll loss may result in serious financial hardships to the LECs, considering

the size of the EAS proposal. Large toll losses should not be ignored either as to their potential impact on the local ratepayers or their possible ultimate impact on ratepayers statewide. By receiving the toll loss figures separately and seeking how they are figured in the rates, the Commission retains maximum flexibility to make the decisions that will best serve the public interest.

The second point to be noted is that the Commission is allowing Carolina and Central the option of using their matrix plans or using the incremental cost methodology. This is in accord with Rule R9-7(f) and Rule R9-7(e)(1). These rules indicate that incremental costs studies will not generally be required of matrix telephone companies except under "unusual and extenuating circumstances." Although the EAS request is large, Carolina's and Central's roles are essentially marginal and the use of matrix results would not be false or misleading. Nevertheless, Carolina and Central should have the option of using either or both methodologies.

The last point to be noted concerns the contents of the incremental costs study. Rule R9-7(e)(2) indicates that such studies will be deemed to include additional equipment costs applicable to EAS plus certain embedded costs. On the recommendation of the Public Staff, the Commission is also requesting information regarding net toll settlement loss and the billed toll revenue loss (MTS, WATS, FX). The billed toll revenue loss is in accord with the Commission's decision to allow rate design utilizing toll revenue loss, and is a proper subject for inquiry in any event. Net toll settlement loss is simply another item which will assist the Commission in getting a truer picture of the impact of EAS.

The decision of the Commission to structure the studies in this fashion is virtually identical to the procedure adopted by the Commission in the Triangle J EAS docket (P-55, Sub 888).

3. ALLTEL Carolina, Carolina, Central, North State, and Southern Bell should coordinate among themselves to study the Washington, D. C. metropolitan phone service plan and report to the Commission regarding its advisability as a model for implementation in the Guilford and Forsyth County area no later than two months from the date of issuance of this Order.

This is virtually identical to the information requested in the Triangle J EAS docket (P-55, Sub 888). The D. C. plan appears to offer several optional calling scopes and a mixture of flat-rate and measured service features at relatively low rates. The Commission would like to receive more detailed information on this plan together with a detailed assessment regarding its advisability as a model for implementation in Forsyth and Guilford Counties.

4. The tariffs filed by Southern Bell on March 4, 1988, and the tariffs filed by North State on April 4, 1988, to offer optional local calling plans in the Triad area should be suspended pending further Order.

The Commission notes, however, that the study of EAS for the Triad area does not by any means forever foreclose the opportunity for the Triad to receive optional plans at some point in the future. The TTC and Public Staff have recommended and the Commission has concurred that only the flat-rate EAS should be studied at the present time. However, conditions may change in such a way that optional plans may be desirable.

IT IS, THEREFORE, ORDERED as follows:

1. As to data concerning flat-rate, two-way, non-optional area-wide EAS:

(a) ALLTEL Carolina, Carolina, Central, North State, and Southern Bell shall gather and submit to the Commission, no later than eight months from the date of the issuance of this Order, data covering the following exchanges: King, Lewisville, Old Town, Rural Hall, Stanleyville, Gibsonville, Kernersville, Walkertown, High Point, Greensboro, Julian, Monticello, Summerfield, and Winston-Salem.

(b) ALLTEL Carolina, North State, and Southern Bell shall perform and submit incremental cost studies and proposed rates. The incremental cost study shall include, cumulatively and separately, incremental equipment costs; embedded costs supporting investments which have previously been used to provide toll service but which under EAS would be used for EAS rather than toll services; the net toll settlement loss; and the billed toll revenue loss (MTS, WATS, FX) that would be experienced as a result of EAS. Each LEC shall develop a rate schedule which would produce the revenue necessary to recover the costs associated with establishing the EAS network plus net toll revenue loss associated with establishing the EAS.

(c) Carolina and Central shall submit proposed rates. Carolina and Central may submit proposed rates derived from their matrix plans or they may submit cost studies and rates along the design set out in Ordering Paragraph 1(b) or they may submit both sets of data.

(d) ALLTEL Carolina, Carolina, Central, North State, and Southern Bell shall coordinate their efforts in making the cost studies to ensure that a compatible and efficient network design is used.

2. ALLTEL Carolina, Carolina, Central, North State, and Southern Bell shall coordinate among themselves to study the Washington, D. C. metropolitan phone service plan and report to the Commission regarding its advisability as a model for implementation in the Guilford and Forsyth County area no later than two months from the date of the issuance of this Order.

3. That the tariffs filed by Southern Bell on March 4, 1988, and the tariffs filed by North State on April 4, 1988, to offer optional local calling plans in the Triad should be, and are hereby, suspended pending further Commission Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of June 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Sarah Lindsay Tate dissents.

COMMISSONER TATE, DISSENTING: I dissent to this Order because I believe no cost studies should be ordered in the Triad until the results from the Triangle J experiments have been completed. Together, the Triad and Triangle J decisions will affect more than seven telephone companies and 1.3 million

consumers in eight counties. The consideration and implementation of a regional calling plan for Triangle J should come first. This is especially important since no optional plan is requested for the Triad, from which the Commission could obtain calling data. The Commission should have the information from the Triangle J experiments in order to make a well-informed and intelligent decision. Together these two plans affect almost all of the Northern Piedmont area of North Carolina and should be approached with caution and great concern for the effect on local telephone rates. To treat the Triad as a typical extended area service plan is to ignore the potential harm to residential subscribers. It is ironic that this Order goes out one day after the Commission received a report on the Washington, D. C. Metropolitan area calling plan. That plan should have been considered before this Order was issued.

Sarah Lindsay Tate, 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	)))))	FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, Raleigh, North Carolina, on Monday, January 25, 1988, 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, Julius A. Wright, and William Redman, Jr.

APPEARANCES:

For Martha H. Mackie:

F. Kent Burns, Burns, Day & Presnell, P.A., Attorneys at Law, Box 2479, Raleigh, North Carolina 27602

For the Public Staff:

Vickie Moir, Staff Attorney, Public Staff, North Carolina Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On December 28, 1987, Commission Hearing Examiner Sammy R. Kirby entered a Recommended Order in this docket entitled "Recommended Order Denying Abandonment, Granting Franchise, and Approving Rates." By this Order, the Hearing Examiner found and concluded, in pertinent part, as follows:

1. That Martha H. Mackie is a public utility under the jurisdiction of and subject to regulation by the North Carolina Utilities Commission;

2. That the public convenience and necessity are served by the furnishing of water and sewer service by Ms. Mackie to her customers in Falls of the Neuse Village;

3. That Ms. Mackie's water and sewer systems can each produce sufficient revenue under the approved rates to meet their respective reasonable expenses of operation, and that authority to abandon public utility service should be denied;

4. That improvements are needed to both Ms. Mackie's water and sewer systems; however, even after reasonable investments are made to improve the systems, each system can produce sufficient revenue to meet the reasonable expenses of operation;

5. That Ms. Mackie 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; and

6. That Ms. Mackie should be granted a certificate of public convenience and necessity to provide water and sewer utility service.

On January 12, 1988, Ms. Mackie filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

By Order dated January 13, 1988, the Commission scheduled an oral argument for Monday, January 25, 1988, to consider Ms. Mackie's exceptions. The matter subsequently came on for oral argument on exceptions. Both Ms. Mackie and the Public Staff were represented by counsel who offered oral argument.

Based upon a careful consideration of the Recommended Order entered in this docket on remand on December 28, 1987, the exceptions thereto filed by Ms. Mackie, the oral argument on exceptions offered by the parties, and the entire record in this proceeding, the Commission is of the opinion, finds, and concludes that all of the findings of fact, conclusions, and decretal paragraphs set forth in the Recommended Order are fully supported by the record; that the Recommended Order should be adopted and affirmed by the Commission; and that each of the exceptions filed by Ms. Mackie should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the exceptions filed by Ms. Mackie with respect to the Recommended Order entered in this docket on remand on December 28, 1987, be, and each is hereby, overruled and denied.

2. That the Recommended Order entered in this docket on remand on December 28, 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 24th day of February 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Edward B. Hipp dissents.

DOCKET NO. W-785 (ON REMAND)

HIPP, COMMISSIONER, DISSENTING. I dissent from the majority Order because (1) I do not believe that the rates approved for water and sewer service furnished by Martha H. Mackie are just and reasonable under the North Carolina Public Utilities Act, (2) I do not believe that the rates are adequate to provide the quality of service to which customers of regulated water and sewer companies are entitled, and (3) I do not believe that the economic feasibility of operating the Mackie system can be properly decided until the engineering studies of needed improvements ordered by the Commission are completed, and

final action on Mrs. Mackie's petition to abandon should be deferred until that time.

The rates established by the Commission are inadequate to provide safe water and sewer service and they will result in substantial losses to the owner, Mrs. Mackie, and will constitute a confiscation of her property without due process of law, because of the following rulings by the Commission.

1. A drastically inadequate determination of the rate base of the water and sewer systems to be a zero rate base except for test period additions, and, therefore, entitled to no return on the investment in the plant serving the public.

2. Disallowance of reasonable depreciation expense for the rate base, as a result of the ruling that the rate base was essentially zero.

3. Insufficient allowance for maintenance expenses, based primarily on almost zero maintenance during the test period due to the pending petition to abandon, without sufficiently normalizing an adequate level of maintenance expenses.

4. Insufficient return for the risk involved in operating the Mackie water and sewer systems.

(1) Zero Rate Base. The Recommended Order finds the rate base to be zero, notwithstanding testimony that $29,250 of the $45,000 paid for the water and sewer systems and 18 acres of land should be apportioned to the water and sewer systems. The basis of the ruling was that Mr. Mackie, the husband of the applicant Mrs. Mackie, arranged to buy the systems and gave the check to the owner Scarsdale Investment Corporation, and then had the deed from Scarsdale, as Grantor, made to Mrs. Martha H. Mackie, as Grantee. The rationale is that Mrs. Mackie thus received the water and sewer systems as a gift from Mr. Mackie, and she therefore had no cost for the plant, and it would thus have a zero rate base. This is based on policy originating in 1975 in NCUC v. Heater, 288 N.C. 457, where the Court found that if a developer charged purchasers of lots or houses a price including water and sewer plant and wrote the cost off on his tax returns and then contributed the plant to a water or sewer company that it would be deemed contributed plant without a rate base because the owners should not pay a return on the plant which they had paid for in their house cost.

Clearly, that rationale is not applicable to the Mackie case. The Grantor Scarsdale was paid $45,000 for the 18 acres and the water and sewer plant, albeit by Mr. Mackie instead of Mrs. Mackie, but Scarsdale was not the developer, and was paid aside from whatever price the homeowners paid for the mill houses when the mill operation closed down beginning in 1950. Under North Carolina law, a man and wife are considered to be one entity for many purposes, and, where the husband delivers the check for a water and sewer system which is deeded to the wife, they still have certain marital rights in the respective property of the marriage partners. To come under the Heater Case rule, Scarsdale would have to be the party who contributed the plant to Mrs. Mackie; where, as here, Scarsdale was fully paid for the water and sewer plant by the husband of the present owner, Mrs. Mackie, and under G.S. 62-133, she is entitled to a fair return on the reasonable cost of the plant. Certainly, from

the standpoint of the customers, they are receiving water and sewer service from a plant for which the applicant's husband paid an apportioned $29,250. It consists of an elevated water storage tank and water lines, receiving tank and pump house, sewage disposal sand pit, and land for tanks and water lines, and under the majority decision it is being confiscated to serve the customers without compensation.

The Recommended Order did allow $1450 rate base for the water operation to cover a chlorine system purchased during the test year and $368 for sewer operations to cover pipe purchased during the test year and depreciation expenses were allowed for these new items acquired by Mrs. Mackie, but they do not relate to any of the plant deeded to Mrs. Mackie in the original purchase from Scarsdale.

(2) Depreciation. Having assigned a zero rate base, the Hearing Examiner consequently disallowed all depreciation expense except on test year additions. The $17,000 assigned to the elevated tank, water lines, receiving tank and pump lines are all depreciating each year and cannot be replaced without an allowance for depreciation expense. Yet, as the owner of a public utility, Mrs. Mackie will be required to replace all of these parts of the plant as they wear out without accumulating depreciation reserves. This is an unlawful confiscation of her property, to use up the plant without any compensation.

(3). Maintenance and Repairs. The Hearing Examiner has allowed $337 e year for maintenance and repair of the water operation and $582 a year for maintenance and repair of the sewer operation for a combined $991 for maintenance and repair of the combined water and sewer operations. This compares with testimony that the level of repairs and maintenance should exceed the test period when repairs and maintenance was reduced far below that normally required and had been "abandoned" for the last 12 months due to the pending petition to abandon the plant, and the test year expenses would not cover adequate repair and maintenance on an ongoing basis. The repairs and maintenance expected and anticipated should be $2379 per year for the combined operations.

(4). Rate of Return. It is obvious that the risk involved in operating the Mackie system is far beyond the risk of an ordinary water and sewer system due to the lack of ownership of the water supply and the totally inadequate sewer disposal system, and too few customers to pay for the major new investment required to build an adequate water supply and sewerage disposal system. The risk is grave and the Commission, should grant a higher return to compensate for such a risk in order to allow the applicant to continue the service and to continue to work to try to improve the system to minimum standards of safety and reliability.

The Commission has in recent years recognized the need for adequate water and sewer rates to cover expenses of small water and sewer systems in North Carolina, except for the Mackie case. It is not infrequent for rates to be approved without hearing equal to $20 a month for sewer service and $16 a month for water service. The rates approved in this case of $12.76 for water service and $13.67 for sewer service are below rates typically approved for problem free water and sewer systems.

Where an owner is being compelled to operate a system by law which she seeks to abandon, the Commission should allow rates which will cover the full cost of the system and encourage the owner to provide the improvements needed for health and safety of operation.

Without going through all of the calculations for the above four changes and the accounting adjustments that would follow, I would estimate that such a corrected rate formula would produce rates of at least $16.00 a month for water and $20.00 a month for sewer service. These rates are not substantially different from many recently approved water and sewer rates regulated by the Commission.

I would defer ruling on Mrs. Mackie's petition to abandon until the engineering studies required in the Order are completed.

The findings by the Hearing Examiner that the systems can be feasibly operated after all improvements are made are based on estimates of future rates without engineering studies. They should be held in abeyance until proper hearings can be held on the engineering studies and a more adequately based feasibility study can be made.

The Court of Appeals vacated the Commission's denial of Mrs. Mackie's petition to abandon and remanded the case to the Commission because of insufficient weight given to the cost of repairs. 79 Ct.App. 19, at p.31. The Hearing Examiner has ordered Mrs. Mackie to have engineering studies made of the repairs needed. The cost of the repairs cannot properly be made before the engineering studies are completed.

The petition to abandon should not be decided until this is done.

Edward B. Hipp, Commissioner

DOCKET NO. W-6, SUB 13
DOCKET NO. W-6, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Applications of Regional Investments of Moore, Inc., to Receive the Franchises of the Water and Sewer Systems Serving the Area in and around the Village of Pinehurst, North Carolina and to Pledge Certain Utility Assets) ORDER DEFERRING RULING ON APPLICATION

HEARD: May 21, 1987, in the Municipal Building, Southern Pines, North Carolina

June 4 and 5, and September 9 and 10, 1987, in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Ruth E. Cook, presiding; and Commissioners Edward B. Hipp and William W. Redman, Jr.

APPEARANCES:

For the Applicant:

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

For the Attorney General:

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

For the Public Staff:

A. W. Turner, Jr., 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 Intervenor the Village of Pinehurst:

William E. Anderson, DeBank, McDaniel, Heidgerd, Holbrook & Anderson, Attorneys at Law, Post Office Box 58186, Raleigh, North Carolina 27658;
and
W. Lamont Brown, Brown, Robbins, May, Pate, Rich, Scarborough & Burke, Attorneys at Law, Post Office Box 370, Southern Pines, North Carolina 28374

COOK, PRESIDING; HIPP AND REDMAN: This proceeding was commenced on February 9, 1987, with the filing of an application by Regional Investments of Moore, Inc. ("RIM" or the "Applicant") for approval to acquire the franchise of the water and sewer systems serving an area in and around the Village of Pinehurst and to purchase the assets of those systems. This application was filed in Docket No. W-6, Sub 13.

On February 26, 1987, the Village of Pinehurst ("the Village" or the "Intervenor") filed a Petition for Leave to Intervene. Also, on February 26, 1987, the Village filed a Motion to Dismiss RIM's application.

On March 4, 1987, the Applicant filed its response to the Village's Petition for Leave to Intervene and the Village's Motion to Dismiss. The Applicant, in its response, did not oppose intervention by the Village, but did oppose the Village's Motion to Dismiss and requested a hearing on this matter.

On March 6, 1987, the Attorney General filed his Notice of Intervention.

The Commission, by Order dated March 11, 1987, allowed intervention by the Village and set oral argument on the Village's Motion to Dismiss for March 23, 1987.

On March 12, 1987, the Village filed a Motion to Postpone Oral Argument on the Motion to Dismiss or, in the alternative, set oral argument on the Motion for the same time as the hearing on the transfer application.

By Order dated March 23, 1987, the Commission scheduled a public hearing on the transfer application for April 30, 1987, and rescheduled oral argument on the Village's Motion to Dismiss for the same time.

The Village, on March 31, 1987, filed a Further Motion to Continue the hearing and oral argument set for April 30, 1987.

On April 1, 1987, the Applicant made an oral Motion that the Village's Motion to Continue be set for oral argument at the earliest possible time.

The Commission by Order dated April 3, 1987, scheduled oral argument on the Village's Motion to Continue for April 6, 1987. The oral argument was held as scheduled.

On April 14, 1987, the Commission issued an Order granting the Village's Motion to Continue and rescheduling the hearing on the transfer application and oral argument on the Village's Motion to Dismiss for June 4, 1987. In the same Order, the Commission scheduled a hearing in Southern Pines for May 21, 1987, for the purpose of taking the testimony of public witnesses.

On May 18, 1987, the Village filed a Motion for Clarification of the hearing schedule.

Also, on May 18, 1987, the Applicant filed an application for permission to pledge the utility assets which the Applicant proposed to purchase. This application was filed in Docket No. W-6, Sub 14.

On May 20, 1987, the Commission, in response to the Village's Motion for Clarification of the hearing schedule, issued an Order providing that any witness that the Village intended to present in support of its position should be presented at the hearing scheduled for June 4, 1987.

On May 29, 1987, the Applicant filed a Motion in Limine.

On June 2, 1987, the Commission issued an Order rescheduling the time for the hearing on June 4, 1987. Also, the Commission ordered oral argument on the Village's Motion to Dismiss to be held at the conclusion of all the evidence.

On June 4, 1987, prior to the presentation of evidence by the parties, the Commission consolidated Docket No. W-6, Sub 13 and Docket No. W-6, Sub 14, for decision-making purposes. Also, the Commission heard oral argument on the Applicant's Motion in Limine, after which the Commission denied the Applicant's Motion.

Other administrative, procedural, and discovery pleadings and Orders appear of record in the Commission's official files.

This proceeding came on for hearing in Southern Pines as scheduled on May 21, 1987, at which time the Commission heard evidence from 18 public witnesses. The following witnesses testified in opposition to RIM's application: Eugene Sheasby, Robert E. Best, Richard Nelson, William F. Scott, James W. Good, Jr., Philip S. Campbell, John McGuire, Carl Colozzi, Jane Clark, Emanuel S. Douglas, Harris Blake, and George Read. Mr. Sheasby testified on behalf of the Pinehurst Civic Group, which has approximately 700 members; Mr. Nelson testified as the President of the Number Six Golf Course Property Owner's Association, which consists of 838 property owners. Two witnesses testified in support of RIM's application: William Miller, the Vice-President of CCA Club Resorts, the parent company of Resorts of Pinehurst, and Penny Hayes. Travis Brown, Director of Lake Pinehurst Association (90 members), testified about faulty sewer and sewer manhole maintenance. Henry V. Middleworth and Gordon Rauck testified about problems with the installation of irrigation meters. The Commission also accepted several exhibits in connection with the above testimony. Petitions and letters opposing and supporting the transfer were also offered for the record.

Upon conclusion of the testimony of the public witnesses, the witnesses of the parties testified before the Commission on June 4 and 5, 1987, and September 9 and 10, 1987.

The Applicant offered the testimony of John Karscig, President of Pinehurst Enterprises, Inc., and shareholder of the Applicant; Frank Morris, Regional Engineer for South Central Region of the North Carolina Division of Health Services, Public Water Supply Branch; Michael F. Ryan, Vice President in charge of Regional Corporate Lending for the Eastern Region of Wachovia Bank and Trust Company; Edward E. Coleman, Chief Executive Officer of Pinehurst Enterprises, Inc.; and Robert W. Van Camp, President of Growth Management, and shareholder of the Applicant. In addition to testimony in support of the Application, the Applicant's witnesses also addressed the problems raised at the public hearing in Southern Pines. The Commission accepted several exhibits offered in connection with the testimony of the Applicant's witnesses.

The Village offered the testimony of George A. Wood, Village Manager of the Village of Pinehurst, North Carolina; William C. Piver, a consulting engineer specializing in sanitary engineering; Robert M. Leary, an urban planning and management consultant and President of Robert M. Leary & Associates; Marjorie Heller, Treasurer of Village Council of Pinehurst; Robert S. Viall, Village of Pinehurst Fire Chief; Bill Coleman, Town Manager of Southern Pines, North Carolina; Sam K. Greenwood, Town Manager of Aberdeen, North Carolina; and Charles Grant, Mayor of the Village of Pinehurst. The Commission accepted several exhibits offered in connection with the testimony of the Village's witnesses.

At the close of testimony by the Village's witnesses, the Applicant offered the testimony of Wendle Snapp, Director of the Civil and Environmental Division for Wilbur Smith & Associates, and Fred Hobbs, President of Hobbs-Upchurch & Associates, as rebuttal witnesses. Due to the lateness of the hour the parties did not make oral argument on the Motion to Dismiss but discussed this matter in their briefs and proposed orders.

Upon careful consideration of all the evidence presented, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. The present holders of the franchise for the water and sewer systems serving the area in and around the Village of Pinehurst are Pinehurst Water Company, Inc., and Pinehurst Sanitary Company, Inc., which are public utility companies duly organized under the laws of North Carolina and subject to the jurisdiction of this Commission. The Commission has jurisdiction over the application for approval of the transfer of the utility franchises and assets from Pinehurst Water Company and Pinehurst Sanitary Company to RIM.

2. RIM is a corporation duly organized under the laws of the State of North Carolina, and upon approval of its purchase of the franchise and utility assets for the water and sewer systems serving the area in and around the Village of Pinehurst, RIM will be a public utility company subject to the jurisdiction of this Commission. Thus, the Commission has jurisdiction over RIM's application for permission to pledge utility assets.

3. Pinehurst Water Company and Pinehurst Sanitary Company are wholly-owned subsidiaries of Pinehurst Enterprises, Inc., which is a wholly-owned subsidiary of Resort Holding Corporation. Resort Holding Corporation is owned by a group of eight banks, which had lent money to Purcell Company, Inc., a previous owner of Pinehurst's water and sewer facilities. After Purcell Company, Inc., experienced financial difficulties, the lending banks purchased all of Purcell's Pinehurst assets, including the utilities, and placed them into Resort Holding Corporation.

4. Subject to Commission approval, RIM entered into an agreement effective February 27, 1987, to purchase Pinehurst's water and sewer facilities from Pinehurst Enterprises, Pinehurst Sanitary Company, and Pinehurst Water Company. Also, on the same date, RIM entered into a loan agreement with Wachovia Bank & Trust, secured by a deed of trust for the assets of Pinehurst's water and sewer systems. RIM, in this proceeding, seeks Commission approval for the above transactions.

5. On February 9, 1987, in Docket No. W-6, Sub 13, RIM applied for approval of its purchase of the franchises and assets of the water and sewer systems serving an area in and around the Village of Pinehurst, North Carolina.

6. On May 18, 1987, in Docket No. W-6, Sub 14, RIM applied for permission to pledge the utility assets, which it proposed to purchase.

7. Prior to March 1982, the parent company of Pinehurst, Inc., was Diamondhead Corporation; Diamondhead Corporation was succeeded by Purcell Company, Inc. In March 1982, Purcell Company, Inc., transferred its assets to Pinehurst, Inc., which changed its name to Pinehurst Enterprises, Inc.

8. These transfers were ultimately approved by the Commission in Docket No. W-6, Sub 11.

9. The application for approval of the sale and transfer is opposed by the Village of Pinehurst. The Village of Pinehurst is a North Carolina municipal corporation with a Mayor, Village Council, and, under the council manager form of government, a Village Manager.

10. In 1973 a Consent Judgment was entered in the Superior Court of Moore County in the case of "Erle G. Christian et al, Plaintiffs vs. Diamondhead Corporation, Pinehurst, Inc., Malcolm McLean, and the Village Council of Pinehurst, North Carolina, Defendants." (73 CVS 594.) There is evidence that the Defendants Pinehurst, Inc., and Diamonhead Corporation and the Village Council of Pinehurst are predecessors to the parties presently before the Commission in these dockets.

11. The Consent Judgment provides in relevant part as follows:

"SALE OF UTILITIES

"13. In the event that the Defendants Pinehurst and Diamondhead shall receive a bona fide offer for the sale of said utilities, prior to accepting said offer, said Defendants shall give to the Village Council for a period of ninety (90) days a right of first refusal to purchase said utilities on behalf of the residents of the Village of Pinehurst at a price and on terms at least equal to the price and terms of the highest offer to said Defendants by a bona fide purchaser. This provision is conditioned upon an adequate assurance on behalf of the Village Council that those services as then rendered by the said utilities shall be maintained at their then level, including rendering services or agreeing to render services to areas outside the Village Boundary if said service is then being rendered or has been provided or committed to said areas. It is agreed that the sale and purchase of the said utilities shall be consummated within one hundred eighty (180) days of the Village Council exercising the right of first refusal.

"In the event that control of the Defendant Pinehurst, Inc., shall be transferred by a sale of the stock or the majority of the stock of said corporation, or in the event a majority of the assets of the Defendant Pinehurst, Inc., are sold or transferred, then in either event the right of first refusal to purchase said utilities

shall survive said sale but shall not be exercisable as a result of said sale.

****

"It is now, therefore, ORDERED, ADJUDGED AND DECREED that those items of settlement consented to by the parties stated as Nos. 1 through 22 is a fair, adequate and reasonable settlement, and the same is hereby approved, and shall be binding upon all parties hereto and shall remain in full force and effect as to the heirs, successors and assigns of said parties; . . . ." (Intervenor's Exhibit A-2.)

Diamondhead Corporation, Pinehurst, Inc., and the Village Council were among the parties that consented to the Consent Judgment.

12. There was no evidence that the Consent Judgment has been appealed, modified, amended, or set aside in any formal judicial proceeding, but the Applicant has contended that the Consent Judgment has been rendered void or invalid by operation of law.

13. In a letter dated December 10, 1980, the President of Pinehurst, Inc., advised the Village Council of the Village of Pinehurst as follows:

"Pursuant to the Consent Decree of 1973, in the event that Pinehurst, Incorporated receives a bonafide offer for the sale of any of its utilities, it shall give a right of first refusal to the Village Council to purchase said utilities at a price and on terms at least equal to the offer received from said bonafide purchaser.

"Attached is a copy of an offer dated December 9, 1980, from Carolina Power & Light Company with reference to the purchase of the electric distribution system and all of its equipment.

"Although you have a period of ninety days in which to elect to purchase said system for the price set out in the order, we would appreciate anything you can do to expidite (sic) your decision on this issue." (Intervenor's Exhibit D-1.)

By letter dated December 16, 1980, the Village of Pinehurst advised Pinehurst, Inc., that it did not oppose the sale of the electric utility to Carolina Power & Light Company. (Intervenor's Exhibit D-2.)

14. The Mayor of the Village of Pinehurst testified at the hearing in these dockets that the Village was unaware of the proposed sale of the utilities at issue in this proceeding until the Commission advised the Village that the Application in Docket No. W-6, Sub 13, had been filed with the Commission on February 9, 1987. The Village regards the failure of Pinehurst Enterprises, Inc., to provide an opportunity for first refusal at an earlier date when it had received a firm offer from the buyer, to constitute a breach of the first refusal provision of the Consent Judgment.

15. By letter of February 24, 1987, the Village of Pinehust advised Pinehust Enterprises, Inc., as follows:

> "The Village of Pinehurst, as now constituted, being the successor to all of the rights, privileges, opportunities and responsibilities of the said Village Council as defined and called for in said CONSENT JUDGMENT, does hereby exercise its said right of first refusal, and notice of its intention to do so is hereby given, and it hereby declares that it is ready, willing, and able to consummate the said sale and purchase and of said utilities on the basis set forth in the Memorandum Agreement submitted to Pinehurst Enterprises as a successor corporation to Pinehurst, Inc., and Diamondhead Corporation." (Intervenor's Exhibit C-10.)

16. In subsequent pleadings filed with the Commission, including its Motion to Dismiss, and in testimony at the hearing, the Village of Pinehurst has pleaded the Consent Judgment as a bar or an impediment to the proposed transfer and has reiterated its intention to exercise the right of first refusal set forth in the Consent Judgment.

17. In the summer and fall of 1986 Pinehurst and the Village conducted negotiations on the sale of the utilities to the Village. The results of these negotiations were inconclusive, and the parties have differing interpretations as to the legal effect of these negotiations.

18. In its Proposed Order and Brief, the Applicant RIM requests the Commission to find that "[t]he Village does not have a valid right of first refusal to purchase Pinehurst's water and sewer facilities" and that "[t]here is no enforceable contract between Pinehurst Enterprises and the Village for the sale of Pinehurst's water and sewer facilities."

CONCLUSIONS

The ultimate issue in this proceeding is whether or not the approval of the Application is justified by the public convenience and necessity. G. S. 62-111(a). Prior to making this determination, however, the Commission must first address the issue of the Consent Judgment entered in the Moore County Superior Court in 1973.

In its Motion to Dismiss Application filed on February 26, 1987, the Village of Pinehurst moved the Commission to dismiss the application or, in the alternative, to stay these proceedings. In support of its Motion, the Village alleged that the proposed transferor is, on information and belief, without lawful authority to sell and transfer the utility systems by virtue of the Consent Judgment which was entered in Moore County in 1973 in a case captioned "Erle Christian et.al, Plantiffs vs. Diamondhead Corporation, Pinehurst, Inc., Malcolm MacLean, and the Village Council of Pinehurst, North Carolina, Defendants"; that the Consent Judgment provides that the Village Council has a right of first refusal to purchase said utilities; and that the Village of Pinehurst has given notice to Pinehurst Enterprise Inc., as successors to said Defendants Pinehurst, Inc., and/or Diamondhead Corporation, that it wishes to exercise its right of first refusal to purchase the utilities on behalf of the residents of the Village of Pinehurst on terms equal to the price in terms of the existing offer. The Motion further alleged that the Village Council is ready, willing, and able to follow through with its responsibilities to effectuate the acquisition.

In its response to the Motion to Dismiss, the Applicant requested the Commission to deny the Motion to Dismiss on the grounds that the Consent Judgment is "invalid and unlawful" for the following reasons, among others:

"a. Such Consent Judgment, to the extent binding at all, is binding upon parties other than those who currently own or seek to own Pinehurst Water Company and Pinehurst Sanitary Company.

"b. Such Consent Judgment was entered in 1973, was not renewed, and is therefore unenforceable.

"c. Such Judgment purports to grant the 'Village Council' as Village Council is defined in such Consent Judgment an option to purchase real and personal property, such option remaining outstanding under the terms of the Consent Judgment for a period without limitation. The interest created by such Consent Judgement therefore is unenforceable as an unlawful impediment to the free alienation of property."

At the hearings in this proceeding in June and in September 1987, the parties presented testimony concerning the Consent Judgement and conducted cross-examination on this issue. The Consent Judgment itself was admitted into evidence.

Thereafter the parties submitted to the Commission proposed orders and briefs for the Commission's consideration. These briefs and proposed orders address the issue of the Consent Judgment and its applicability to this proceeding. In its Proposed Order the Applicant RIM requested the Commission to make the following findings of fact with respect to the Consent Judgment:

"FINDING OF FACT NO. 14

"The Village does not have a valid right of first refusal to purchase Pinehurst's water and sewer facilities.

"FINDING OF FACT NO. 15

"There is no enforceable contract between Pinehurst Enterprises and the Village for the sale of Pinehurst water and sewer facilities."

In its Proposed Order and in its Brief, the Applicant RIM presented the argument that the Village cannot "enforce its alleged right of first refusal because the Consent Judgment, and the right of first refusal contained therein are invalid." The Applicant further argued that the right of first refusal in the Consent Judgment is void and that the Consent Judgement is void as a whole for the following reasons:

a. The right of first refusal created by the Consent Judgment is void as a violation of the rule against perpetuities.

b. The Consent Judgment was void ab initio as beyond the authority of the Court and in violation of the law of North Carolina; further, the Village

of Pinehurst is not a proper successor so as to enforce the right of first refusal.

c. The Consent Judgment is void as containing void terms.

d. The Village's argument that the Consent Judgment is valid because it has been assumed to be valid in the past is incorrect.

The Applicant further argued that assuming that the Consent Judgment is valid, the Village has not exercised its right of first refusal.

In its Brief and Proposed Order the Village contended that the Commission should reject the contentions of the Applicant that the Consent Judgment is invalid and should make findings that the 1973 Consent Judgment gives the Village Council the right of first refusal pursuant to the terms of that Judgment and that the Village Council has given notice of its intention to exercise the right of first refusal and has given the assurance contained in that condition.

In its Brief, the Attorney General recommended that the Commission should defer ruling on the application in this docket until the contractual claims of the Village of Pinehurst are resolved in the Superior Court of Moore County. The Attorney General argued that the Consent Judgment has not been modified or set aside by a court of jurisdiction and that its terms remain valid and is an impediment to a final transfer of the franchise at issue in this docket. The Attorney General urged the Commission to defer ruling on the transfer application until the Superior Court of Moore County resolves questions raised about the validity of the Consent Judgment and the right of first refusal.

The parties filed reply briefs. The Applicant further argued that the Commission should ignore the Consent Judgment altogether and advised the Commission that it has no intention of going to the Superior Court to remove a "non-existent cloud upon its title." In its Reply Brief the Village of Pinehurst assured the Commission that it was presently prepared to commence legal action in the Superior Court of Moore County to obtain a ruling on the issue of the validity of the Consent Judgment "at such time as that is necessary and appropriate." The Village renewed its request, however, that the Commission issue an Order denying the application on the merits.

The Commission has carefully considered the issue of the Consent Judgment, and the argument thereon of the parties, and is of the opinion, and so concludes, that the Consent Judgment must be addressed as the threshold issue in this proceeding. The language of the Consent Judgment provides that "[i]n the event that the Defendants Pinehurst and Diamondhead shall receive a bona fide offer for the said utilities, prior to accepting said offer, said Defendants shall give to the Village Council for a period of ninety (90) days a right of first refusal to purchase said utilities on behalf of the Village of Pinehurst at a price and on terms at least equal to the price and terms of the highest offer to said Defendants by a bona fide purchaser." Diamondhead Corporation, Pinehurst, Inc., and the Village Council of Pinehurst, among others, consented to the Consent Judgment. The Consent Judgment further provides that the items of settlement consented to by the parties, including the sale of utilities, is a "fair, adequate and reasonable settlement." The Consent Judgment further provides that it shall be "binding upon all parties

hereto and shall remain in full force and effect as to the heirs, successors and assigns of said parties."

There is evidence before the Commission to support a finding that the parties Pinehurst Enterprises, Inc., and the Village of the Pinehurst in this proceeding are "successors and assigns" of the "Defendants Diamondhead and Pinehurst" and the "Village Council."

There is no evidence or suggestion that the Consent Judgment has been appealed, modified, amended, or set aside in a formal judicial proceeding.

A careful reading of the Consent Judgment would tend to support the contentions of the Village that the terms of the Consent Judgment give to it a right of first refusal with respect to the sale of the Pinehurst water and sewer systems. The Applicant contends that the Consent Judgment is invalid or void and that the Commission should ignore it. If the contentions of the Village are correct, then the Consent Judgment is an impediment to the transfer of the utilities; the issues surrounding the Consent Judgment and the right of first refusal must then be addressed and resolved. If the contentions of the Applicant are correct, then any impediment or bar to the transfer is removed, and the Commission can proceed to determine if the transfer is justified by the public convenience and necessity, as it is clearly required to do under G.S. 62-111(a).

In its brief the Attorney General sets forth principles of law controlling the interpretation of judgments in general and consent judgments in particular. These principles of law determine how the Commission should resolve the contentions of the parties with respect to the applicability of the Consent Judgment; they should be summarized here:

A consent judgment is the contract of the parties entered upon the records with the approval and sanction of a court of competent jurisdiction. Stanley v. Cox, 253 N.C. 620 (1960). Although it is not strictly speaking a judgment of the court, it is binding upon the parties, and those in privity with them, and has the same force and effect as if it had been entered by the court in regular course. Herring v. Coach Co., 234 N.C. 51 (1951); Edmundson v. Edmundson, 222 N.C. 181 (1942). In construing a consent judgment, its unambiguous terms must be given effect until the judgment is modified or set aside in a proper proceeding. 8 N.C. Index 3d, "Judgments", § 10.

A consent judgment is not subject to impeachment by a collateral attack and may not be modified or vacated without the consent of the parties, absent fraud or mistake, determined in an independent action. LaLoude v. Hubbard, 202 N.C. 771 (1932); Morris v. Patterson, 180 N.C. 484 (1920). A collateral attack is one in which a plaintiff is not entitled to the relief demanded in the complaint unless the judgment in another action is adjudicated invalid. 8 N.C. Index 3d, "Judgments" § 16. A void judgment, however, is subject to direct or collateral attack, or may be vacated by a court ex mero motu, or may be ignored or treated as a nullity at any time that some benefit or right is asserted thereunder. Pruden v. Keemer , 262 N.C. 212 (1964); 8 N.C. Index 3d, "Judgments," §17. A judgment is not void if it is rendered by a court which has authority to hear and determine the questions in dispute, and has jurisdiction over the parties to the controversy or their interest in the subject matter. 8 N.C. Index 3d, "Judgments", §17.1. An erroneous judgment is

one entered contrary to law and cannot be collaterally attacked. 8 N.C. Index 3d, Ibid, §18. "If the judgment was erroneous, that is, based upon an erroneous application of legal principles to the established facts, it could be corrected only by this court [the Supreme Court] on appeal or on certiorari." Moore v. Humphrey, 247 N.C. 423 (1958).

The Consent Judgment is presumed to be valid until the contrary is shown in a proper proceeding. Owens v. Voncannon, 251 N.C. 351 (1959); Shaver v. Shaver, 248 N.C. 113 (1958). The Commission may, when requested to do so, examine and construe the contractual terms of the Consent Judgment and determine their applicability to this proceeding, subject, however, to well-settled principles of the law of judgments and of contracts. The Applicant contends that the Consent Judgment is invalid or void and that the Commission should ignore it in reaching its decision in this case. In support of its contentions, the Applicant has presented substantial and carefully-researched reasons why the Consent Judgment is void or invalid and unlawful and should be ignored. (No suggestion has been made that the Superior Court lacked subject matter jurisdiction or jurisdiction over the parties.) The Commission is of the opinion, however, and so concludes, that the reasons advanced by the Applicant do not render the Consent Judgment void on its face but instead go to the question whether or not the Judgment is erroneous as a matter of law. The Commission is unable to make this determination, since to do so would be tantamount to a collateral attack on the Consent Judgment.

The Commission is further of the opinion that the right of first refusal contained in the Consent Judgment constitutes a cloud on the ability of the Applicant Pinehurst Enterprises, Inc., to sell and transfer the water and sewer utilities of Pinehurst which are the subject of this proceeding. The Commission stands ready to determine the Application in a expeditious manner, as it is required to do pursuant to G.S. 62-111(a). Without deciding the Application at this point, and putting aside for the moment the Consent Judgment and the issues it raises, the Commission is of the opinion that the Applicant has made a prima facie case that the proposed transfer is justified by the public convenience and necessity. The Commission is unwilling to determine this ultimate issue, however, when there exists a cloud on the ability of the transferor Pinehurst Enterprises, Inc., to convey the subject utilities "free and clear" to RIM. Unless the serious questions surrounding the Consent Judgment and the right of first refusal are resolved in a proper forum, any order of the Commission approving the transfer could be subject to further proceedings if the Village should ultimately prevail in its announced intention to exercise the right of first refusal and purchase the utilities.

The Attorney General has recommended that the Commission defer ruling on the transfer application in Docket No. W-6, Sub 13, until the Superior Court of Moore County resolves the questions raised by the parties concerning the validity of the Consent Judgment and the right of first refusal. The Applicant in its Reply Brief has informed the Commission that it "has no intention of going to the Superior Court to remove a non-existent cloud upon its title." The Village of Pinehurst, in its Reply Brief, assures the Commission that it is "presently prepared to commence a legal action in the Superior Court of Moore County to obtain a ruling" on the Consent Judgment.

The Commission is of the opinion that the recommendation of the Attorney General is sound and should be adopted, and therefore issues this Order

deferring ruling on the Application until the questions surrounding the Consent Judgment and the right of first refusal have been adjudicated in the Superior Court.

IT IS, THEREFORE, ORDERED as follows:

1. That, within 60 days after the issuance of this Order, the Village of Pinehurst shall institute an action in the Superior Court of Moore County to resolve the questions raised in this proceeding concerning the validity of the Consent Judgment entered in the Superior Court of Moore County in 1973 (73 CVS 594) and the right of first refusal contained therein.

2. That the Village of Pinehurst shall notify the Commission when the action is instituted and file with the Commission a copy of all pleadings and orders in that action and shall keep the Commission informed on the progress of the proceeding in the Superior Court.

3. That in the event the Village of Pinehurst does not file an action in the Superior Court within the time ordered in Paragraph 1, above, the Commission will proceed to a final determination of these dockets.

4. That further action by the Commission in these dockets is deferred pending further order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of January 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-796, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by HARRCO Utility Corporation, 8601 Barefoot Industries Road, Raleigh, North Carolina, 27612, for a Certificate of Public Convenience and Necessity to Furnish Sewer Utility Service in Sheffield, Stone Creek, and Stonebridge VI Subdivisions, Wake County, North Carolina, and for Approval of Rates

FINAL ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND SETTING RATES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, April 11, 1988, at 2:00 p.m.

BEFORE: Chairman Robert O. Wells, and Commissioners Ruth E. Cook, Edward B. Hipp, William W. Redman, Jr., and Sarah Lindsay Tate

APPEARANCES:

For the Applicant:

Samuel Roberti, Attorney at Law, Suite 200, 100 East Parrish Street, Durham, North Carolina 27701
Appearing for: HARRCO Utility Corporation

For the Public Staff:

Paul L. Lassiter, Public Staff, North Carolina Utilities Commission, 430 North Salisbury Street, P. O. Box 29520, Raleigh, North Carolina 27626-0520
Appearing for: The Using and Consuming Public

BY THE COMMISSION: On July 22, 1987, HARRCO Utility Corporation (HARRCO, the Company, or the Applicant) filed an application for a Certificate of Public Convenience and Necessity to provide sewer utility service in Sheffield, Stone Creek, and Stonebridge VI Subdivisions, Wake County, North Carolina, and for approval of rates.

By Order issued on November 24, 1987, the Commission scheduled the matter for public hearing and required the Applicant to give notice of the application, proposed rates, and scheduled public hearing.

This matter was originally heard by Commission Hearing Examiner Rudy Shaw on January 7, 1988. Both the Applicant and the Public Staff were present at the original hearing and represented by counsel. The Applicant presented the testimony of Barrett L. Kays, President of Barrett Kays and Associates, a civil engineering and planning firm that is also involved in soil science work, and Lexie W. Harrison, President of HARRCO Utility Corporation. The Public Staff presented the testimony of Andy Lee, an engineer in its Water Division.

On March 4, 1988, Hearing Examiner Shaw issued a Recommended Order Granting Certificate of Public Convenience and Necessity and Setting Rates. On March 17, 1988, the Public Staff filed Exceptions and Motion For Oral Argument. On March 25, 1988, the Commission Schedule an oral argument on the exceptions for April 11, 1988, at 2:00 p.m.

The matter came on for oral argument as scheduled. At the opening of the oral argument, the parties announced that they had agreed to a stipulation.

Based upon the information contained in the application, the evidence presented at the hearing on January 7, 1988, the stipulation of the parties, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. The Applicant is a corporation duly organized under the laws of the State of North Carolina and is authorized to engage in the operation of a public utility.

2. The Applicant proposes to furnish sewer utility service to Sheffield, Stone Creek, and Stonebridge VI Subdivisions in Wake County, North Carolina.

The Applicant seeks a Certificate of Public Convenience and Necessity to provide such utility service and approval of rates for such service.

3. Sheffield, Stone Creek, and Stonebridge VI Subdivisions are residential communities located in Northern Wake County near the Falls Basin. At present, twenty-one houses have been completed, are occupied, and are using the sewer system. It is anticipated that there will be a total of 98 houses when the projects are fully completed. The houses range from 4,000 sq. feet to over 7,000 sq. feet. The houses typically have five bedrooms or more and are often referred to in the building industry as megahomes.

4. The Applicant proposes a residential sewer service rate of $24.00 per month and a nonresidential sewer service rate of $72.00 per month.

5. The Applicant proposes a finance charge of 1% per month for late payment and a $15.00 reconnection charge if sewer service is cut off by utility for good cause.

6. The Public Staff proposes a residential sewer service rate of $18.00 per month and agrees with the Applicant's other proposed rates and charges.

7. Low pressure pipe nondischarge sewer facilities for the three projects have been installed. They include approximately 14.40 acres of nitrification fields, several large storage tanks, ten submersible pumps, 100 control valves, five pumping stations, approximately 23,400 lineal feet of underground pipes, approximately 54,700 lineal feet of underground nitrification lines, and five telemetry systems (one for each pump station) to monitor the facilities and to notify the Applicant if any pump, valve, or storage tank experiences problems. The systems has the capacity to handle 49,050 gallons per day.

8. Said sewer facilities are designed to accommodate in excess of 500 gallons per unit per day usage. The normal system is designed to accommodate approximately 300 gallons per unit per day.

9. The sewer system is designed to protect against discharge into the Falls Basin and to protect against contamination of ground water. Sheffield Subdivision is less than ½ mile from the Falls Basin and is less then 3/4 miles from the Falls Lake Reservoir. Stone Creek and Stonebridge VI Subdivisions are approximately 1 to 1½ miles from the Falls Lake Reservoir.

10. The cost of the sewer facilities has been recovered by the developer through the sale of the lots. The facilities have been contributed to the Applicant at the cost of $3.00, except for the land to which the Applicant has been given an easement.

11. The Applicant did not require the developers to pay any taxes on the contribution in aid of construction (gross-up).

12. The rates allowed in this proceeding should be those found in the attached Schedule of Rates.

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

The evidence supporting these findings of fact is contained in the application filed on July 22, 1987, in the testimony of Company witness Harrison, in the testimony of Public Staff witness Lee, and in the entire record of this proceeding. These findings are essentially procedural and jurisdictional in nature and were uncontested and uncontroversial.

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

The evidence supporting these findings of fact is found in the application filed on July 22, 1987, and in the testimony of Company witnesses Kays and Harrison.

The sewer systems (low pressure pipe) installed in these subdivisions are a fairly new type of sewage treatment system. Basically, they consist of a small holding tank located at each residence where the customer's sewage is collected and then pumped through a force main to a large central holding tank at the drainage field. The sewage is then pumped at low pressure into several miles of perforated pipe installed in the drainage field.

Such a system can be used in an environmentally sensitive area where most conventional sewer systems cannot be used. This type of system was chosen here because the Falls Reservoir supplies water for Wake County, and no discharge into the Falls Reservoir can be permitted. If the sewer systems are not properly maintained, the repair costs will be equal to or exceed the original construction costs. The nitrification fields must be mowed regularly, and the mowing equipment must use special tires to avoid compaction of the soil. The equipment fields must be inspected regularly. A sophisticated telemetry system monitors pumps, valves, and storage tanks at all times and automatically telephones a message if any problems develop. The developer could not find any utility other than the Applicant willing to own and operate the sewer system, because it is a unique system and there is a potential for major failure to the system if not properly maintained. Furthermore, the Applicant has an excellent reputation in operations of these systems.

The sewer systems of these three subdivisions has stringent requirements which were established by the Water Quality Section of the Department of Environmental Management for the State of North Carolina. The maintenance requirements are in excess of requirements established for normal ground absorption systems. For example, the Nondischarge Permit from the Department of Environmental Management requires a pump test of all pumps monthly, with the results to be submitted quarterly. A second example is that the lines have a monthly pressure test, with the results to be submitted quarterly. This also is not required of other systems. A further example is that the system has ground water monitoring testing three times per year. This is required of similar systems, but it is not required of other types of sewer systems. A further example is that this system has a sophisticated telemetry system, while systems this size would not normally have telemetry capability. The above requirements by the State of North Carolina are for the purpose of protecting the ground water.

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

The evidence supporting these findings of fact comes from the testimony of Company witness Harrison.

Witness Harrison testified that the sewer equipment and easements have been contributed to the Applicant by the developer at the cost of $3.00. The developer will recover his costs through the sale of the lots.

These systems were conveyed to the Applicant in 1987. The Applicant did not require the developer to pay additional monies to cover any income taxes on the CIAC as required by the Commission in its February 3, 1987, Order in Docket No. M-100, Sub 113. Witness Harrison testified that the utility had been advised by its professional accountant that the CIAC would not be subject to income tax treatment since a verbal contract had been made between the utility and the developers in 1986 prior to the income tax code changes which become effective January 1, 1987. The Public Staff has some reservations about this treatment of the taxes. However, witness Harrison stipulated that if the utility is held liable for income taxes on the subject CIAC by the appropriate taxing authorities, then the customers will not have to pay for such taxes through increased rates or other charges. Witness Harrison stipulated that HARRCO would not object to such language being made part of this Order. The Public Staff agreed to handle the tax issue in this manner.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding of fact is found in the testimony of Company witnesses Kays and Harrison and in the testimony of Public Staff witness Lee.

The only issue not satisfied at the hearing was the amount of the initial rates for residential customers to be set in this proceeding. The Company proposed a flat rate of $24.00, while the Public Staff proposed a flat rate of $18.00.

The Applicant presented estimates of revenue and expenses in its application. At the hearing, the Applicant presented its Exhibit Number 1 which showed estimated annual maintenance costs of the sewer system based on the Applicant's initial experience in operating the system for the eight-month period from May 1987, through January 1988. The exhibit shows estimated annual costs of $25,663.52. At the present time there are 21 houses on the systems. As additional houses are constructed, they will begin to use the systems. As new houses come to the system, some expenses will increase, such as electricity charges. Other expenses, such as those for mowing, telemetry telephone, mileage charges, and employee costs will remain the same. Witness Kays, who designed the system, testified that he believes that it will be more expensive to operate this system than a more conventional system. Furthermore, this system has a substantially greater capacity than a normal sewer system, since the houses using said system are known as megahomes, i.e., are extremely large.

Public Staff witness Lee testified that he did not believe that this system would be more expensive to operate than other systems in the state and noted that the Commission has recently approved flat sewer rates in the amount of $18.00 per month for other systems. Witness Lee testified that the Public

Staff disagreed with four expense items. Public Staff Exhibit 1, presented by witness Lee showed these items. The Applicant and Public Staff disagree as follows:

	Applicant	Public Staff	Difference
Salaries	$ 7,200	$5,200	$2,000
Maintenance and repairs	5,400	1,200	4,200
Interest on debt	1,200	-0-	1,200
Telephone service	2,896	1,896	1,000
Total	$16,696	$8,296	$8,400

However, during direct examination and cross-examination, witness Lee revised the recommended allowance for maintenance and repair expense and for telephone service. Although the recommended allowance for both of these expense items were increased, witness Lee did not recommend increasing the Public Staff's recommended rate of $18.00. Witness Lee testified that " ... I feel that $18.00 should be the rate approved until the Company has sufficient operating experience to evaluate its rates and proceed to seek a rate adjustment ..."

The task of setting initial sewer rates is complicated by the uniqueness of this system. The Public Staff witness testified during cross examination that this system had more expenses than he originally calculated prior to the hearing, and he recognized that some of the additional expenses as stated by Applicant were indeed necessary.

At the Oral Argument held on April 11, 1988, the parties stipulated and agreed that the amount of $21.00 per month flat rate should be approved for residential sewer service as the initial rate. Any time after the Applicant has twelve months of verifiable expenses, the Applicant should be permitted to petition for an increase of rates. By agreement of the parties the rates as set out in this Order shall be effective for service rendered on and after May 1, 1988.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant be, and hereby is, granted a Certificate of Public Convenience and Necessity to provide sewer utility service in Sheffield, Stone Creek, and Stonebridge VI Subdivisions in Wake County, North Carolina.

2. That Appendix A, attached hereto, shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved to be effective on May 1, 1988, and said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. § 62-138.

4. That the Notice to Customers, attached hereto as Appendix C, shall be mailed or hand delivered to the customers in Sheffield, Stone Creek, and Stonebridge VI Subdivisions within 30 days of the effective date of this Order.

5. That ratemaking treatment will not be allowed in any future proceeding for the taxes on CIAC if at some future date taxes are found to be due (see Evidence and Conclusions for Findings of Fact Nos. 10-11).

6. That the Applicant shall maintain its books and records in such manner that all applicable items of information required in the Applicant's annual report to the Commission can be readily identified, and a copy of the annual report form shall be furnished to the Applicant with the mailing of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of April 1988.

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

APPENDIX A
DOCKET NO. W-796, SUB 1
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By These Presents, That
HARRCO UTILITY CORPORATION
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide sewer utility service
in
SHEFFIELD, STONE CREEK, AND STONEBRIDGE VI SUBDIVISIONS
Wake County, North Carolina

subject to such orders, rules, regulations, and
conditions as are now or may hereafter be lawfully
made by the North Carolina Utilities Commission

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of April 1988.

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

APPENDIX B

SCHEDULE OF RATES
for
HARRCO UTILITY CORPORATION
for providing sewer utility service in
SHEFFIELD, STONE CREEK, AND STONEBRIDGE VI SUBDIVISIONS
Wake County, North Carolina

Sewer Rates:

Residential customers	-	$21.00
Nonresidential customers	-	$72.00

Connection Charges: None

Reconnection Charges:
If sewer service cut off by utility for good cause: $15.00

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 for bills still overdue 25 days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-796, Sub 1, on this the 21st day of April 1988.

APPENDIX C

DOCKET NO. W-796, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by HARRCO Utility Corporation, 8601 Barefoot Industries Road, Raleigh, North Carolina 27612, for a Certificate of Public Convenience and Necessity to Furnish Sewer Utility Service in Sheffied, Stone Creek, and Stonebridge VI Subdivisions, Wake County, North Carolina, and for Approval of Rates) NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has granted HARRCO Utility Corporation a Certificate of Public Convenience and Necessity to provide sewer utility service in Sheffield, Stone Creek, and

Stonebridge VI Subdivisions, Wake County, North Carolina, and has approved the following rates:

<u>Sewer Rates:</u>

Residential customers	-	$21.00
Nonresidential customers	-	$72.00

<u>Connection Charges:</u> None

<u>Reconnection Charges:</u>
If sewer service cut off by utility for good cause: $15.00

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of April 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-812, Sub 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Tingen Construction Company, Inc. 911-C Paverston Drive, Raleigh, North Carolina 27615, Complainant v. CAC Utilities, Inc., Respondent	ORDER DENYING CONNECTION TO SEWER SERVICE AND CONSOLIDATING COMPLAINT WITH DOCKET NO. W-812, SUB 5

HEARD: April 4, 1988, Commission Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina 27602, at 11:00 a.m.

BEFORE: Chairman Robert O. Wells, Presiding; Commissioners Robert K. Koger, Edward B. Hipp, J. A. "Chip" Wright, and William W. Redman, Jr.

APPEARANCES:

For the Complainant:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605
For: Tingen Construction Company, Inc.

For the Respondent:

William E. Grantmyre, Post Office Box 250, Cary, North Carolina 27511
For: CAC Utilities, Inc.

For the Public Staff:

Robert Cauthen, 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: On March 28, 1988, Tingen Construction Company, Inc., filed a Verified Complaint in this docket and Motion for Emergency Action.

In the Verified Complaint, Complainant alleges that he owns Lot No. 72 in Windsor Oaks Subdivision, 10717 East Bridgeford, Raleigh, North Carolina; that the Respondent CAC Utilities, Inc., has a certificate of public convenience and necessity to provide sewer service to the Windsor Oaks Subdivision; that the Complainant has received a Certificate of Occupancy ("CO") from Wake County for Lot No. 72 on August 6, 1986; in late 1987 the Division of Environmental Management enacted a moratorium on the issuance of COs by Wake County for Windsor Oaks; although CAC Utilities, Inc., has made extensive modifications and repairs to the sewer system, DEM has not yet released the system as far as

the issuance of additional COs; Respondent, under Commission Rule R10-13(b), has unilaterally instituted a moratorium on new additions which has not been authorized by the Commission; the Respondent's moratorium is in addition to the DEM moratorium.

The Complainant further alleges that the Complainant has a home under contract to sell on March 31, 1988; the sale of said home is in jeopardy because of the inability to receive sewer service; the Respondent has carried this home for some time and is at risk of losing said sale because of the utility's self imposed moratorium; extensive upgrading of the sewer system has already occurred, and there is a possibility of the City of Cary providing sewer service to Windsor Oaks; what the Complainant is asking the Commission to do is find that CAC's self-imposed moratorium on homes with COs is unreasonable and excessive; the moratorium imposed by DEM is sufficient to deal with the current situation, and CAC should be required to immediately connect complainant's home to sewer service.

The Complainant requested that the Commission issue an Order requiring CAC Utilities to connect Complainant's home to sewer service; or alternatively schedule an expedited oral argument on this matter so as to allow an Order to be issued by March 31, 1988.

On March 30, 1988, the Commission issued an Order setting the complaint and Motion for Emergency Action for oral argument and hearing before the full Commission on Monday, April 4, 1988, at 11:00 a.m., which was the earliest date the matter could be heard by the full Commission.

The complaint and Motion came on for oral argument and hearing before the full Commission at the time and place scheduled. The Complainant, the Respondent, and the Public Staff were present and represented by counsel. The parties made oral argument. The Complainant presented the testimony of Daniel Harold Tingen, who is President of the Complainant, and Carolyn McCaskill, who is the regional water quality supervisor of the Division of Environmental Management. CAC Utilities, Inc., presented the testimony of John Melvin, the President of CAC Utilities, Inc. The following homeowners testified in opposition to the complaint: William P. Bennett, Patricia Tharp, Richard Pecorella, and James Jones.

Upon consideration of the oral argument and evidence presented on April 4, 1988, and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. CAC Utilities, Inc., holds a certificate of public convenience and necessity from this Commission to provide sewer utility service to the Windsor Oaks Subdivision in Wake County.

2. The Complainant owns Lot No. 72 in Windsor Oaks Subdivision, 10712 East Bridgeford, Raleigh, North Carolina. Complainant received a certificate of occupancy ("CO") from Wake County for a house on Lot No. 72 on August 6, 1986. In late 1987 the Division of Environmental Management ("DEM") recommended to Wake County that the County issue no more COs for the Windsor Oaks Subdivision because of ongoing problems with the sewer system serving the subdivision.

3. The Complainant has a house on Lot No. 72 under contract to sell. The closing date was first on March 31, 1988, and has been rescheduled to April 5, 1988. The Complainant testified that the sale of this house on Lot No. 72 is in jeopardy because of the inability to receive sewer service from the Respondent because of the Respondent's moratorium on further connections to the sewer system. The home is valued at approximately $170,000.

4. The Complainant seeks an order from the Commission directing the Respondent to connect Complainant's home on Lot No. 72 to the Respondent's sewer system and to provide sewer service to the home.

5. The sewer system of the Respondent in Windsor Oaks Subdivision is a low pressure system, which is a recent technological development in sewer systems. Problems began with the sewer system in the summer of 1985, when there were sewage breakouts at the end of certain laterals in the sewage fields. By the summer of 1986 it was apparent that there was a total failure of the sewer system. According to the witness from DEM, there was a total failure of the sewer system in March 1987, at which time DEM requested Wake County not to issue any more COs in the subdivision.

6. The Respondent has a contract with the developer, Windsor Oaks Development Corporation, dealing with the sewer system. Attempts have been made by the developer to correct the problems with the sewer system, including extensive renovations, since March 1987. The sewer system, however, as of the date of the hearing was in noncompliance with the permit issued by DEM. DEM has stated that it would make further investigation of the sewer system and determine whether or not, in light of recent renovations, new connections to the system should be made. After the inspection by DEM, DEM may find that the system is conditionally in compliance.

7. DEM inspected the new fields constructed for the sewer system during the week of March 28 and found that the drainage ditches were moist and that there was an odor of raw sewage.

8. As a result of meetings between the Respondent and the developer, and pursuant to the contract between the Respondent and the developer, extensive renovations and additions to the sewer system have taken place. However, in November 1987 sewage discharges from the fields once again became noticeable. Following an inspection on March 27, 1988, by the Company, and samples taken of the sewage water puddling in the fields, there were extraordinarily high readings of biochemical oxygen demand and fecal coliform, both readings which were greatly in excess of DEM permissible standards.

9. The sewer system presents special problems during wet weather.

10. CAC imposed its own moratorium in December 1987, because it was of the opinion that the sewer system could not properly handle any additional connections.

11. The homeowners in Windsor Oaks Subdivision have experienced great distress and discomfort because of the problems with the sewer system. Homeowners who live next to the sewage fields can smell the odor of the leaking sewage and can observe the leaking of the sewage into the fields and into drainage ditches, a creek, and even onto their properties. One homeowner is

unwilling to open her windows during the summertime because of the smell of sewage. Several homeowners expressed concern about the high fecal coliform content of the escaping sewage, especially because they have young children who play out-of-doors. As recently as the day of the hearing, the homeowners observed puddles of sewage in the fields. All of the homeowners who testified supported the moratorium imposed by the Respondent on any further connections and particularly opposed the connection of the Complainant's house on Lot No. 72.

12. There is pending before the Commission, in Docket No. W-812, Sub 5, the complaint of the residents of Windsor Oaks Subdivision against the Respondent and against the development company, Windsor Oaks Development Corporation. This complaint has been set for hearing on April 19, 1988. This complaint docket has before it the complaints of the homeowners concerning the problems of the sewer system.

13. There have been discussions by the Respondent and the homeowners with the Town of Cary as to the possibility of the Town of Cary providing sewer service to the subdivision. The results of these conversations are inconclusive at the present time.

14. The sewer system of the Respondent in Windsor Oaks Subdivision is unable to handle any additional connections to the system because of the problems of the sewer system.

CONCLUSIONS

I.

The Commission concludes that the complaint and Motion of the Complainant requesting an Order by the Commission directing CAC Utilities, Inc., to immediately connect the Complainant's house on Lot No. 72 to the sewer system of the Respondent should be denied. The Commission further concludes that the moratorium imposed by CAC Utilities, Inc., upon further connections to its sewage system in Windsor Oaks Subdivision should be approved at this time.

Commission Rule R10-13(a),(b) and (c) states as follows:

"(a) Noncompliance with Rules and Regulations. -- Any utility may decline to serve an applicant until he has complied with State regulations governing sewer service and the approved rules and regulations of the utility.

"(b) Utility's Facilities Inadequate. -- 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 or if the intended use is of a character that is likely to affect unfavorable service to other customers.

"(c) Applicant's Recourse. -- In the event that the utility shall refuse to serve an applicant under the provisions of this rule, or on other rules incorporated herein, the utility shall inform the

applicant of the basis of its refusal, and the applicant may apply to the Commission for a ruling thereon."

Attention is also called to G.S. 143-215.67(a), which provides:

"(a) No person subject to the provisions of G.S. 143-215.1 shall willfully cause or allow the discharge of any wastes or air contaminants to a waste-disposal system or air-cleaning device in excess of the capacity of the disposal system or cleaning device or any wastes or air contaminants which the disposal system or cleaning device cannot adequately treat."

G.S. Chapter 143 sets forth the powers of the Environmental Management Commission. A sewer system is "subject to the provisions of G.S. 143-215.1."

The evidence in the hearing before the Commission on April 4, 1988, fully supports the findings that the sewer system of CAC Utilities, Inc., serving the Windsor Oaks Subdivision is experiencing severe problems in handling the existing connections and that the moratorium on further connections imposed by the utility was justified. Attention is called to the testimony of witness McCaskill of DEM, who testified that the sewer system was in "noncompliance" with its permit at the present time. She testified extensively about the problems that the sewer system has experienced in the past two years and especially noted that there was a failure of the system in March 1987. Conditions became so bad in the subdivision that DEM requested Wake County in March 1987 not to issue any more certificates of occupancy. Attention is also called to the testimony of Mr. Melvin, the President of the Respondent, who testified extensively on the problems of the sewer system and its failures. The attempts of CAC Utilities, Inc., to resolve the problems will be more fully explored in the pending complaint docket, Docket No. W-812, Sub 5, the hearing of which is to begin on April 19, 1988. The testimony of Mr. Melvin discloses that the sewer system is continuing to experience problems up to the day of the hearing; especially persuasive was his testimony that the biochemical oxygen demand and fecal coliform readings of leaking sewage vastly exceeded the limits of DEM. Mr. Melvin testified that the Company imposed its own moratorium on further connections when it realized that any further connections to the sewer system would adversely impact the system and the homeowners who are now on the system.

Finally, attention is called to the testimony of the homeowners in the subdivision who described the impact of the leaking sewage upon them and their families. One or two of the homeowners live next to the sewage fields and testified about the odor and the presence of leaking sewage on the ground. All of the homeowners vigorously opposed the lifting of the moratorium of the Company for purposes of connecting the Complainant's house to the sewer system.

The evidence clearly discloses that the CAC sewer system in Windsor Oaks Subdivision is unable to handle properly the existing connections to the sewer system. The System is in noncompliance with its DEM permit. Any additional connections at the present time, such as that requested by the Complainant, will clearly exceed the capacity of the system to handle the discharge of waste. The facilities of CAC are inadequate to render the service for which it was dedicated; any additional connections will result in further discomfort and distress to existing customers and their families. CAC properly imposed its

moratorium when it became apparent that the system was in a state of failure. Although Mr. Tingen testified that he may lose the sale of his house if it is not connected to the system, the Commission must consider the ability of the system to handle new connections and the impact of new connections upon the existing customers. For the reasons set forth above, the request of the Complainant for immediate connection to the sewer system and service from, is denied.

The Commission notes that DEM is continuing its investigation of the system. Witness McCaskill testified that further investigation into the recent renovations may disclose the system to be conditionally in compliance with its permit. The Commission will request DEM to keep the Commission informed of its investigation and to present the results thereof at the hearing on April 19, 1988.

II.

The Commission concludes that the complaint of Tingen Construction Company, Inc., should be consolidated in Docket No. W-812, Sub 5, which is the complaint of the Windsor Oaks Subdivision residents against CAC Utilities, Inc., and the development company, Windsor Oaks Development Corporation. This complaint docket was instituted on February 12, 1988, when the homeowners in Windsor Oaks filed a complaint requesting the Commission to investigate the problems of the sewer system and to order satisfactory resolution of the problems. Hearing has been scheduled on the homeowners' complaint for April 19, 1988, before the Commission. The Commission is of the opinion that the complaint of Mr. Tingen involves common questions of law and fact with the homeowners' complaint and that these two dockets should be consolidated and heard together. There was additional testimony that there may be other homes in the subdivision which are occupied but which have been refused connection to the sewer system. The status of these homes will be examined at the April 19, 1988, hearing.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motion for emergency action filed by the Complainant in this docket be denied.

2. That the request of the Complainant for immediate connection to, and service from, the sewer system of the Respondent be denied.

3. That the complaint be consolidated for hearing and determination in Docket No. W-812, Sub 5.

4. That the Division of Environmental Management is requested to keep the Commission informed of its investigation of the Windsor Oaks Subdivision sewer system and to present the findings of its investigation to the Commission at the hearing scheduled in Docket No. W-812, Sub 5, on April 19, 1988. A copy of this Order shall be sent to DEM.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of April 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-6, SUB 10
DOCKET NO. W-6, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-6, SUB 10

In the Matter of
Application of Pinehurst Water Company and Pinehurst Sanitary Company, Post Office Box 8220, Pinehurst, North Carolina, for Authority to Increase Rates for Water and Sewer Utility in Pinehurst, Moore County, North Carolina

DOCKET NO. W-6, SUB 11

In the Matter of
Application of Pinehurst Water Company and Pinehurst Sanitary Company to Transfer the Franchise for the Water and Sewer Systems Serving the Area in and Around the Village of Pinehurst, North Carolina, from Pinehurst, Inc., to Pinehurst Water Company and Pinehurst Sanitary Company

FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

ORAL ARGUMENT HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, October 3, 1988, at 2:00 p.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Ruth E. Cook, Julius A. Wright, and William W. Redman, Jr.

APPEARANCES:

For the Attorney General:

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

For Pinehurst Water Company and Pinehurst Sanitary Company:

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

BY THE COMMISSION: On February 28, 1986, Commission Hearing Examiner Rudy C. Shaw entered a Recommended Order in these dockets whereby Pinehurst Water Company and Pinehurst Sanitary Company (the Companies) were allowed to increase their rates and charges for water and sewer utility service. That Order became final on March 19, 1986. No party filed exceptions to the Order.

On August 5, 1988, the Companies filed a motion in this proceeding whereby the Commission was requested to amend the Order of February 28, 1986, to allow

connection fees for water and sewer service. In support of their motion, the Companies made the following statements:

1. For many years, Pinehurst Water Company and Pinehurst Sanitary Company have charged water and sewer tap fees to customers connecting to the system for the first time.
2. On May 24, 1985, the Companies filed for an increase in rates and charges. The Companies' application contained tariffs that proposed no change in the water and sewer tap fees. The Companies proposed to continue the water tap fee of $225 and the sewer tap fee of $175.
3. No party raised any issue during the course of the general rate case proceeding concerning the need for tap fees or the level of tap fees.
4. The Companies and the Public Staff filed proposed Orders at the conclusion of the hearing in which the parties advocated approval of the tap fees filed by the Companies in their application.
5. The Recommended Order issued by the Hearing Examiner on February 28, 1986, which became the final Order of the Commission on March 19, 1986, failed to contain a provision for tap fees in the tariffs approved. The Companies assumed that the absence of a provision approving tap fees in the tariffs was due to oversight or inadvertence.
6. The Companies have continued to charge tap fees at the rate requested in the filing of $225 for water tap and $175 for sewer tap.
7. It has recently come to the Companies' attention that the existing tariffs contain no provision for tap fee.

On August 9, 1988, the Attorney General filed a Notice of Intervention in these dockets. On August 12, 1988, the Attorney General filed a pleading entitled "Response of the Attorney General to Motion to Amend Order; Alternative Motion to Prospectively Amend the Order and Require Refund." In his motion, the Attorney General requested the Commission to:

1. Deny the motion to retroactively modify or amend the judgment.
2. Grant the Attorney General's motion to prospectively modify the tariffs to allow for the collection of water and sewer tap fees in the amount requested in the application.
3. Require the Companies to refund with interest the tap fees illegally collected or, in the alternative, to fine the Company pursuant to G.S. 62-310 and 312.

On August 23, 1988, Hearing Examiner Shaw entered a Recommended Order in these dockets ruling that the "omission of the connection charges was simply an oversight" and granting the Companies' motion to amend the Order of February 28, 1986. The Hearing Examiner found that the Attorney General's recommendation that the Companies should be fined to be "totally without merit" and denied the relief requested by the Attorney General.

On September 9, 1988, the Attorney General filed certain exceptions to the Recommended Order of August 23, 1988, and requested the Commission to schedule an oral argument to consider the exceptions.

An oral argument on exceptions was subsequently held before the Commission on October 3, 1988, with counsel for the Attorney General and the Companies participating. The Public Staff did not participate in the oral argument.

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

FINDINGS OF FACT

1. On August 27, 1979, in Docket No. W-6, Sub 6, the Commission approved water tap fees for Pinehurst Water Company of $225.00 and sewer tap fees for Pinehurst Sanitary Company of $175.00.

2. On May 24, 1985, in Docket No. W-6, Sub 10, the Companies filed an application requesting a general increase in their water and sewer rates and charges. The Companies proposed no increase or change in tap fees. On June 24, 1985, the Commission issued an Order establishing a general rate case and suspending the proposed new rates for up to 270 days pursuant to G.S. 62-134. The case in Docket No. W-6, Sub 10, proceeded to hearing at which a number of issues were contested. The issue of the level of tap fees was never raised, contested or discussed in any manner in Docket No. W-6, Sub 10. The Attorney General took no part in that case. The Companies and the Public Staff filed proposed Orders. The Public Staff's proposed Order contained an Appendix B which listed tap fees of $225.00 for water service and $175.00 for sewer service. The Companies' proposed Order contained provisions approving their proposed rates, which, if adopted, would have resulted in reissuing the preexisting level of tap fees.

3. Commission Hearing Examiner Rudy C. Shaw entered a Recommended Order in Docket No. W-6, Sub 10, on February 28, 1986. The Order failed to address tap fees. The Order contained no provision repudiating, rescinding, or modifying the level of tap fees theretofore established on August 27, 1979, in Docket No. W-6, Sub 6.

4. On August 5, 1988, the Companies filed a motion whereby the Commission was requested to amend the Order of February 28, 1986, nunc pro tunc to include provision for tap fees.

5. By pleading dated August 12, 1988, the Attorney General for the first time intervened in these dockets and opposed the Companies' motion to the extent the motion sought to amend the Order retroactively. The Attorney General characterized the Companies' actions of charging tap fees at the same level as those approved in 1979 between February 28, 1986, and August 1988 as "unlawful and illegal" conduct. The Attorney General labeled the Companies' delay in bringing the Commission's oversight to its attention as "unconscionable."

6. Commission Hearing Examiner Shaw, by the Recommended Order entered in these dockets on August 23, 1988, ruled that the "omission of the connection charges was simply an oversight" and that the Companies' motion to amend should be granted. The Hearing Examiner found the Attorney General's recommendation that the Companies should be fined to be "totally without merit" and denied the relief requested by the Attorney General.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission concludes that good cause does not underlie the position taken by the Attorney General in this case. There is no evidence that the Companies have acted in bad faith at any time in this case. Clearly, all that the Companies needed to do when the Commission issued the Order erroneously omitting reference to tap fees was to bring that omission to the Commission's attention, and the provision for tap fees would have been included. No evidence was presented in these dockets that would have supported tap fees at any other level. No party sought to change the preexisting level of tap fees. What possible incentive could the Companies have to hide the omission? The Attorney General has apparently drawn certain inferences from the Companies' actions which we find to be unsupported, arbitrary, and unreasonable.

The disputed facts of this case, no matter what the Companies knew or should have known, raise no issue amounting to a violation of G.S. 62-139 or retroactive ratemaking. Rates, once established, are deemed just and reasonable as a matter of law until they are changed or modified on appeal or by further action of the Commission itself. G.S. 62-132. The Commission's complete silence on the level of tap fees subsequent to August 27, 1979, is not a Commission action changing or modifying the tap fee tariffs.

The Attorney General incorrectly asserts that the Commission's failure to address tap fees in the February 28, 1986, Order in Docket No. W-6, Sub 10, constituted a repudiation of the tap fee tariff provisions approved in 1979 in Docket No. W-6, Sub 6. The 1979 tap fee tariffs have never been changed or modified by action of the Commission. No Order has been issued by the Commission since 1979 finding that the 1979 tap fees are unjust or unreasonable. The issuance of tariffs in 1986 containing no mention of tap fees is insufficient to alter preexisting tap fee levels in the absence of a clear intent on the part of the Commission to delete tap fees altogether.

Even if there had been no tariffs in effect between February 28, 1986, and August 5, 1988, the concept of retroactive ratemaking is not called into play in this case. The Companies are not asking the Commission for permission to charge now or in the future for taps made between February 1986 and August 1988. The Companies charged tap fees when the taps were made. Retroactive ratemaking involves charging in a current period for services performed in a past period. State ex rel. Utilities Commission v. Farmers Chem. Ass'n., 42 N.C. App. 606, 257 S.E. 2d 439, cert. denied, 299 N.C. 124, 261 S.E. 2d 926 (1980). The concept of retroactive ratemaking has not been raised in this case.

Even if there had been no preexisting 1979 tap fee tariff, the Hearing Examiner's action of amending the Order nunc pro tunc is completely lawful and appropriate. As previously described, the Hearing Examiner concluded that the tap fee provision was omitted inadvertently. It is axiomatic that oversights and omissions may be corrected by reviewing courts. American Trucking Ass'n v. Frisco Transp. Co., 358 U.S. 133, 145 (1958) (citing Gagnon v. United States, 193 U.S. 451 (1904)). In American Trucking Ass'n., the United States Supreme Court held that this doctrine similarly applies to the Interstate Commerce Commission, 358 U.S. at 145 ("[t]o hold otherwise would be to say that once an

error has occurred, the Commission is powerless to take remedial steps"), and several administrative agencies have applied this rule in similar circumstances. See e.g., City of Long Beach v. Department of Energy, 754 F 2d 379, 387 (Emer. Ct. App. 1985) ("[t]he parties do not dispute the rule that an administrative agency has the power to correct orders containing inadvertent, ministerial errors."). See also 8 N.C. Index 3d, Judgments § 6.1 ("A court of record has inherent power to amend its records and supply defects or omissions or correct mistakes to make its records speak the truth.") The doctrine applies directly to this case. The tap fees charged by the Companies would have been included in the tariff but for the inadvertent oversight of the Hearing Examiner. Thus our action to change the tariff amounts to a remedial corrective measure, not retroactive ratemaking.

IT IS, THEREFORE, ORDERED as follows:

1. That the Recommended Order entered in these dockets on August 23, 1988, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

2. That the word "obsession" set forth on page 2 of the Recommended Order of August 23, 1988, be, and the same is hereby, changed to "omission."

3. That each and every exception filed by the Attorney General with respect to the Recommended Order of August 23, 1988, be, and each is hereby, denied and overruled.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of October 1988.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

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Happy Travelers Tours, Bobby Gene Turnage, d/b/a	Statewide	B-473, Sub 1	1-12-88
Highland Tour and Charter, Inc.	Statewide	B-484	2-29-88
King's Charter, Archie Cree King, d/b/a	Statewide	B-494	8-31-88
Lacy & Sons, Inc.	Statewide	B-483	4-7-88
Mountain Majic Tours, Inc.	Statewide	B-479, Sub 1	1-5-88
Prestige Charters & Tours, John Dallas Myrick, d/b/a	Statewide	B-469, Sub 1	1-29-88
Regional Storage & Transport, Inc.	Statewide	B-500	12-27-88
Roanoke-Chowan Travel, Inc.	Statewide	B-486	3-29-88
Sea Island Stages, D. R. Wismer, d/b/a	Statewide	B-495	10-26-88
Sun-Land Tours, Inc.	Statewide	B-445, Sub 1	5-19-88
Transit Enterprise Systems, Inc.	Statewide	B-497	12-12-88
Triad Lines, Inc.	Statewide	B-359, Sub 4	5-3-88

ORDERS AND DECISIONS LISTED

Carolina Coach Company - Order Approving Authority to Lease a Portion of Certificate No. B-79 from Seashore Transportation Company
B-15, Sub 196 (6-7-88)

Ivey Coaches, Inc. - Recommended Order Granting Application for Regular Route Passenger Authority and Charter Operations (Order Allowing Withdrawal of Exceptions and Affirming Recommended Order as the Final Order of the Commission 8-9-88)
B-477 (5-27-88)

AUTHORIZED SUSPENSION

Dove Tours, Inc. - Order Granting Authorized Suspension of Operations - Good Cause Appearing
B-474, Sub 1 (3-17-88)

Safety Transit Tours of Eden, Inc. - Order Granting Authorized Suspension of Operations - Good Cause Appearing
B-377, Sub 4 (3-10-88)

BROKER'S LICENSE

Care-Free Travels, Robert Donald Watson, t/a - Order Granting Broker's License
B-491 (7-13-88)

Hazel Kay Tours, Hazel S. Kay, d/b/a - Order Suspending Broker's License for Failure to Maintain Insurance
B-330, Sub 2 (1-21-88)

Holiday Tours, Inc. - Order Cancelling Broker's License - Ceased Operations
B-338, Sub 1 (10-21-88)

Manning Tours, Inc. - Order Suspending Broker's License for Failure to Maintain Insurance - Termination of Surety Bond
B-361, Sub 1 (5-27-88)

North State Heritage Tours, Inc. - Order Cancelling Broker's License due to termination of business
B-400, Sub 1 (6-8-88)

Per-Flo Tours, Inc. - Order Suspending Broker's License for Failure to Maintain Insurance
B-321, Sub 1 (2-4-88)

Sue's V.I.P. Tours, Archie Cree King and Bernice Marie King, d/b/a - Order Granting Broker's License
B-490 (3-24-88)

TLC Tours, Joyce T. Brantley, d/b/a - Order Suspending Broker's License for Failure to Maintain Insurance
B-459, Sub 1 (9-22-88)

ORDERS AND DECISIONS LISTED

CERTIFICATES CANCELLED

TLC Tours, Joyce T. Brantley, d/b/a - Recommended Order Cancelling Broker's License - Termination of Surety Bond
B-459, Sub 1 (11-8-88)

Virginia Dare Transportation Company, Inc. - Recommended Order Cancelling Operating Authority - Termination of Liability Insurance Coverage
B-97, Sub 12 (6-7-88)

Windsor Square Joint Venture - Order Cancelling Certificate No. B-476 - Ceased Operations
B-476, Sub 1 (8-31-88)

NAME CHANGE

Greyhound Lines, Inc. - Order Approving Name Change from Eastern Greyhound Lines Co. and Southern Greyhound Lines Co., for Certificate No. B-456 and B-457
B-7, Sub 106 (1-25-88)

Prestige Charters and Tours, Inc. - Order Approving Name Change from John Dallas Myrick, d/b/a Prestige Charters and Tours for Certificate No. B-469
B-469, Sub 3 (7-27-88)

Sue's V.I.P. Tours, Bernice Marie King, d/b/a - Order Approving Name Change from Bernice Marie King & Arch Cree King, d/b/a Sue's V.I.P. Tours for Broker's License No. B-490
B-490, Sub 1 (7-13-88)

Tours and Functions, Task, Inc., d/b/a - Order Approving Name Change from Shopping Sprees, A Division of Topics, Incorporated, and for Broker's License No. B-380 be amended accordingly
B-380, Sub 2 (6-29-88)

MOTOR TRUCKS

APPLICATIONS AMENDED

ADM Trucking, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-2995 (8-10-88)

Actionfirst Delivery Express, Barry Douglas Horrell, d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-2997 (8-10-88)

Anderson Trucking Co., Lester Wayne Anderson, d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-2973 (6-15-88)

Another Day Trucking, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2980 (9-23-88)

ORDERS AND DECISIONS LISTED

B & B Lines, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-1992, Sub 2 (5-4-88)

Barnes and Barnes, Clifford M. Barnes & C. Miller Barnes, Jr. - Order Amending Application and Allowing Withdrawal of Protest
T-2869 (7-11-88)

Beam Express, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3036 (11-14-88)

Boone, A. G. Company - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-24, Sub 12 (12-22-88)

Budget Courier Service, Judy Carroll, Sue Carroll and Steve Carroll, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2993 (8-11-88)

C.O.D. Services, Cathy O. Daniels, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2861 (2-2-88)

Carolina Trailer Rentals, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3050 (12-22-88)

Coastal Wrecker Service, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3030 (10-27-88)

Colt Fast Delivery, Inc. - Order Amending Application, Allowing Withdrawal of Protests, Cancelling Hearing and Granting Temporary Authority
T-2938 (6-23-88)

Colt Fast Delivery, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2938, Sub 1 (8-1-88)

Commercial Equipment Company, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3024 (10-25-88)

D and D Contractors, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Granting Temporary Authority
T-2994 (8-2-88)

Dew Line, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3020 (9-21-88)

ORDERS AND DECISIONS LISTED

Flash Courier Service, Inc. - Order Amending Application, Allowing Withdrawal of Protests and Cancelling Hearing
T-3026 (10-19-88)

Frito-Lay, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Granting Temporary Authority
T-2630, Sub 1 (10-25-88)

G. and H. Transportation, Bud Monroe Hawley, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3007 (9-26-88)

Hayes, Ray - Order Amending Application and Allowing Withdrawal of Protest
T-3014 (10-5-88)

Hayes, Ray - Order Amending Application, Allowing Withdrawal of Protests and Cancelling Hearing
T-3014 (10-7-88)

Ivory, Inc. - Order Amending Application, Allowing Withdrawal of Protests and Cancelling Hearing
T-3048, Sub 1 (12-8-88)

J.H.M. Leasing, Inc. - Order Amending Application
T-3051 (12-30-88)

Johnson Truck Lines, Inc. - Order Amending Application
T-2989 (8-3-88)

Justus Truck Lines, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2976 (7-25-88)

Ladd Transportation, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3001 (9-23-88)

Lewis, J. W., Transport, Incorporated - Order Amending Application, Allowing Withdrawal of Protest
T-3013 (9-13-88)

Locklear, C. D. Trucking Company - Order Amending Application, Allowing Withdrawal of Protest and Granting Temporary Authority
T-2914 (1-27-88)

Macfield, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3061 (12-20-88)

Mauney, Michael Paul - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2984 (7-27-88)

ORDERS AND DECISIONS LISTED

Modular Transporters, Richard M. Burkett, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2908 (3-10-88)

Package Pickup Service, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3023 (10-21-88)

Piedmont Transportation, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2961 (6-9-88)

RTC Transportation, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3006 (10-4-88)

Rapid Run, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3029 (10-27-88)

REVA, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3056 (12-20-88)

Reynolds Trucking Co., Inc. - Order Amending Application, Allowing Withdrawal and Protest and Cancelling Hearing
T-2192, Sub 2 (6-30-88)

Roadway Package Systems, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3003 (9-23-88)

Robert's Deliveries, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2982 (8-1-88)

Robinette Trucking, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-2970 (6-10-88)

SLP, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-2969 (7-20-88)

Sain & Heavner Trucking Co., Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3034 (11-14-88)

Sandhill Express, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-2953 (11-21-88)

Snow, Jerry J., Trucking, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-2975 (9-12-88)

ORDERS AND DECISIONS LISTED

Southern Bulk Haulers, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2924 (4-13-88)

Suggs, Sandy, Jr. - Order Amending Application and Allowing Withdrawal of Protest
T-3039 (11-14-88)

Suiter, John Arthur, Jr. - Order Amending Application, Allowing Withdrawal of Protest and Granting Temporary Authority
T-2986 (7-12-88)

Transit Express, Inc., U.S. Transit Corporation, d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-3062 (12-20-88)

Truck Air of Carolinas, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-2996 (8-10-88)

2800 Corporation - Order Amending Application and Allowing Withdrawal of Protest - Contract Carrier
T-2042, Sub 3 (6-15-88)

2800 Corporation - Order Amending Application and Allowing Withdrawal of Protest - Common Carrier
T-2042, Sub 4 (6-15-88)

Westover Express, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2987 (8-1-88)

Willcar, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Granting Temporary Authority
T-2974 (6-7-88)

APPLICATIONS DENIED/DISMISSED

Actionfirst Delivery Express, Barry Douglas Horrell, d/b/a - Order Dismissing Application and Closing Docket
T-2997 (10-21-88)

Same Day Delivery Service, SLP, Inc., d/b/a - Recommended Order Denying Application for Common Carrier Authority
T-2969 (10-14-88)

APPLICATIONS WITHDRAWN (COMMON OR CONTRACT CARRIER AUTHORITY)

Company	Docket Number	Date
Conard, Bob & Sons Mobile Home Moving Lucille S. Conard, d/b/a	T-3017	10-7-88

Hill, Michael Trucking Michael Colon Hill, d/b/a	T-2965	6-28-88
Jim's Trucking Company	T-2398, Sub 2	1-29-88
Marck Express Ivory, Inc., d/b/a	T-3048	11-1-88
Nichols Trucking Company, W. J. Nichols, Jr.	T-3041	11-30-88
R.E.M. Trucking Co., Inc.	T-2487, Sub 1	10-17-88
Santita Trucking Company Wrathel Mitchell, d/b/a	T-2535, Sub 2	1-20-88
Steve's Transport, Steven R. Pagel, d/b/a	T-3016	9-13-88

AUTHORITY GRANTED - COMMON CARRIER

A & A Moving Co., Tyrone Artis and James McCotter, d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Statewide
T-2939 (9-9-88)

Affiliated Services, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities Except Classes A and B Explosives, Household Goods, Commodities in Bulk and Commodities Requiring Special Handling Because of Size and Weight, Statewide (Restriction: The Authority is Restricted Against Shipments Weighing Less Than 200 Pounds)
T-2536, Sub 2 (5-18-88)

All American Mobile Home Sales & Service, Mark D. Chandler and Howard E. Norton, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3019 (12-15-88)

Anderson Trucking Co., Lester Wayne Anderson, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories is not Authorized)
T-2973 (8-11-88)

B & B Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Transportation as Restricted Common Carrier for Unmanufactured Tobacco and Tobacco Materials, Statewide
T-1992, Sub 2 (5-26-88)

B. L. Trucking Company, Lacy L. Cummings, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2933 (3-30-88)

Backwoods Mobile Home Service & Repair, Hugh Zimbelman and Donald Kenneth Ward, Jr. - Recommended Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Modular Homes, Over Irregular Routes, Statewide
T-2990 (9-15-88)

ORDERS AND DECISIONS LISTED

Barrett Trucking Company, Jackie Ray Barrett, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Prefabricated Iron and/or Steel, Statewide
T-2893 (1-26-88)

Brooks, Danny J. - Recommended Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, in the Counties of Wilkes, Surry, Yadkin, Alleghany, Iredell, and Stokes
T-3015 (11-10-88)

Brothers Mobile Home Movers, Tanny J. Woodell and John R. Woodell, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2906, Sub 1 (6-15-88)

Bryant and Sons Auto and Farm Equipment Movers, Bobby Dean Bryant, d/b/a - Order Granting Common Carrier Authority to Transport Group 6, Agricultural Commodities, Group 13, Motor Vehicles and Group 21, Farm Equipment (Tractors, Discs, Plows, Planters, etc.) and Bulk Tobacco Barns, Statewide
T-2911 (4-25-88)

Budget Courier Service, Judy Carroll, Sue Carroll & Steve Carroll, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide (See Official Copy of Order in Chief Clerk's Office for Restrictions)
T-2993 (8-19-88)

Bulldog Hiway Express - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Except Commodities in Bulk in Tank Vehicles and Group 19 Unmanufactured Tobacco and Accessories) and Group 10, Building Materials, Statewide
T-3025 (11-21-88)

Bullis Deliveries, Kevin Craig Bullis, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide (See Official Copy of Order in Chief Clerk's Office for Restrictions)
T-2838 (3-11-88)

CLC Rentals, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2884 (1-22-88)

C & M Enterprise, Charles S. and Marlene P. Jones, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2966 (7-20-88)

CTB Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2947 (7-20-88)

ORDERS AND DECISIONS LISTED

Campbell Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities; Except Commodities in Bulk, in Tank Trucks, Household Goods, Explosives, and Group 19, (Unmanufactured Tobacco and Accessories) and Shipments Weighing 100 Pounds or Less; Statewide
T-2077, Sub 5 (10-28-88)

Carolina Mobile Home Service, Gene Thompson, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2880 (1-11-88)

Carolina Parcel Service, Patricia A. Benholf, d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2921 (4-21-88)

Carolina Western Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2896 (1-22-88)

Chestnut Enterprises Trucking, Wilmington Shipping Company, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2928 (4-13-88)

Childers, Jerry, Delivery Service, Jerry W. Childers, Incorporated, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 10, Building Materials and Group 15, Retail Store Delivery Service, Statewide
T-2901 (1-22-88)

Clark Transportation Service, 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-2945 (5-18-88)

Coastal Wrecker Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories is not Authorized)
T-3030 (11-7-88)

Commercial Equipment Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized)
T-3024 (11-28-88)

Curlee Masonry, Inc. - Order Granting Common Carrier Authority to Transport Group 10, Building Materials, Statewide
T-2894 (1-11-88)

ORDERS AND DECISIONS LISTED

Dew Line, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized)
T-3020 (11-9-88)

Douglas & Sons, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-1635, Sub 5 (1-21-88)

Ellis of Wilkes, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Necessary Set-Up Equipment, Statewide
T-2929 (4-6-88)

First Choice Towing, Kenneth Wayne Andrews, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Boats and Boat Trailers (New and Used) and Camper Trailers, Statewide
T-2971 (7-8-88)

Fleig Leasing, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2932 (3-30-88)

Gary's Mobile Home Service, Gary Steven Godfrey, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, House Trailers, Statewide
T-2680, Sub 1 (6-30-88)

Gate City Towing Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2904 (1-22-88)

Gatlin Corporation - Recommended Order Denying Application for Common Carrier Authority to Transport Group 5, Solid Refrigerated Products, Statewide
T-2886 (3-25-88)

Giles, William M. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3002 (9-26-88)

Gold Hill Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities and Group 8, Dry Fertilizer and Dry Fertilizer Materials, Statewide
T-2925 (10-18-88)

Haux Trucking Company, Robert Haux, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Metal Building Components Including Steel in Sheets, Rafton, Beams, Siding and Roofing, Statewide
T-2955 (7-20-88)

ORDERS AND DECISIONS LISTED

Hawley Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized)
T-2898 (2-5-88) Errata Order (2-9-88)

Helms, Clyde Vernon - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Manufactured Homes, House Trailers, Office Trailers and Storage Facilities, Statewide
T-2903 (1-22-88)

Household Goods, Commodities in Bulk and Commodities Requiring Special Handling Because of Size and Weight, Statewide (See Official Copy of Order in Chief Clerk's Office for Restrictions)
T-2536, Sub 2 (5-18-88)

Humboldt Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide (See Official Copy of Order in Chief Clerk's Office for Restrictions)
T-2828 (4-15-88)

Ideal Towing Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Office Trailers and Construction Site Office Trailers and Storage Facilities, Statewide
T-2768, Sub 2 (6-29-88)

Ivory, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Excluding Group 19, Unmanufactured Tobacco and Accessories), Statewide
T-3048, Sub 1 (12-16-88)

Joe's Moving & Hauling, Joseph H. Smith, d/b/a - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Between all Points and Places within a 120-Mile Radius of Fayetteville
T-2789 (2-12-88)

Johnny's Transfer Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-1966, Sub 4 (2-11-88)

Johnson Truck Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except Group 19, Unmanufactured Tobacco and Accessories and Commodities in Bulk in Tank Vehicles, Statewide
T-2989 (8-30-88)

Key Way Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2930 (5-19-88)

L & R Trucking, Randy Joe Rogers, d/b/a - Order Granting Common Carrier Authority to Transport Group 16, Furniture Factory Goods and Supplies, Statewide
T-2941, Sub 1 (8-19-88)

ORDERS AND DECISIONS LISTED

Lewis, J. W., Transport, Incorporated - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories is not Authorized)
T-3013 (10-18-88)

Lisk, Howard, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Cement, Between the Facilities of Blue Circle Atlantic in Durham and Wayne Counties on the One Hand, and on the Other, Points in the State
T-1685, Sub 14 (2-1-88)

Locklear, C. D. Trucking Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories in not Authorized)
T-2914 (3-3-88)

M & C Trucking, Michael & Charles Hill, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities and Group 21, Empty Coke Bottles, Statewide
T-2965 (9-21-88)

M & E Express Couriers, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Under 100 Pounds, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2895 (3-9-88)

Matthews Moving Systems, Inc. - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Statewide
T-2985 (10-25-88)

McAlexander Cartage, Inc. - Order Granting Common Carrier to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2935 (5-4-88)

McFarling, M. H. Trucking Company, Monroe Houston McFarling, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2888 (2-1-88)

McLawhorn, Charles M. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 6, Agricultural Commodities; Group 15, Retail Store Delivery Service and Group 18, Household Goods, Statewide
T-2913 (3-14-88)

Miller Movers, Archie L. Miller, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2950 (5-17-88)

Mitchell Brothers Moving MBM, Daniel I. Mitchell, d/b/a - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Statewide
T-2882 (2-22-88)

ORDERS AND DECISIONS LISTED

Mobile Home Movers and Service, Johnny Jolly, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Manufactured Homes, Parts and Accessories, Statewide
T-2902 (2-1-88)

Mode, Ken - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2899 (2-22-88)

Modular Transporters, Richard M. Burkett, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Modular Offices, Statewide, Excluding Mobile Homes
T-2908 (3-14-88)

Motor Freight Specialist, Neal R. White, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2897 (1-22-88)

Myers Men, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2954 (7-20-88)

National Modular Home Service, Carolyn Mullenax Smith, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, From all Points and Places in Wake and Harnett Counties to all Points and Places in North Carolina and from all Points and Places in North Carolina to all Points and Places in Wake and Harnett Counties
T-2943 (5-19-88)

Newton Transportation Co., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-210, Sub 2 (7-20-88)

Package Pickup Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Between all Points and Places East of and Including the Counties of Granville, Durham, Wake, Harnett, Cumberland and Robeson (See Office Copy of Order in Chief Clerk's Office for Restrictions)
T-3023 (10-24-88)

Palco Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2934 (6-2-88)

Petroleum Express, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Statewide
T-2972 (11-18-88)

Piedmont Mobile Home Set-Up and Service, Samuel W. Brummitt, Jr., and Robert D. Brummitt, d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Prefabricated Modular Homes, Statewide
T-2891 (2-22-88)

Q Carriers, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 17, Textile Mill Goods and Supplies, Statewide
T-2922 (6-8-88)

Quality Mobile Home Sales of Godwin, Turpin Associates, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Classes A and B Explosives, Household Goods, Commodities in Bulk in Tank Trucks, and Commodities Requring Special Equipment for Handling, Statewide (See Official Copy of Order in Chief Clerk's Office for Restrictions)
T-2660, Sub 1 (1-28-88)

RTC Transportation, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories is not Authorized)
T-3006 (10-18-88)

Ranger Transportation, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except Commodities in Bulk in Tank Vehicles and Group 19, Unmanufactured Tobacco and Accessories; Statewide
T-3009 (10-27-88)

Reco Transportation, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Except Classes A and B Explosives, Commodities in Bulk, Household Goods, and Shipments less than 101 Pounds if Transported in a Motor Vehicle in Which no one Package Exceeds 100 Pounds), Statewide
T-2632 (10-26-88)

Reinhardt Trucking, Charles Henry Reinhardt, t/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, from Asheville, N.C. to Morganton, N.C. and from Asheville, N.C. to Durham, N.C.
T-2847 (4-15-88)

Reliable Delivery, Gravely & Gravely, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except Commodities in Bulk in Tank Vehicles and Group 19, Unmanufactured Tobacco; Between All Points in North Carolina East of Interstate 95
T-3022 (10-21-88)

Reynolds Trucking Co., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 9, Forest Products and Group 10, Building Materials, Statewide (See Official Copy of Order in Chief Clerk's Office for Restrictions)
T-2912, Sub 2 (8-12-88)

Roadway Package System, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized)
T-3003 (10-18-88)

ORDERS AND DECISIONS LISTED

Roberts Deliveries, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (See Official Copy of Order in Chief Clerk's Office for Exceptions)
T-2982 (8-12-88)

Robinette Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide (See Official Copy of Order in Chief Clerk's Office for Restrictions)
T-2970 (8-31-88)

Sain & Heavner Trucking Co., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide, (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized)
T-3034 (11-21-88)

Sealed Air Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2892 (1-11-88)

Shaw Trucking Co., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2977 (8-19-88)

Smith Transfer Company, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except those of Unusual Value, Commodities in Bulk, in Tank Trucks, Classes A and B Explosives, and Commodities Requiring Special Equipment, Statewide (See Official Copy of Order in Chief Clerk's Office for Restrictions)
T-470, Sub 6 (4-8-88)

Sonic Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except Group 19, Unmanufactured Tobacco and Accessories; Statewide
T-3044 (12-15-88)

Southern Bulk Haulers, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Cement and Cement Products, Lime, Fertilizer, Sand, Fly Ash (Except that Fly Ash is Restricted Against Transportation for Monier Resources, Inc.) and General Commodities on Flat Bed Trucks and Trailers, Statewide, but Restricted Against Shipments Originating in Wilmington, North Carolina or within a 15-mile Radius thereof
T-2924 (6-6-88)

Southern Container Corporation - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except those of Unusual Value, Commodities in Bulk, in Tank Trucks, Classes A and B Explosives, and Commodities Requiring Special Equipment, Statewide (See Official Copy of Order in Chief Clerk's Office for Restrictions)
T-2981 (8-30-88)

Speedy-Pak, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2756 (5-26-88)

Steve's Transport, Steven R. Pagel, d/b/a - Order Granting Common Carrier Authority to Transport Group 21 Mobile Homes, Statewide
T-3016 (10-25-88)

Suiter, John Arthur, Jr. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories is not Authorized)
T-2986 (8-19-88)

Sykes, Edward Stewart - Order Granting Common Carrier Authority to Transport Group 21, Bulk Tobacco Barns, Statewide
T-2957 (6-7-88)

Taylor Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2863 (1-28-88)

Triad Distribution Service, Charles Allen Calhoun, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities and Group 16, Furniture Factory Goods and Supplies, Statewide
T-2915 (3-30-88)

Triangle Wholesale Building Supply, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Group 6, Agricultural Commodities, Group 8, Dry Fertilizer and Dry Fertilizer Materials, and Group 21, Feed Salt, Meat Salt, Liquid Nitrogen Fertilizer Solution for Farm Use, Statewide
T-2872 (5-12-88)

Truck Air of the Carolinas, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories is not Authorized)
T-2996 (10-7-88) Errata Order (11-1-88)

2800 Corporation - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide (Restrictions: Transportation of Group 19, Unmanufactured Tobacco and Accessories)
T-2042, Sub 4 (8-1-88) Errata Order (8-9-88)

United Parcel Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide (See Official Copy of Order in Chief Clerk's Office for Restrictions)
T-1317, Sub 24 (1-27-88)

Western Auto Supply Company/Transportation Division - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except Household Goods, Class A & B Explosives, Commodities in Bulk and those Commodities Requiring Specialized Equipment or Protective Service; Statewide
T-2926 (8-3-88)

Westover Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities Except Classes A and B Explosives, Household Goods and Commodities in Bulk and Shipments of less than 101 Pounds if Transported in a Motor Vehicle in which no one Package Exceeds 100 Pounds, Statewide, Excluding Group 19, Unmanufactured Tobacco and Accessories
T-2987 (10-12-88)

Willcar, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide, Excluding the Transportation of Group 19, Unmanufactured Tobacco and Accessories
T-2974 (11-7-88)

Williams, H. C., Jr., Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2889 (1-19-88)

Woodell Delivery Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Group 15, Retail Store Delivery Service and Group 21, Preprinted Forms and Paper Products Between Points and Places in the Counties of Alexander, Catawba, Cleveland, Davidson and Davie
T-2843, Sub 1 (2-22-88)

AUTHORITY GRANTED - CONTRACT CARRIER

ADM Trucking, Inc. - Order Granting Contract Carrier Authority to Transport All of the Groups Listed on the Official Copy of the Order in the Chief Clerk's Office
T-2995 (9-21-88)

Belue Trucking Co., Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum Products, in Bulk, in Tank Vehicles, Statewide, Under Continuing Contract with Amoco Oil Company
T-2717, Sub 3 (5-19-88)

Belue Trucking Co., Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, in Bulk, in Tank Vehicles, Statewide, Under Continuing Contracts with Fitzgerald Oil Company
T-2717, Sub 4 (11-15-88)

Bevtran, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities and Group 21, Beverages, Statewide, Under Continuing Contracts with Southern Pallet, Inc.; Pepsi-Cola Bottling Company of Roxboro, Inc.; Carolina Canners, Inc.; Carolina Canners Wholesale Corporation and Carolina Beverage Packers of Durham, Inc.
T-2919 (12-7-88)

ORDERS AND DECISIONS LISTED

Boone, A. G. Company - Order Granting Contract Carrier Authority to Transport Group 21, Such Commodities as are Dealt in or used by Grocery, Food, Drug and Department Stores, and Materials, Equipment and Supplies used in the Manufacture, Sale and Distribution of such Commodities, Between Points in the State of North Carolina, Under Continuing Contract with Bonded Distribution, Inc.
T-24, Sub 11 (12-8-88)

Brothers Mobile Home Movers, Tanny J. Woodell, Ronnie G. Hart, and Danny T. Woodell, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Mobile Homes, Statewide, Under Contract with Clayton Homes, Inc., and AAA Mobile Homes, Inc.
T-2906 (2-5-88)

Chemical Cartage Company - Order Granting Contract Carrier Authority to Transport Group 21, Commodities in Bulk, Statewide, Under Continuing Contract with Unocal Chemical, Division of Union Oil Company of California, Transportation of Group 21, Liquid Fertilizer and Fertilizer Materials, in Bulk, Statewide, Under Continuing Contract with Western Branch Holding Company, d/b/a Nitrex
T-3027 (12-2-88) Errata Order (12-7-88) Errata Order (12-15-88)

Colonial Freight System, Inc. - Order Granting Contract Carrier Authority to Transport Group 5, Solid Refrigerated Products, Between the Facilities of United States Cold Storage, Inc., at or Near Lumberton on the one hand, and Points in North Carolina, on the Other Hand
T-2004, Sub 7 (5-19-88)

Continental Industrial Chemicals, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide, Under Continuing Contract with E. I. Du Pont De Nemours & Company, Inc.
T-2958 (7-28-88)

Double D Enterprises, Joe B. Faison, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1 General Commodities, Statewide, Under Continuing Contract with Reynolds Aluminum Recycling Company and Wake Enterprises, Inc.
T-2685 (3-23-88)

Eastern Fuels Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk, in Tank Trucks and Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide, Under Continuing Contracts with Eastern Fuels, Inc.; Eastern Fuels of Ahoskie, Inc.; Plymouth Oil Company of Washington County; Windsor Oil Company, Inc.; Coastal Oil Company of Belhaven, N. C., Inc.; Pungo Distributors, Inc.; Beasley Enterprises, Inc.; C. W. Beasley Oil Company, Inc.; Wood Beasley, Inc.; Beasley Farms, Inc.; Creywood Oil Company; "Miss Boo" Inc.; and Pearce-Beasley, Inc.
T-2900 (1-22-88)

Harrison, Silas J., Jr., Inc. - Order Granting Contract Carrier Authority to Transport Group 8, Dry Fertilizer and Dry Fertilizer Materials and Group 21, Liquid Fertilizer, Statewide, Under Continuing Contract with Lebanon Chemical Corp.
T-2890 (2-17-88) Errata Order (2-24-88)

Kentec, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Group 17, Textile Mill Goods and Supplies and Group 21, Virgin and Recycled Triethylene Glycol, a Nonregulated Chemical Solvent used in the Cleaning of Textile Spinning Machine Parts, in the Counties of Pitt, Lenoir, Duplin, Pender, New Hanover and Brunswick, Under Continuing Contract with E.I. Du Pont de Nemours & Co., Inc.
T-2949 (6-7-88)

L & R Trucking, Randy Joe Rogers, d/b/a - Order Granting Contract Carrier Authority to Transport Group 16 Furniture Factory Goods and Supplies, Statewide, Under Contract with Edgar B. Furniture Plantation
T-2941 (5-5-88)

Ladd Transportation, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contracts with Roses Stores, Inc. (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized)
T-3001 (10-19-88)

Majors, Fred G. - Order Granting Contract Carrier Authority to Transport Group 15 Retail Store Delivery Service and Group 21, Household Appliances, Stoves, Refrigerators, Washers, Dryers, Statewide, Under Continuing Contract with Sears, Roebuck & Co.
T-2956 (6-29-88)

Piedmont Transportation, Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Statewide, Under Continuing contracts with Chatham Oil Company and United States Oil Company, Inc.
T-2961 (7-13-88)

R. & O. Transport, Richard Edward Ohmer, Jr., d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Contract with Brenner Equipment Corporation
T-2842 (2-9-88)

Respess Trucking, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, from Eden to New Bern and Washington and from Washington to Warrenton and Lillington, Under Contract with Bafer, Incorporated and C. O. Tankard Company, Inc.
T-2940 (7-13-88)

Respess Trucking, Inc. - Recommended Order Granting Application for Contract Carrier Authority to Transport Group 1, General Commodities, from Eden, in Rockingham County, East to Ahoskie, in Hertford County, and Elizabeth City, in Pasquotank County, Under Continuing Contracts with Bellcross Beverage Company
T-2940, Sub 1 (12-7-88)

Ryder Bulk Transportation Services, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Commodities in Bulk, in Tank Vehicles Between Facilities of Borden Chemical Division of Borden, Inc. Located at or near Fayetteville, NC on the One Hand, and on the other, Points in North Carolina, Under Continuing Contract(s) with the Chemical Divison of Borden, Inc.
T-2991 (9-23-88)

Snow, Jerry J., Trucking, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contracts with Expo Wire Company, The North Carolina Granite Corporation and The L. S. Starrett Company (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories is not Authorized)
T-2975 (10-18-88)

Swicegood, Donald J. - Order Granting Contract Carrier Authority to Transport Group 21, Cement, in Bulk and in Bags, From Points in the State to the Plants to Taylorsville Manufacturing Concrete Supply, Inc., at Statesville and Taylorsville Under Continuing Contract with Taylorsville Manufacturing Concrete Supply, Inc.
T-2465, Sub 2 (2-19-88)

2800 Corporation - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities and Group 5, Solid Refrigerated Products, Statewide, Under Continuing Contracts with Abbott Laboratories, GTS Transportation Services and Carolina Turkeys (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories is not authorized)
T-2042, Sub 3 (7-5-88)

Whiteford Transport Systems, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Glass, and Materials, Equipment, and Supplies Utilized in the Sale, Manufacture, and Distribution thereof, Between Laurinburg, on the one hand, and, on the other, Points in North Carolina, Under Continuing Contract(s) with Libby Owens Ford Co.
T-2960, Sub 1 (9-21-88)

AUTHORIZED SUSPENSION

Company	Certificate	Reason
Ace Moving & Storage Company Wilbert A. Jackson, d/b/a T-954, Sub 4 (11-30-88)	C-677	Good Cause
American Distribution Systems, Inc. T-1758, Sub 3 (4-20-88)	C-173	Good Cause
B & W Local Moving, Inc. T-1978, Sub 2 (12-15-88)	C-602	Good Cause
Branch Moving & Storage Company T-895, Sub 5 (7-20-88)	C-692	Good Cause

Continental Freight Systems, Inc. T-2531, Sub 1 (11-16-88)	P-501	Good Cuase
Eagle Transport Corporation T-151, Sub 21 (1-16-88) Errata Order (1-29-88)	C-296	Good Cause
Eagle Transport Corporation T-151, Sub 21 (12-14-88)	C-296	Good Cause
Ed's Used Cars, Walter Edward Radford, d/b/a T-2613, Sub 2 (4-13-88)	C-1385	Good Cause
Eggleston, Gorris Oil Transport, Inc.	C-163	Good Cause
Everette Truck Line, Inc. T-27, Sub 10 (3-23-88)	C-417	Good Cause
Gardner-Creech Oil Co., Inc. T-790, Sub 6 (7-13-88)	C-574	Good Cause
Graebel/North Carolina Movers, Inc. T-2333, Sub 1 (2-29-88)	C-1256	Good Cause
Hamrick, J. Austin T-1605, Sub 5 (8-19-88)	C-1013	Good Cause
Hewett's Mobile Home Set-Up and Repair Harry Bert Hewett, d/b/a T-2558, Sub 4 (10-18-88)	C-1370	Good Cause
Honeycutt, J. B., Co., T-94, Sub 14 (2-10-88)	C-217	Good Cause
Hood Moving & Storage, Inc. T-2452, Sub 1 (7-6-88)	C-1302	Good Cause
Hopkins, D. O. Trucking, Inc. T-1694, Sub 5 (10-7-88)	C-1038	Good Cause
J & M Mobile Home Repair Service, Jimmy T. Brown, d/b/a T-2801, Sub 1 (9-7-88)	C-1523	Good Cause
J & W Service, Jerry Small, d/b/a T-2814, Sub 1 (2-9-88)	C-1530	Good Cause
McCotter, J. D., Sr. T-448, Sub 10 (3-14-88)	C-259	Good Cause
McLaurin Trucking Company T-1974, Sub 3 (10-21-88)	CP-52	Good Cause

Mitchell, Cyrus A., Jr. T-2187, Sub 2 (2-23-88)	C-1185	Good Cause
Mustang Transportation, Inc. T-2708, Sub 2 (11-10-88)	C-1462	Good Cause
North State Transport, Frank E. Dills & Wesley M. Dills, d/b/a T-2677, Sub 2 (6-28-88)	P-523	Good Cause
P & Y Mobile Homes, Inc. T-1418, Sub 4 (4-14-88)	C-950	Good Cause
P & Y Mobile Homes, Inc. T-1418, Sub 4 (10-5-88)	C-950	Good Cause
Potter, James Luther T-2775, Sub 1 (4-6-88)	C-1498	Good Cause
Storr Office Environments, Inc. T-2860, Sub 1 (3-14-88)	C-1570	Good Cause
Storr Office Environments, Inc. T-2860, Sub 2 (8-19-88)	C-1570	Good Cause
2800 Corporation T-2042, Sub 5 (10-7-88)	CP-58	Good Cause

Bell Truck Line, Thomas Bell, d/b/a - Recommended Order Granting Authorized Suspension of Operations, Certificate No. C-89 - Termination of Liability Insurance Coverage
T-406, Sub 3 (5-13-88)

CERTIFICATES/PERMITS CANCELLED

Ceased Operations Company and Certificate No.	Docket Number	Date
Benton, James E. (C-1119)	T-1963, Sub 3	7-27-88
Big King Mobile Home Sales, C & T Enterprises, Inc., d/b/a (C-1168)	T-2140, Sub 1	9-22-88
Central Feeds, Inc. (P-383)	T-2126, Sub 2	4-15-88
Champion International Corporation (P-493)	T-2529, Sub 1	4-21-88
Danny's Mobile Home Moving Service, Danny A. Whitesides, d/b/a (C-1518)	T-2794, Sub 1	7-20-88
Fuel Oil Service Company (P-295)	T-995, Sub 8	8-4-88
Gelco Distribution Services, Inc. (P-470)	T-2479, Sub 1	8-11-88
Hallport, Inc. (P-532)	T-2729, Sub 1	4-4-88
Herman, Ray L. (C-1074)	T-1823, Sub 6	8-31-88
Hudson Transportation, Inc. (P-345)	T-2044, Sub 2	5-19-88
Loving, T. A., & Company (C-758)	T-1056, Sub 1	6-3-88
McCullough, William F., Jr. (C-653)	T-900, Sub 5	7-8-88
Movers World, Inc. (C-682)	T-2381, Sub 2	4-13-88

ORDERS AND DECISIONS LISTED

Termination of Liability/Cargo Insurance Coverage

Company and Certificate No.	Docket Number	Date
Watson Moving & Storage, Inc.	T-2280, Sub 4	1-4-88

Action Freight Lines, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1128 - Termination of Cargo Insurance Coverage
T-1999, Sub 5 (9-27-88)

All Ohio Trucking Company - Recommended Order Cancelling Operating Authority Permit No. P-413 - Termination of Liability Insurance Coverage
T-2235, Sub 2 (6-6-88)

Allred Boat Transport, David & Virginia Allred, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1365 - Termination of Cargo Insurance Coverage
T-2565, Sub 2 (12-8-88)

B L Trucking Company, Lacy L. Cummings, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1597 - Termination of Liability and Cargo Insurance Coverage
T-2933, Sub 1 (11-8-88)

Bartlett, Jack, Moving & Construction, Jack E. Bartlett, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-646 - Termination of Cargo Insurance Coverage
T-1863, Sub 2 (2-2-88)

Bre-Dav Transportation, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1235 - Termination of Cargo Insurance Coverage
T-2293, Sub 6 (7-6-88)

C & P Trucking Co., Connie Clark Everson & William Franklin Pittman, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1605 - Termination of Liability and Cargo Insurance Coverage
T-2927, Sub 1 (10-14-88)

Carolina Movers & Riggers, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-840 - Termination of Cargo Insurance Coverage
T-1748, Sub 4 (2-18-88)

Carroll's Mobile Home Transport, Elwood Carroll Williams, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-855 - Termination of Liability Insurance Coverage
T-2211, Sub 3 (10-14-88)

Ford's Contracting Service, William C. Ford, t/a - Recommended Order Cancelling Operating Authority Permit No. P-365 - Termination of Liability Insurance Coverage
T-2081, Sub 5 (11-8-88)

ORDERS AND DECISIONS LISTED

Freeman Contract Service, Inc. - Recommended Order Cancelling Operating Authority Permit No. P-400 - Termination of Liability Insurance Coverage
T-2167, Sub 2 (5-13-88)

Freight Shuttle, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-896 - Termination of Liability Insurance Coverage
T-2532, Sub 2 (4-20-88)

J & R Mobile Home Moving Repair Service, Jesse James Smith and Roy B. Williams, d/b/a - Recommended Order Cancelling Operating Authority Certificate C-1021 - Termination of Cargo Insurance Coverage
T-2426, Sub 1 (2-29-88)

Jim's Mobile Home Delivery and Set-Up Service, James D. Hodge, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1464 - Termination of Cargo Insurance Coverage
T-2743, Sub 1 (10-14-88)

Jones, Raymond E. - Recommended Order Cancelling Operating Authority Permit No. P-505 - Termination of Liability Insurance Coverage
T-2566, Sub 2 (11-23-88)

Jordan Mobile Home Movers, Ronnie Long Jordan, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1455 - Termination of Liability Insurance Coverage
T-2684, Sub 2 (5-13-88)

K R & F Express, Inc. - Recommended Order Cancelling Operating Authority Certificate C-1502 - Termination of Liability and Cargo Insurance Coverage
T-2786, Sub 1 (4-20-88)

Lewis Contract Carriers, John C. Lewis, d/b/a - Recommended Order Cancelling Operating Authority Certificate C-1478 - Termination of Liability and Cargo Insurance Coverage
T-2760, Sub 1 (3-7-88)

Martin, Roger E., Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-829 - Termination of Cargo Insurance Coverage
T-1193, Sub 4 (4-14-88)

Mid-State Mobile Home Movers, Tony L. Branch, d/b/a - Recommended Order Cancelling Operating Authority Certificate C-1516 - Termination of Cargo Insurance Coverage
T-2808, Sub 1 (2-18-88)

Mitchell Express, Inc. - Recommended Order Cancelling Operating Authority Permit No. P-411 - Termination of Liability Insurance Coverage
T-2240, Sub 4 (11-23-88)

Native American Trucking Company, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1522 - Termination of Cargo Insurance Coverage
T-2803, Sub 1 (7-28-88)

Piggy-Back & Cartage Service, Oscar Barwick, Jr., d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1557 - Termination of Cargo Insurance Coverage
T-2870, Sub 2 (8-2-88) Order Rescinding Order (8-18-88)

Port City Transfer & Storage Company, John S. Templeton & Charles Thad Linker, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-620 - Termination of Cargo Insurance Coverage
T-1491, Sub 2 (4-14-88)

Postmasters, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1113 - Termination of Liability Insurance Coverage
T-2683, Sub 3 (8-2-88)

Sam's Mobile Home Service, Samuel E. Moore, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1497 - Termination of Cargo Insurance Coverage
T-2780, Sub 1 (7-28-88)

Sanford Transfer & Storage Company, Roy W. Cashion and L. F. Cashion, Jr., d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-735 - Termination of Cargo Insurance Coverage
T-1028, Sub 2 (2-2-88) Rescinding Order Cancelling Authority (2-26-88)

Snow, Ted B. - Recommended Order Cancelling Operating Authority Permit No. P-355 - Termination of Liability Insurance Coverage
T-2057, Sub 2 (10-2-88)

South West Mobile Home Transport, Harry George West, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1425 - Termination of Liability Insurance Coverage
T-2693, Sub 2 (11-7-88)

Stox Trucking Company - Recommended Order Cancelling Operating Authority Certificate No. C-1287 - Termination of Cargo Insurance Coverage
T-2397, Sub 3 (9-23-88)

Venture Trucking Company, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1561 - Termination of Cargo Insurance Coverage
T-2821, Sub 1 (11-23-88)

Williams, Moses - Recommended Order Cancelling Operating Authority Permit No. P-491 - Termination of Liability Insurance
T-2524, Sub 3 (7-6-88)

INCORPORATIONS AND TRANSFERS

Holt, H. R. Trucking, Inc. - Order Approving Incorporation from H. R. Holt for Certificate No. C-385
T-320, Sub 7 (1-20-88)

ORDERS AND DECISIONS LISTED

MERGERS

Eagle Transport Corporation - Order Approving Transfer and Merger with Charlotte Transportation Company, Inc., Holder of Certificate No. C-902
T-151, Sub 21 (1-21-88)

NAME CHANGE/TRADE NAME

A & F Equipment Service Co., Inc. - Order Approving Name Change from A & F Equipment Service Co. for Certificate No. C-1509
T-2807, Sub 1 (5-11-88)

American Frieght System, Inc. - Order Approving Name Change from American Freight System of North Carolina, Inc. for Certificate No. C-62
T-2578, Sub 2 (4-20-88) Order Rescinding Order (4-25-88)

American Mobile Home Moving Service, William M. Giles, d/b/a - Order Approving Name Change from William M. Giles for Certificate No. C-1640
T-3002, Sub 1 (10-14-88)

B & B Movers, Incorporated - Order Approving Name Change from J. P. Cauley, Jr., d/b/a, B & B Movers for Certificate No. C-1241
T-2314, Sub 3 (1-11-88)

Belue Trucking Co., Inc. - Order Approving Name Change from C. P. Belue, d/b/a Belue Trucking for Certificate No. CP-93
T-2717, Sub 4 (4-29-88)

Blevins Motor Express, Inc. - Order Approving Name Change from Hyte Blevins, d/b/a Blevins Motor Express for Certificate No. C-860
T-1242, Sub 7 (3-4-88)

Brothers Mobile Home Movers, Tanny J. Woodell & John R. Woodell, d/b/a - Order Approving Name Change from Tanny J. Woodell, Ronnie G. Hart and Danny T. Woodell, d/b/a Brothers Mobile Home Movers for Permit No. P-555
T-2906, Sub 2 (6-15-88)

Cabarrus Mobile Home Towing, Inc. - Order Approving Name Change from Clyde Vernon Helms
T-3058 (12-2-88)

Everette, Woodrow, d/b/a W. Everette Company - Order Approving Name Change from Everette Contract Carrier, Inc., for Certificate No. C-417
T-2968 (7-27-88)

Fleetwood Express, Inc. - Order Approving Name Change from Fleetwood Express, Robert Lee Padgett, d/b/a for Certificate No. CP-83
T-2610, Sub 3 (8-4-88)

Fox Brothers of Boone, Inc. - Order Approving Name Change from Max Fox & Benny Fox, d/b/a Fox Brothers for Certificate No. C-842
T-1208, Sub 1 (1-12-88)

ORDERS AND DECISIONS LISTED

General Aviation, Inc. - Order Approving use of Trade Name, General Transport Services, Inc., General Aviation, Inc., d/b/a for Permit No. P-551
T-2875, Sub 1 (10-25-88) Errata Order (11-4-88)

Glover, J. Harold, Trucking Co., Inc. - Order Approving Name Change from James Harold Glover Trucking Company, Inc., d/b/a Glover Trucking Co. for Certificate No. C-34
T-2457, Sub 1 (1-15-88)

G.D.T.I.E., Ltd., Great Southern Express, d/b/a - Order Approving Name Change from G.D.T.I.E., d/b/a Great Southern Express for Certificate No. C-1441
T-2653, Sub 2 (2-9-88)

Harris, Billy Trucking Co., Inc. - Order Approving Name Change from William Lester Harris for Permit No. P-349
T-2048, Sub 4 (7-12-88)

Hickory Merchants Delivery, Inc. - Order Approving Name Change from E. L. Burns, t/a Hickory Merchants Delivery for Permit No. P-246
T-1670, Sub 1 (7-6-88)

Leggwork Mail Service, Courier Service and Information Service, Motion-Ventures, Inc., d/b/a - Order Approving Name Change from Leggwork, Inc., d/b/a Leggwork Mail Service, Courier Service and Information Service for Certificate No. C-1546
T-2849, Sub 1 (2-25-88)

Mobile Transporters, Sherilyn FormyDuval, d/b/a - Order Approving Name Change from Hewett's Mobile Home Set-Up and Repair, Harry Bert Hewett, d/b/a for Certificate No. C-1370
T-2558, Sub 3 (5-2-88) Order Rescinding Order Approving Name Change (5-18-88)

Reliable Tank Line, Limited Partnership - Order Approving Name Change from G-B Management, Inc. t/a Reliable Tank Line for Certificate No. C-310
T-459, Sub 6 (2-23-88)

Seneca Transportation Company, Inc., d/b/a In Time Transportation, Incorporated - Order Approving Use of Trade Name In Time Transportation, Incorporated
T-2854, Sub 1 (1-12-88)

Seneca Transportation Company, Inc., d/b/a In Time Transportation, Inc. - Order Approving Name Change from Seneca Transportation Company, Inc., d/b/a In Time Transportation, Incorporated
T-2854, Sub 2 (4-13-88)

Tamway Trucking, Inc. - Order Approving Name Change from Tamway Trucking Company, Thomas W. Randleman, d/b/a, for Certificate No. C-346
T-2576, Sub 2 (10-24-88)

The News & Observer Publishing Co. - Order Approving Name Change from Raleigh Delivery Service, Division of the The News and Observer Publishing Company, for Permit No. P-212
T-1443, Sub 5 (11-16-88)

ORDERS AND DECISIONS LISTED

Troy Homes Corporation - Order Approving Name Change from Allen Realty Company, Inc., for Certificate No. C-1041
T-1832, Sub 4 (8-29-88)

RATES - MOTOR COMMON CARRIERS

Motor Common Carriers - Recommended Order Vacating Suspension of Commission Order of February 10, 1988, for Increase in Rates and Charges Applicable to Shipments of General Commodities, Including Minimum Charges
T-825, Sub 301 (3-30-88) Recommended Order Adopted (3-31-88)

Motor Common Carrier - Order Allowing Withdrawal of Tariff Filing for Proposed 5% Increase in Rates and Charges Appling on Tariff NCTA No. 5-V, Item 40 Petroleum and Petroleum Products, in Bulk, in Tank Trucks, Scheduled to Become Effective on April 1, 1988
T-825, Sub 303 (6-9-88)

RESCINDING ORDERS CANCELLING AUTHORITY

Company and Certificate No.	Docket Number	Date
Bartlett, Jack Moving & Construction Jack E. Bartlett, d/b/a	T-1863, Sub 2	2-19-88

SALES AND TRANSFERS/CHANGE OF CONTROL

Admiral Transportation Acquisition Corp. - Order Approving Transfer of Stock of Certificate No. C-892 from Whitley, Clayton, Helms Associate, Inc., d/b/a Admiral Transportation Services
T-2475, Sub 3 (1-20-88)

American Freight System, Inc. - Order Approving Transfer and Assignment of Certificate No. C-62 from American Freight System of North Carolina, Inc.
T-2578, Sub 3 (9-20-88)

Atlanta Motor Lines, Inc. - Order Approving Transfer of Stock of Certificate No. C-1517 from Atlanta Motor Lines, Inc., Employee Stock Ownership Trust
T-2818, Sub 1 (4-21-88)

Atlantis Transporters, J. B. Curl, d/b/a - Order Approving Sale and Transfer of Certificate No. C-972 from Clyde Haugen & Boyce Rhymer, d/b/a Atlantis Transporters
T-2193, Sub 1 (11-17-88)

Bland Trucking Company, Inc. - Order Approving Sale and Transfer of Certificate No. C-1361 from Pioneer Trucking Co., Inc.
T-3045 (11-17-88)

Blue Ridge Grading, Inc. - Order Approving Sale and Transfer of Certificate No. C-1340 from Jackie W. Noblett, d/b/a Ashe Lake Garage
T-2983 (7-25-88)

ORDERS AND DECISIONS LISTED

Bob's Mobile Home Transport & Service Co., Samuel Franklin Chamberlain, d/b/a - Order Approving Transfer of Certificate No. C-887 from Robert Harold Chamberlain, d/b/a Bob's Mobile Home Transport & Service Co.
T-1312, Sub 3 (4-25-88)

Brown Transport Truckload, Inc. - Order Approving Authority to Acquire Control of Thurston Motor Lines, Inc., Holder of Certificate No. C-26
T-2912 (2-19-88) Errata Order (2-24-88)

Brytran, Inc. - Order Approving Sale and Transfer of Certificate No. C-242 from Bryant Brothers, Inc.
T-2923 (3-18-88)

C.J.S. Courier Service Plus, Inc. - Order Approving Sale and Transfer of Certificate No. C-1441 from G.D.T.I.E., Inc., d/b/a Great Southern Express
T-2967 (5-19-88)

C & P Trucking Co., Connie Clark Everson & William Franklin Pittman, d/b/a - Order Approving Sale and Transfer of a Portion of Certificate No. C-259 from J. D. McCotter, Sr.
T-2927 (4-22-88)

Christian's Mobile Home Movers, Gregory Lee Christian, d/b/a - Order Approving Sale and Transfer of Certificate No. C-899 from Lamb's Mobile Home Movers, William David Lamb, d/b/a
T-2948 (4-22-88)

Clark's Mobile Home Movers, Charles Eugene Clark, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1370 from Harry Bert Hewett, d/b/a Hewett's Mobile Home Set-up and Repair
T-3040 (11-17-88)

Curlee Trucking, Inc. - Order Approving Sale and Transfer of Certificate No. C-1571 from Curlee Masonry, Inc.
T-3021 (9-20-88)

DSI Transports, Inc. - Order Approving Sale and Transfer of Certificate No. C-1187 from Bralley-Willett Tank Lines, Inc.
T-3049 (12-22-88)

Daily Delivery Service, Patricia Alligood Stalls, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1261 from Reginald Gordon Stalls, d/b/a Daily Delivery Service
T-2372, Sub 2 (3-17-88)

Eagle Transport Corporation - Order Approving Sale and Transfer a Portion of Certificate No. C-217 from J. B. Honeycutt Co., Inc.
T-151, Sub 22 (3-17-88)

Everette Contract Carrier, Inc. - Order Approving Sale and Transfer of Certificate No. C-417 from Everette Truck Line, Inc.
T-2968 (6-17-88)

ORDERS AND DECISIONS LISTED

Franklin's, Johnny Mobile Home Moving & Service, Johnny Franklin, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1037 from Charles Cantrell Associates, Inc.
T-3031 (10-24-88)

Gateway South Warehousing & Distribution, Inc. - Order Approving Sale and Transfer of Certificate No. C-1531 from BRTS, Inc., d/b/a B & R Transportation Service
T-2946 (4-22-88)

Glass Container Transport, F.M.B. Transport, Inc., d/b/a - Order Approving Transfer of Certificate No. C-1055 From Mercer Bros. Trucking Co.
T-2429, Sub 2 (4-25-88)

Gore's Transporting, Inc. - Order Approving Sale and Transfer of Certificate No. C-1369 from Southern Mobile Home Service, Inc.
T-3035 (11-17-88)

Gra-Bell Truck Line, Inc. - Order Approving Sale and Transfer of Permit No. P-417 from Gilliland Transfer Company
T-2907 (2-19-88)

Hopson, Julian and Sara W. Hopson - Order Approving Transfer of Stock of Certificate No. C-572 from Weathers Brothers Moving and Storage Company, Inc.
T-2917 (2-19-88)

Junior's Mobile Home Sales & Service, Inc. - Order Approving Sale and Transfer of Certificate No. C-1013 from J. Austin Hamrick
T-3032 (10-18-88)

Landmark Mobile Homes, Inc. - Order Approving Sale and Transfer of Certificate No. C-1429 from Oscar Eugene Wingler, d/b/a Winglers Mobile Home Moving
T-2918 (2-19-88)

Marlowe's Mobile Home Repair, Archie Rudolph Marlowe & Thomas Archie Marlowe, d/b/a - Order Approving Sale and Transfer of Certificate No. 1248 from James Edgar Cox, d/b/a Cox's Mobile Home Moving
T-1806, Sub 1 (1-20-88)

Overbay Transport, Raymond Overbay, Jr., d/b/a - Order Approving Sale and Transfer of Certificate No. 1500 from Bill Mark Ormandy, d/b/a Bill Mark's Mobile Home Movers
T-2936 (3-17-88)

Pilot Freight Carriers, Inc. - Order Approving Sale and Transfer of Certificate No. C-1146 from TNT Pilot, Inc.
T-192, Sub 10 (7-25-88)

Reavis, Bobby Mobile Home Moving, Bobby Reavis, d/b/a - Order Approving Sale and Transfer of Certificate No. C-845 from Gary Steven Godfrey, d/b/a Gary's Mobile Home Service
T-3012 (10-28-88)

S.A.F.E., South Atlantic Freight Express, Inc., d/b/a - Order Approving Sale and Transfer of Certificate/Permit No. CP-3 from South Atlantic Bonded Warehouse Corporation
T-2978 (7-27-88)

Wainwright Transfer Co. of Fayetteville, Inc. - Order Approving Sale and Transfer of Certificate No. C-1063 from Kallam Transfer Co., Inc.
T-861, Sub 6 (7-25-88)

West Brothers Moving and Storage, Inc. - Order Approving Sale and Transfer of a Portion of Certificate No. CP-16 from West Brothers Transfer and Storage, Hauling And Storage Division, Inc.
T-2931 (3-17-88)

Whiteford Transport Systems, Inc. - Order Approving Sale and Transfer of Certificate No. C-1207 from C.C.C.A., Inc., d/b/a Carolina Cartage and Associates
T-2960 (5-20-88)

Williams, A. T., Oil Company, Inc. - Order Approving Sale and Transfer of Certificate No. C-1066 from Wilco Transport Company, Inc.
T-3042 (11-17-88)

SECURITIES

Admiral Transportation Service, Whitley, Clayton, Helms Associate, Inc., d/b/a - Order Approving Transfer of Control of Stock Certificate No. C-892 from Names Listed on Official Copy of the Order in the Chief Clerk's Office
T-2475, Sub 4 (10-18-88)

United Transport America, Inc. - Order Approving Transfer of Stock in Certificate No. C-1187 from Bralley-Willett Tank Lines, Inc.
T-3005 (9-20-88)

MISCELLANEOUS

Best Way Motor Lines, Inc. - Order Approving Pledge of Certificate for Certificate No. C-93
T-2396, Sub 3 (10-18-88)

Ryder Distribution Resources, Inc. - Order Amending Permit No. P-423 to Reflect the Contracting Shipper, Mead Corporation, has sold its Butner Plant to Weyerhaeuser Company
T-2302, Sub 1 (5-31-88)

United Parcel Service, Inc. (An Ohio Corporation) - Recommended Order Approving Supplement No. 3 to Tariff North Carolina Utilities Commission No. 5
T-1317, Sub 25 (1-29-88)

United Parcel Service, Inc. (An Ohio Corporation) - Order Allowing Recommended Order to be Effective February 1, 1988
T-1317, Sub 25 (1-29-88)

ORDERS AND DECISIONS LISTED

RAILROADS

APPLICATIONS WITHDRAWN OR DISMISSED

CSX Transportation, Inc. - Order Allowing Withdrawal of Application to Amend the Open and Prepay Station List to Change Forest City from Public to Private Siding Status
R-71, Sub 165 (10-11-88)

CSX Transportation, Inc. - Order Allowing Withdrawal of Application to Retire Team Track No. 8 Located at Ayden
R-71, Sub 166 (8-18-88)

Southern Railway Company - Order Allowing Withdrawal of Petition to Retire and Remove Track No. 25-1 at King
R-29, Sub 694 (7-6-88)

Southern Railway Company - Order Allowing Withdrawal of Petition to Retire and Remove Track No. 71-2, Formerly Serving Morrisette Paper Company at Mile-Post CF-70.3, Greensboro
R-29, Sub 695 (6-1-88)

AGENCY STATIONS

CSX Transportation, Inc. - Order Granting Application to Retire Team Track at Gill, and to Amend the Open and Prepay Station List to Change Gill, From Public to Private Siding Status
R-71, Sub 158 (2-15-88)

CSX Transportation, Inc. - Order Granting Application to Amend the Open and Prepay Station List to Change Youngsville From Public to Private Siding Status
R-71, Sub 159 (2-23-88)

CSX Transportation, Inc. - Order Granting Application to Retire the House Track at Southern Pines and to Remove that Point from the Open and Prepay Station List
R-71, Sub 162 (5-19-88)

CSX Transportation, Inc. - Order Granting Application to Retire Team Track at Everetts and to Remove that Point from the Open and Prepay Station List
R-71, Sub 164 (5-19-88)

Southern Railway Company - Order Granting Application to Close the Agency Station at Reidsville; Revise Mobile Agency Route SOU VA NC-7 (based at Danville, Virginia) to Serve Reidsville and the Prepay-Stations of Pelham, Ruffin, Pennrington and Benaka, Presently Governed by Reidsville; and Add Brown Summit to those Non-Agency Stations Governed by the Agency Station at Greensboro
R-29, Sub 735 (10-31-88)

ORDERS AND DECISIONS LISTED

MOBILE AGENCY AND NONAGENCY STATIONS

CSX Transportation, Inc. - Order Granting Application to Consolidate Charlotte Mobile Agencies No. 1 and 2, at Charlotte; and Change the Status of the Stations of Ellenboro, Lincolnton, Mt. Holly, and Stanley, to Non-Agency Stations Under the Jurisdiction of the Consolidated Mobile Agency Concept
R-71, Sub 160 (3-16-88)

CSX Transportation, Inc. - Order Granting Application for Authority to Include Roanoke Rapids into Rocky Mount No. 2 Mobile Agency and Change Bethel-Parmele to Non-Agency Status Under Jurisdiction of Rocky Mount No. 1 Mobile Agency
R-71, Sub 163 (5-2-88)

CSX Transportation, Inc. - Order Granting Application for Authority to Change the Status of Plymouth to a Non-Agency Station Under the Jurisdiction of the Rocky Mount Transportation Service Center
R-71, Sub 167 (8-17-88)

Southern Railway Company - Final Order Overruling Exceptions 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 and Affirming Recommended Order
R-29, Sub 673; R-29, Sub 674; R-29, Sub 675; R-29, Sub 676 (1-20-87)

Southern Railway Company - Order Granting Petition for Authority to Abandon the Non-Agency Station of Rhodhiss, and Remove the Station from the Open and Prepay Station List
R-29, Sub 683 (6-6-88)

Southern Railway Company - Order Granting Petition for Authority to Close the Agency Station at Lenoir; Revise Mobile Agency Route SOU NC-7 (based at Hickory) to Serve Lenoir and Its Non-Agency Station of Rhondiss; and, Add Saw Mills to those Prepay Stations Governed by the Agency Station at Hickory
R-29, Sub 690 (5-12-88)

Southern Railway Company - Recommended Order Granting Petition for Authority to Close the Agency Station at Kannapolis; Revise Mobile Agency Route SOU NC-10 (Based at Badin) to Serve Kannapolis and the Prepay Stations of Landis, China Grove and Sumner Siding, All Presently Governed by Kannapolis; and Add Concord and Harrisburg to those Non-Agency Stations Presently Governed by the Agency Station at Charlotte
R-29, Sub 691 (5-13-88)

Southern Railway Company - Recommended Order Granting Petition for Authority to Discontinue the Agency Station at Wilson; Assign Wilson and Its Non-Agency Stations of Powell, Walstonburg and Stantonsburg (Presently Governed by Wilson) to Mobile Route NCNS-2 Based at Chocowinity; and Assign the Non-Agency Stations of Simms, Neverson, Bailey, Middlesex, Zebulon, Rockton and Wendell (Presently Governed by Wilson) to the Open Agency at Raleigh
R-29, Sub 734 (12-22-88)

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 158	2-15-88	Milepost S-118	Gill
R-71, Sub 161	4-6-88	Track No. 893	Harris

CAROLINA AND NORTHWESTERN RAILWAY COMPANY, a Subsidiary of Southern Railway System

Docket Number	Date	Track	Town
R-29, Sub 681	2-3-88	Fomerly Serving Fieldcrest Mills	Eden/Draper

DANVILLE AND WESTERN RAILWAY COMPANY

Docket Number	Date	Track	Town
R-29, Sub 647	3-24-88	Mile Post 22-L	Draper

SOUTHERN RAILWAY COMPANY (NORTH CAROLINA RAILROAD COMPANY)

Docket Number	Date	Track	Town
R-29, Sub 656	2-3-88	1-15 Near Mile Post R-1	Charlotte
R-29, Sub 668	8-3-88	3-2	Hendersonville
R-29, Sub 684	1-7-88	2-1 (Old R Line) Milepost R 1.1	Charlotte
R-29, Sub 682	1-29-88	120-1	Gulf
R-29, Sub 686	1-29-88	70-1 (Milepost CF-68)	Greensboro
R-29, Sub 662	3-24-88	Track Formerly Serving Acker-Baugh	Charlotte
R-29, Sub 692	7-13-88	5-2, Milepost K-4.59	Friendship
R-29, Sub 697	6-3-88	70-9, Milepost CF-68.7	Greensboro
R-29, Sub 700	7-13-88	284-37, Milepost 283.5	Greensboro
R-29, Sub 701	8-30-88	20-4, Mile Post W 19.8	Henderson
R-29, Sub 703	10-7-88	288-1	Pomona
R-29, Sub 704	7-13-88	71-6, Milepost CF-70	Greensboro
R-29, Sub 705	6-30-88	3-6, Mile Post M2.7	High Point
R-29, Sub 707	6-3-88	66-2,	Greenboro
R-29, Sub 708	6-3-88	13-5, Mile Post I-12.5	Henderson
R-29, Sub 709	6-8-88	26-19,	Winston Salem
R-29, Sub 711	6-15-88	H2-16,	Greensboro
R-29, Sub 712	7-13-88	M-2-5, Mile Post M1.6	High Point
R-29, Sub 713	10-7-88	1-6, Mile Post 299	High Point
R-29, Sub 714	8-31-88	300-14, Mile Post 299.9	High Point
R-29, Sub 715	8-26-88	Mile Post 229.5	Raleigh

R-29, Sub 716	7-15-88	105-3, MIle POst CF 104.4	Siler City
R-29, Sub 717	8-12-88	M-2-4, Mile Post 1.6,	High Point
R-29, Sub 718	8-11-88	Mile Post 0.9	High Point
R-29, Sub 719	8-17-88	3-5, Mile Post L3-514	Winston Salem
R-29, Sub 721	8-11-88	14-2, Mile Post I-13.8	Henderson
R-29, Sub 723	8-26-88	Mile Post NS 181.9	Wilson
R-29, Sub 724	10-7-88	1, and 2, Mile Post CF66	Greensboro
R-29, Sub 727	9-2-88	148.1	Greenville
R-29, Sub 728	8-11-88	Mile Post 196.2	Bailey
R-29, Sub 729	12-1-88	261-11, Mile Post 261.0	Reidsville
R-29, Sub 730	8-26-88	54-1, Mile Post H 53.4	Durham
R-29, Sub 731	12-2-88	245-2, Mile Post 244.1	Pelham
R-29, Sub 732	8-11-88	Mile Post 148.7	Greenville
R-29, Sub 737	8-22-88	55-9, Mile Post H 54.6	Durham
R-29, Sub 738	10-20-88	38-1, Mile Post K37.9	Rural Hall
R-29, Sub 740	12-2-88	396, Mile Post 396	Ranlo
R-29, Sub 741	11-21-88	118-1, Mile Post 117.8	Princeton
R-29, Sub 744	10-21-88	287-56C, Mile Post 286.5	Greensboro
R-29, Sub 747	10-20-88	Mile Post NS 148.6	Greenville
R-29, Sub 748	10-20-88	Mile Post 286.5	Pomona
R-29, Sub 746	11-2-88	42-1, Mile Post H 41.8	Occoneechee

Southern Railway Company - Recommended Order Granting Petition to Retire and Remove Spur Track Beginning at a Point 2964 Feet Southwest of Milepost R-1, Formerly Serving Welders Supply at Charlotte
R-29, Sub 672 (4-27-88)

Southern Railway Company - Recommended Order Granting Petition to Retire and Remove 203 Feet of Track Formerly Serving Earl Thompson, Inc., at Goldsboro
R-29, Sub 693 (6-14-88)

MISCELLANEOUS

Southern Railway Company - Recommended Order Keeping Docket Open Until October 1, 1988
R-29, Sub 688 (3-28-88)

TELEPHONE

APPLICATIONS WITHDRAWN OR DISMISSED

American Television and Communications Corporation - Order Granting Motion to Withdraw Application and to File an Amended Application in Lieu Thereof
P-188 (1-27-88)

CERTIFICATES

Cable & Wireless Communications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Long Distance Telecommunications Service as a Reseller in North Carolina on an Intrastate Basis
P-200 (8-9-88) Order Making Recommended Order Final (8-16-88)

ORDERS AND DECISIONS LISTED

Carolina Network Corporation - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide interLATA Long Distance Telecommunications Services in North Carolina Subject to the Terms and Conditions listed in the Official File in the Chief Clerk's Office
P-188 (6-16-88) Recommended Order Adopted (6-20-88)

Cellular One, Jacksonville Cellular Communications, Inc., d/b/a - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Retail and Wholesale Cellular Radio Communications Services
P-196 (5-8-88)

Cellular One, Wilmington Cellular Communications, Inc. d/b/a - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Retail and Wholesale Cellular Radio Communications Services
P-197 (5-4-88) Errata Order (5-5-88)

Cellular Services of Hickory, Hickory Metronet, Inc., d/b/a - Recommended Order Granting Certificate of Public Convenience and Necessity to Resell Cellular Service and for Approval of Initial Rates, Charges and Regulations to Serve the Hickory MSA
P-198 (3-24-88)

Centel Cellular Company of Hickory - Recommended Order Granting Certificate of Public Convenience and Necessity, Approving Initial Rates, Charges and Regulations
P-190 (2-17-88)

International Telecharge, Inc. - Order Denying Request for Interim Authority to Operate as a Reseller of Telecommunications Services in North Carolina
P-191 (3-18-88)

Military Communications Center, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Resell Telecommunications Services
P-194 (4-5-88)

United Telespectrum, Inc. - Recommended Order Granting Franchise to Provide Retail and Wholesale Cellular Radio Communications Services in the Jacksonville Metropolitan Statistical Area
P-157, Sub 8 (6-1-88)

United Telespectrum, Inc. - Recommended Order Granting Temporary Operating Authority to Provide Retail and Wholesale Cellular Radio Communication Services in Wilmington Metropolitan Statistical Area
P-157, Sub 9 (5-19-88)

United Telespectrum, Inc. - Order Granting Temporary Operating Authority to Provide Retail and Wholesale Cellular Radio Communications Services in the Wilmington Metropolitan Statistical Area
P-157, Sub 9 (5-20-88)

COMPLAINTS

Carolina Telephone and Telegraph Company - Order Declaring Exemption For St. Regis Resort in Complaint of St. Regis Resort
P-7, Sub 702 (6-30-88)

Continental Telephone Company - Order Closing Docket in Complaint of J. C. Wallin
P-128, Sub 18 (5-26-88)

Continental Telephone Company of North Carolina and Southern Bell Telephone and Telegraph Company - Order Closing Docket in Complaint of Troy Bryson
P-89, Sub 34 (5-26-88)

Ellerbe Telephone Company - Order Closing Docket in Complaint of Donald F. Barnes
P-21, Sub 48 (4-28-88)

Southern Bell Telephone and Telegraph Company - Recommended Order Denying Complaint and Motion in Complaint of The Public Staff, North Carolina Utilities Commission
P-55, Sub 890 (7-14-88)

Southern Bell Telephone and Telegraph Company - Recommended Order on Reconsideration in Complaint of The Public Staff, North Carolina Utilities Commission
P-55, Sub 890 (11-21-88)

Southern Bell Telephone and Telegraph Company - Order Finding no Reasonable Grounds to Investigate Complaint and Closing Docket
P-55, Sub 903 (11-23-88)

Southern Bell Telephone and Telegraph Company - Order Finding no Reasonable Grounds to Investigate Complaint and Closing Docket
P-55, Sub 906 (8-22-88)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Company - Recommended Order Dismissing Complaint of Neil J. Nadeau
P-89, Sub 28 (6-7-88) Final Order Overruling Exceptions and Affirming Recommended Order (9-26-88)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Company - Recommended Order Granting Complaint of Mr. Shiraishi, Daruma Japanese Restaurant
P-89, Sub 33 (7-29-88)

Southern Bell Telephone and Telegraph Company and BAPCO - Order Closing Docket in Complaint of Jerry McQuay, d/b/a Signs, Inc.
P-89, Sub 35 (6-24-88)

ORDERS AND DECISIONS LISTED

EXTENDED AREA SERVICE (EAS)

Carolina Telephone and Telegraph Company - Order Approving Implementation of Extended Area Service, Halifax and Northampton Counties
P-7, Sub 718 (8-15-88)

Carolina Telephone and Telegraph Company - Order Authorizing EAS Poll of Fountain to Greenville, One-Way Extended Area Service
P-7, Sub 720 (5-5-88)

Carolina Telephone and Telegraph Company - Order Approving One-Way Extended Area Service From Fountain to Greenville
P-7, Sub 720 (8-5-88)

E-Z Page, Inc. - Order Approving Extension of Service Area
P-187, Sub 2 (7-12-88)

Southern Bell Telephone and Telegraph Company - Order Approving Two-Way EAS Without Rate Increase
P-55, Sub 910 (8-9-88)

MERGERS

NAME CHANGE

Carolina Telcom, Inc. - Order Allowing Name Change from Phones Unlimited & Telecommunications, Inc.
SC-19, Sub 1 (3-23-88)

Computerized Payphone Systems - Order Granting Name Change from Sav-Way Food Stores
SC-178; SC-332 (7-13-88)

Peoples Telephone Company, Inc. - Order Allowing Name Change from Jeffrey Hanft
SC-286, Sub 1 (3-30-88)

Western Union Corporation - Order Allowing Name Change from The Western Union Telegraph Company
WU-114 (2-9-88)

RATES

Carolina Telephone and Telegraph Company - Order Allowing Reclassification of Exchange Rate Groups
P-7, Sub 721 (5-13-88)

SALES AND TRANSFERS

SouthernNet Services, Inc. - Order Approving Transfer of Operating Authority from Telecommunications Systems, Inc.
P-156, Sub 11 (10-13-88)

SECURITIES

Contel of Virginia, Inc. - Order Granting Authority to Sell First Mortgage Bonds
P-28, Sub 45 (11-18-88)

GTE South Incorporated - Order Granting Authority to Issue and Sell Common Stock to GTE Corporation
P-19, Sub 218 (2-29-88)

SPECIAL CERTIFICATES

Docket Number	Date	Company
SC-264	1-11-88	Telesmart, Inc.
SC-265	1-11-88	Idol's Food Store, Inc.
SC-266	1-14-88	Pope Oil Company
SC-267	1-14-88	Anson Community College
SC-268	1-14-88	Charter Pines Hospital
SC-269	1-14-88	CO-OP Tele Service
SC-270	1-20-88	D B C, Inc.
SC-271	1-20-88	Jacksonville Mall
SC-272	1-20-88	Caldwell Memorial Hospital
SC-273	1-27-88	YMCA Camp Hanes
SC-274	1-27-88	Ronald Lance Horney
SC-275	1-27-88	Call Communications, Inc.
SC-276	2-2-88	Two Eleven Food Mart
SC-277	2-2-88	Daniel Pay Phones
SC-279	2-2-88	Ingles Markets, Inc.
SC-278	2-10-88	William Verlin Murray
SC-280	2-10-88	Earl Kivett
SC-281	2-16-88	Lytle Oil Company
SC-282	2-16-88	E. J. Pope and Son, Inc.
SC-283	2-16-88	J. Thomas Jordan, t/a All American Telephone Part of All American Amusement, Inc.
SC-284	2-16-88	Robert G. Prongay
SC-285	2-23-88	Farrell E. Hastings
SC-286	3-9-88	Jeffrey Hanft
SC-287	2-23-88	Blowing Rock Assembly Grounds, Inc.
SC-288	3-2-88	Universal Payphone Company
SC-289	3-2-88	Network Communications
SC-290	3-2-88	Edwards Communications, Inc.
SC-291	3-9-88	Edward W. Wright
SC-292	3-9-88	Military Communications Center, Inc.
SC-293	3-15-88	Carl S. Stevens
SC-294	3-15-88	Shelton's Gulf Service
SC-295	3-15-88	Northside Bowling Lanes, Inc.
SC-296	3-23-88	Harper Enterprises
SC-297	3-23-88	Dwayne M. Whiting
SC-298	3-23-88	George M. Dickerson
SC-299	3-30-88	U.S. Public Communications, Inc.
SC-300	3-30-88	Pinebrook Grocery

ORDERS AND DECISIONS LISTED

SC-301	3-30-88	Southern T-Comm, Inc.
SC-302	4-5-88	Members Only Club
SC-303	4-5-88	Metro Phone, Inc.
SC-304	4-5-88	Feimster Vending Co., Inc.
SC-305	4-19-88	McGuffey's Restaurants, Inc.
SC-306	4-19-88	Equitable Properties, Ted Phillips, Jr.
SC-307	4-19-88	Michael Deans Vester
SC-308	4-19-88	William R. Smith, Trinity Amusement
SC-309	4-20-88	William M. Wilkerson, Jr.
SC-310	4-20-88	Buddy Patel
SC-311	4-20-88	Smoky Mountain Systems, Inc.
SC-312	4-26-88	Gopal K. Pandey
SC-313	4-26-88	National Telcom, Inc.
SC-313, Sub 1	6-10-88	Lowery Tire Service, d/b/a National Telecom, Inc.
SC-314	5-11-88	John Parker
SC-315	5-11-88	Benchmark Management Group, Inc.
SC-316	5-24-88	The Tavern Inc., Gregory S. High, d/b/a
SC-317	5-25-88	T & Y Mart, Inc., d/b/a Best Mart Stores
SC-318	5-25-88	E. G. Eakes
SC-319	5-25-88	Qualla Arts & Crafts
SC-320	5-25-88	Harry Bea Coates
SC-321	6-2-88	B-COMM, Lanny Miller, d/b/a
SC-322	6-7-88	Richard H. Raybon
SC-323	6-7-88	Southern Tell Phones
SC-324	6-7-88	Todd B. Drachman, d/b/a Charlotte Novelty
SC-325	6-8-88	Charles Minkema
SC-326	6-8-88	Mr. and Mrs. Clifton Shipman
SC-327	7-5-88	Kenneth Cuthbertson
SC-328	7-5-88	Andrew Panagiotakis
SC-329	7-5-88	Jennings Smith
SC-331	7-5-88	Thomas McClain Lifestyle Marketing Group
SC-332	7-13-88	Computerized Payphone Systems
SC-333	7-5-88	Douglas Mark Vogel
SC-334	7-5-88	Charles L. Paskus/New-Com
SC-335	8-3-88	Fred H. Robinson/Huddle House
SC-336	8-3-88	Charles Ragan
SC-337	8-3-88	Piedmont Area Phone Company (PAPCO), Eric M. Buchanan, d/b/a
SC-338	8-3-88	Betty Penley
SC-330	8-3-88	Habeeb, Inc.
SC-339	8-17-88	Ibrahim (Abe) K. Ganim
SC-340	9-13-88	William B. Minkema
SC-341	8-16-88	Freedom Telecom, Inc.
SC-342	8-24-88	Cracker Barrel Convenience Store, W. C. England
SC-343	8-24-88	Ronald P. Warren
SC-344	9-16-88	Fresh Way Food Stores
SC-345	8-24-88	Reaben Oil, Inc., d/b/a Triangle Stop
SC-346	9-8-88	Joe Eblen/Biltmore Oil Company, Inc.
SC-347	9-8-88	Mr. Telephone, Inc.
SC-348	9-8-88	Earl Baldwin/Earl's Sav-mor
SC-349	9-8-88	Thomas Roy Whitaker
SC-350	9-8-88	Kim K. Millar

ORDERS AND DECISIONS LISTED

SC-351	9-13-88	Kimberly Ann Savchuk Brown
SC-352	9-13-88	Roger Villarreal
SC-353	9-13-88	Thomas C. Duncan/Clyde's Quick Stop
SC-354	9-13-88	Randy's Creekside Convenience/Randy Peek
SC-355	9-21-88	Kent Geer/Mini Mart Store
SC-356	9-21-88	Sam's Car Washes
SC-357	9-27-88	David E. McCracken, Jr.
SC-358	9-27-88	Thurman Vassey/Ken's Mini Mart
SC-359	9-27-88	Sealed Air Corporation
SC-360	10-12-88	Prince's On The Park
SC-361	10-14-88	Shelby Seafood/John O'Leary
SC-362	10-12-88	Gaston Memorial Hospital
SC-363	10-12-88	Taylor's Services and Communications
SC-364	10-12-88	Mr. Thomas E. Stephens
SC-365	10-12-88	Godfrey's Communications
SC-366	10-12-88	Robert J. Babeck
SC-367	10-12-88	Robert McDonough
SC-368	10-12-88	Clifford Justice
SC-369	10-27-88	Coin Products Systems, Inc.
SC-370	10-27-88	Willard R. Metzker
SC-371	10-27-88	Ice Service, Inc.
SC-372	10-27-88	W. M. Williamson
SC-373	10-28-88	Sugar Mountain Resort, Inc.
SC-374	10-28-88	Glenn D. Hart
SC-375	10-28-88	Leola and Oliver Alexander
SC-376	11-10-88	Flash Food Store/Gary D. Williams
SC-377	11-10-88	Ernest Telecom, Inc.
SC-378	11-23-88	Robert Lunn
SC-379	11-10-88	Roscoe Greene
SC-380	11-10-88	Vico Sales, Inc.
SC-381	11-10-88	Rohi Telecommunication
SC-382	11-23-88	Joe King
SC-383	11-23-88	Metro Telecom, Inc.
SC-384	11-23-88	U.S. Label Corporation
SC-385	11-23-88	McCrary Auto Service/Tom McCrary, Jr.
SC-386	12-1-88	Gene Edwin Sizemore
SC-387	12-1-88	United Payphone Systems, Inc.
SC-388	12-1-88	Danny Alvin Poindexter
SC-389	12-1-88	Ed Griffin
SC-390	12-15-88	Rhoden Enterprises, Inc.
SC-391	12-15-88	Param Investments, Inc., d/b/a Bel Air Motel
SC-392	12-15-88	G.H.S. Corporation
SC-393	12-15-88	K & B Servicenter, Inc.
SC-394	12-22-88	Preferred Telephone Service, Inc.
SC-395	12-22-88	Falling Creek Service Center
STS-1	8-16-88	Raleigh Technology Group, Inc. (Errata Order 8-19-88)

SPECIAL CERTIFICATES CANCELLED

Company	Special Certificate No.	Date
Reich, Lois	SC-59	11-7-88

ORDERS AND DECISIONS LISTED

TARIFFS

AT&T Communications of the Southern States, Inc. - Order Allowing Tariff Filing to Offer High Capacity Station Terminal Service to Become Effective
P-140, Sub 19 (10-18-88)

Carolina Telephone and Telegraph Company - Order Granting Motion for Reconsideration and Allowing Amendments to EAS Matrix Tariff to Become Effective
P-7, Sub 724 (11-30-88)

Military Communications Center, Inc. - Order Allowing Tariffs to go into Effect
P-194, Sub 1 (11-30-88)

Phone America of Carolina, Inc. - Order Allowing Tariffs to Become Effective
P-166, Sub 4 (10-4-88)

Southern Bell Telephone and Telegraph Company - Order Allowing Tariff Filing to be Withdrawn, Cancelling Hearing, and Closing Docket
P-55, Sub 870 (2-8-88)

Southern Bell Telephone and Telegraph Company - Interim Order Lifting Suspension and Allowing Special Assembly Tariff to Become Effective on an Interim Basis Pending Final Order
P-55, Sub 890 (2-8-88)

Southern Bell Telephone and Telegraph Company - Order Suspending Tariff Filing in Part Pending Investigation
P-55, Sub 892 (1-20-88)

Southern Bell Telephone and Telegraph Company - Order Allowing Tariff Filing to Become Effective as Modified
P-55, Sub 894 (2-10-88)

Southern Bell Telephone and Telegraph Company - Order Allowing Proposed Tariffs to Become Effective and Scheduling Hearing
P-55, Sub 899 (12-15-88)

Southern Bell Telephone and Telegraph Company - Order Allowing Tariff Filing to Become Effective
P-55, Sub 911 (8-18-88)

SouthernNet Services, Inc. - Order Disapproving Tariff in Part and Requiring Refiling to Offer Operator Services to Its Customers and End-Users of Hospitality Establishments
P-156, Sub 10 (5-17-88)

SouthernNet Services, Inc. - Order Suspending Proposed Tariff Filing and Scheduling Hearing
P-156, Sub 12 (9-16-88)

SouthernNet Services, Inc. - Order Cancelling Hearing and Allowing Tariff to Offer New Combined Service Offering (CSO) to Become Effective
P-156, Sub 12 (10-31-88)

ORDERS AND DECISIONS LISTED

MISCELLANEOUS

AT&T Communications of the Southern States, Inc. - Order Consolidating Dockets and Authorizing Interim Private Line Rates
P-140, Sub 9 (Remanded) and P-140, Sub 17 (2-23-88)

AT&T Communications of the Southern States, Inc. - Order Approving Petition to Amortize Depreciation Reserve Imbalances (Commissioner Hipp dissents.)
P-140, Sub 20 (12-9-88)

Barnardsville Telephone Company - Order Allowing Proposed Accounting Treatment of Reserve Deficiency Relating to Retired Switch
P-75, Sub 36 (6-1-88)

Carolina Telephone and Telegraph Company - Order Approving Public Staff Consent Order for Extended Area Service Between Fuquay-Varina, and Apex, and Cary
P-7, Sub 711 (1-13-88)

Carolina Telephone and Telegraph Company - Interim Protective Order Requiring Production of Information
P-7, Sub 713 (7-12-88) Errata Order (7-18-88)

Central Telephone Company - Order Approving Amortization of Reserve Deficits and Acceleration of Embedded Inside Wire Amortization (Commissioner Hipp dissents.)
P-10, Sub 433 (9-9-88)

Concord Telephone Company - Order Approving Petition to Amortize Depreciation Reserve Imbalances (Commissioner Hipp dissents.)
P-16, Sub 159 (11-22-88)

Lexington Telephone Company - Order Approving Petition to Amortize Depreciation Reserve Imbalances (Commissioner Hipp dissents.)
P-31, Sub 120 (11-22-88)

Metro Mobile CTS of Charlotte, Inc. - Order Approving Assumption of Indebtedness
P-155, Sub 4 (9-19-88)

Randolph Telephone Company - Order Approving Petition (Commissioner Hipp dissents.)
P-61, Sub 70 (11-22-88)

Sandhill Telephone Company - Order Approving Petition to Amortize Depreciation Reserve Imbalances and to Accelerate Amortization of Embedded Inside Wire (Commissioner Hipp dissents.)
P-53, Sub 55 (12-5-88)

Service Telephone Company - Order Allowing Amortizations (Commissioner Hipp dissents.)
P-60, Sub 50 (11-22-88)

WATER AND SEWER

APPLICATIONS AMENDED

Hasty Water Utilities, Inc. - Order Amending Certificate of Public Convenience to Provide Water Utility Service in Wetherburn Woods and Buxton Subdivision, Wake County, and Approving Rates
W-736, Sub 34 (8-11-88)

APPLICATIONS WITHDRAWN

Birchwood Farms, Inc. - Order Allowing Withdrawal of Application to Increase Rates for Water Utility Service in Cypress Lake Subdivision, Cumberland County, Cancelling Hearing, Requiring Public Notice and Closing Docket
W-656, Sub 1 (3-23-88)

Bradshaw Water Company - Order Allowing Withdrawal of Application and Closing Docket
W-103, Sub 8 (9-12-88)

Clearwater Utilities, Inc. - Order Allowing Withdrawal of Application to Furnish Water Utility Service in Eaglewood Farms, Jordan Woods, and Oaks Plantation Subdivisions, Wake County, and Approving Rates
W-846, Sub 7 (9-27-88)

Huey, Wade - Order Allowing Withdrawal of Application to Discontinue Water Utility Service in Rolling Acres Subdivision, Buncombe County, and Closing Docket
W-614, Sub 2 (8-17-88)

Inlet Bay Utilities, Inc. - Order Withdrawing Application and Closing Docket
W-828, Sub 2 (9-14-88)

Inlet Bay Utilities, Inc. - Order Withdrawing Application and Closing Docket
W-828, Sub 6 (9-14-88)

Juniper Water Company - Order Allowing Withdrawal of Application and Closing Docket
W-868, Sub 1 (9-12-88)

Mid South Water Systems, Inc. - Order Allowing Withdrawal of Application for Water and/or Sewer Franchises in 22 Service Areas in Ten Counties in North Carolina and Closing Docket
W-720, Sub 75 (5-27-88)

Mid South Water Systems, Inc. - Order Allowing Withdrawal of Application for Franchise to Provide Sewer Utility Service in Hideaway Condos, Lincoln County, and Closing Docket
W-720, Sub 81 (7-21-88)

Riviera Utilities of North Carolina - Order Allowing Withdrawal of Application for Increase in Rates for Water Utility Service in Lake Royale, Franklin County, Cancelling Hearing, Closing Docket, and Requiring Public Notice
W-665, Sub 1 (10-7-88)

Tarheel Utility Management, Inc. - Order Allowing Withdrawal of Application for Interim Approval for Proposed Public Sewer System in Park Ridge Subdivision, Wake County, and Closing Docket
W-827, Sub 1 (5-13-88)

Valleydale Water Company, Lewis E. Watford, d/b/a - Order Allowing Withdrawal of Application for Increase in Rates for Providing Water Utility Service in Its Service Areas
W-272, Sub 3 (11-28-88)

West Wilson Water Corporation - Order Allowing Withdrawal of Application for Authority to Transfer the Franchise to Provide Water Utility Service in Hazelwood Subdivision, Edgecombe County, from Hazelwood Water Company and Closing Docket
W-781, Sub 6 (8-17-88) Errata Order (8-19-88)

AUTHORIZED ABANDONMENT OR SUSPENSION

Mid South Water Systems, Inc. - Recommended Order Denying Application for Authority to Discontinue Water Utility Service in Freedom Acres Subdivision, Cabarrus County
W-720, Sub 92 (9-30-88)

Mountain View Estate - Recommended Order Authorizing Abandonment of Water System on July 31, 1988, for Water System Serving Mountain View Estate, Stanly County
W-928 (4-21-88)

Suburban Heights Water System - Order Terminating Operation of Water System by Emergency Operator and Discharging Emergency Operator
W-394, Sub 3 (10-18-88)

Waverly Mills, Inc. - Order Granting Suspension of Franchise for Term of One Year for Water and Sewer Utility Franchise in East Laurinburg, Scotland County
W-734, Sub 1 (8-29-88)

CANCELLATIONS

Matlock Water Company, T. L. Matlock, Jr., d/b/a - Order Cancelling Franchise for Water Utility Service in Terrace Lawn and West Taylorsville Subdivision, Alexander County
W-624, Sub 1 (8-17-88)

Mid South Water Systems, Inc. - Order Cancelling Franchise and Allowing Discontinuance of Water Utility Service in Cloverdale Subdivision, Catawba County
W-720, Sub 74 (2-9-88)

Overhills Water Company, Inc. - Order Cancelling Franchise for Water Utility Service in Ponderosa Subdivision, Harnett County
W-175, Sub 8 (1-26-88)

Scotsdale Water and Sewer, Inc. - Order Cancelling Sewer Franchises Listed on the Official Copy of the Order in Chief Clerk's Office and Closing Docket
W-883 (7-21-88)

Sehorn, Patricia, Executrix of the Estate of Elizabeth L. Sehorn - Order Cancelling Franchise for Water Utility Service in Lake View Subdivision, Cabarrus County
W-773, Sub 2 (8-19-88)

CERTIFICATES

B & C Corporation, Inc. - Recommended Order Granting Authority to Provide Water Utility Service in Ocean Aire Estates Subdivision, Brunswick County, and Approving Rates
W-924 (11-30-88) Recommended Order Adopted (11-30-88)

Baytree Waterfront Properties, Inc. - Recommended Order Granting Authority to Provide Water and Sewer Utility Service in Windemere Subdivision, Montgomery County, and Approving Rates
W-938 (4-11-88)

Carolina Lakes Corporation - Order Granting Authority to Provide Water and Sewer Utility Service in Carolina Lakes Subdivision, Harnett County, and Approving Rates
W-879 (5-19-88)

Channel Side Corporation - Recommended Order Granting Authority to Provide Water Utility Service in Lockwood Folly Subdivision, Brunswick County, and Approving Rates
W-939 (4-8-88)

Clearwater Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Eaglewood Farms, Jordan Woods, and Oakes Plantation Subdivisions, Wake County, and Approving Rates
W-846, Sub 7 (6-30-88)

G & F Utilities, G & F Construction, Inc., d/b/a - Order Granting Authority to Provide Sewer Utility Service in Churchill Estates Subdivision, New Hanover County, and Approving Rates
W-940 (4-19-88)

HARRCO Utility Corporation - Recommended Order Granting Authority to Provide Water and Sewer Utility Service in Sheffield, Stone Creek, and Stonebridge VI Subdivisions, Wake County, and Approving Rates
W-796, Sub 1 (3-4-88)

Hasty Water Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Pear Meadow Subdivision, Wake County, and Approving Rates
W-736, Sub 36 (2-18-88)

Hasty Water Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Tradewinds Subdivision, Wake County, and Approving Rates
W-736, Sub 37 (3-29-88)

Hasty Water Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Southwoods Subdivision, Section III, Johnston County, and Approving Rates
W-736, Sub 38 (8-1-88)

Hasty Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Fox 'n' Hound II Subdivision, Wake County, and Approving Rates
W-736, Sub 40 (10-5-88)

Hasty Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Chesterfield Village II Subdivisions, Wake County, and Approving Rates
W-736, Sub 42 (11-22-88)

Hasty Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Pebblestone and Fairstone Subdivisions, Wake County, and Approving Rates
W-736, Sub 43 (11-22-88)

Heater Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Langston Estates and Thompson Mill Run Subdivisions, Wake County, and Tyndrum Subdivision, Durham County, and Approving Rates
W-274, Sub 41 (2-5-88)

Heater Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Ridgebrook Bluffs and Stagecoach Subdivisions, Wake County, and Approving Rates
W-274, Sub 42 (2-5-88)

Heater Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Heinsohn and Byrum Subdivisions, Wake County, and Approving Rates
W-274, Sub 45 (8-1-88)

Heater Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Sedgemoor, River Oaks, and Bay Laurel Subdivisions, Wake County, and Wexford Subdivision, Durham County, and Approving Rates
W-274, Sub 47 (8-3-88)

Heater Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Tadlock, Saddleridge, and Kildaire Estates Subdivisions, Wake County, and Approving Rates
W-274, Sub 48 (9-7-88)

Hunt Farms, Ronald Burnette and James Burnette, Jr., d/b/a - Recommended Order Granting Franchise to Furnish Water Utility Service in Hunt Farms Subdivision, Wake County, and Approving Rates
W-931 (1-26-88)

Hydraulics, Ltd. - Order Granting Authority to Provide Water Utility Service in Staffordshire Estates, Guilford County, and Approving Rates
W-218, Sub 44 (8-3-88)

Hydraulics, Ltd. - Order Granting Authority to Provide Water Utility Service in Westview Subdivision, Randolph County, and Approving Rates
W-218, Sub 45 (2-5-88)

Hydraulics, Ltd. - Order Granting Authority to Provide Water Utility Service in Deer Path Subdivision, Forsyth County, and Approving Rates
W-218, Sub 52 (10-13-88)

Inlet Bay Utilities, Inc. - Order Granting Authority to Provide Sewer Utility Service in Dolphin Bay Subdivision, New Hanover County, and Approving Rates
W-828, Sub 4 (1-11-88)

Johnston-Wake Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Heather Downs Subdivision, Johnston County, and A Weekend Retreat Subdivision, Wake County, and Approving Rates
W-906, Sub 1 (1-28-88)

Kannapolis Water Company, Atlantic American Properties, Inc., and Fieldcrest Cannon, Inc., d/b/a - Recommended Order Granting Authority to Provide Water and Sewer Utility Service in the Kannapolis Area, Rowan and Cabarrus Counties, and Approving Rates
W-934 (3-29-88)

Lewis Water Company, Inc. - Order Granting Authority to Provide Water Utility Service in South Fork Subdivision, Gaston County, and Approving Rates
W-716, Sub 8 (3-23-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Sewer Utility Service in Country Woods II Subdivision, Union County, and Approving Rates
W-720, Sub 55 (9-14-88)

Mid South Water Systems, Inc. - Order Granting Temporary Operating Authority to Furnish Water Utility Service in Swiss Pine Lake Subdivision, Mitchell County, and Approving Rates
W-720, Sub 58 (9-27-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Sewer Utility Service in Frye Bridge Subdivision, Forsyth County, and Approving Rates
W-720, Sub 68 (9-14-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Sewer Utility Service in Pinebrook Manor Subdivision, Forsyth County, and Approving Rates
W-720, Sub 69 (7-8-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Water Utility Service in Cedar Forest Subdivision, Alexander County, and Approving Rates
W-720, Sub 78 (6-20-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Water Utility Service in Middleton Subdivision, Cabarrus County, and Approving Rates
W-720, Sub 79 (8-30-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Water Utility Service in Woodlawn Subdivision, McDowell County, and Approving Rates
W-720, Sub 82 (8-30-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Water Utility Service in Browne's Ferry Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 83 (8-30-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Water Utility Service in Forest Brook Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 85 (8-30-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Water Utility Service in Hunting Creek Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 86 (8-30-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Water Utility Service in Oakcroft Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 87 (10-5-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Water Utility Service in Tuxedo Subdivision, Polk County, and Approving Rates
W-720, Sub 88 (9-27-88)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Water Utility Service in Windmill Ridge Subdivision, Rowan County, and Approving Rates
W-720, Sub 89 (6-20-88)

Neuse Crossing Utilities Corporation - Recommended Order Granting Authority to Provide Water and Sewer Service to Neuse Crossing Subdivision, Wake County, and Approving Rates, also for Permission to Pledge Stock and/or Assets
W-937 and W-937, Sub 1 (9-8-88)

North State Utilities, Inc. - Order Granting Authority to Provide Sewer Utility Service in Piney Mountain Subdivision, Orange County, and Approving Rates
W-848, Sub 6 (1-28-88)

North State Utilities, Inc. - Order Granting Authority to Provide Sewer Utility Service in Oakcroft Subdivision, Mecklenburg County, and Approving Rates
W-848, Sub 7 (1-28-88)

North State Utilities, Inc. - Order Granting Authority to Provide Sewer Utility Service in Wexford Subdivision, Durham County, and Approving Rates
W-848, Sub 8 (1-28-88)

ORDERS AND DECISIONS LISTED

North State Utilities, Inc. - Order Granting Authority to Provide Sewer Utility Service in Pine Hall Plantation Subdivision, Wake County, and Approving Rates
W-848, Sub 9 (8-3-88)

Pied Piper Resort, Inc. - Recommended Order Requiring Improvements to Provide Water Utility Service in Piper Village, Sierra Village, and Piper Hamlet Subdivisions, Cherokee County, and Approving Rates
W-893 (4-27-88)

Prior Construction Company, Inc. - Order Granting Authority to Provide Water Utility Service in Littlejohn Acres Subdivision, Wake County, and Approving Rates
W-567, Sub 3 (11-18-88)

Queens Harbor Utility, Inc., Carolina Water Service, Inc., of North Carolina, d/b/a - Order Granting Authority to Provide Water and Sewer Utility Service in Queens Harbor Condominium Development and Channel Club Development, Mecklenburg County, and Approving Rates
W-936 (10-13-88)

River Dell Utilities, Inc. - Recommended Order Granting Authority to Provide Water Utility Service in Neuse Colony Subdivision Section B, Johnston County, and Approving Rates
W-949 (12-8-88)

Sapphire Lakes Utility Company - Recommended Order Granting Authority to Provide Water and Sewer Utility Service in Sapphire Lakes Subdivision, Transylvania County, and Approving Rates
W-941 (7-11-88)

Shaw Hill 22 Investors - Recommended Order Granting Temporary Operational Authority to Provide Water Utility Service in Shaw Hill Estates Subdivision, Durham County, and Approving Rates
W-943 (10-27-88)

Triton Financial, Ltd. - Recommended Order Granting Temporary Operating Authority to Provide Water Utility Service in Country Life Estates Subdivision, Iredell County, and Approving Rates
W-932 (3-30-88)

Triton Financial, Ltd. - Order Granting Full Operating Authority to Provide Water Utility Service in Country Life Estates Subdivision, Iredell County, and Approving Rates
W-932 (6-1-88)

Vila Pump Company - Recommended Order Granting Authority to Provide Water Utility Service in Skyline Estates Subdivision, Moore County, and Approving Rates
W-945 (9-19-88)

ORDERS AND DECISIONS LISTED

COMPLAINTS

Bermuda Run Country Club, Inc. - Order Dismissing Complaint in Complaint of Richard Pope and Closing Docket
W-707, Sub 2 (5-26-88)

CAC Utilities, Inc. - Recommended Order Requiring CAC Utilities, Inc., to Secure a "Pump and Haul" Permit From the Division of Environmental Management in Complaint of Residents of Windsor Oaks Subdivision, Wake County
W-812, Sub 5 (5-3-88)

Cape Fear Utilities, Inc. - Order Cancelling Hearing and Closing Docket in Complaint of Ellie Stawicki
W-279, Sub 17 (1-21-88)

Corriher Water Service - Order Closing Docket in Complaint of Ken Thackett
W-233, Sub 14 (9-9-88)

Glendale Water, Inc. - Order Closing Docket in Complaint of Phyllis Vermillion et al.
W-691, Sub 29 (5-25-88)

Hensley Enterprises, Inc. - Order Restricting Connections to the Country Acres Subdivision Water System in Complaint of Nicky D. Darby
W-89, Sub 29 (7-5-88)

Hydraulics, Ltd. - Order Closing Docket in Complaint of Graystone Forest Homeowner's Association, Inc.
W-218, Sub 34 (5-26-88)

Lewis, Sherwood - Order Closing Docket in Complaint of Hydraulics, Ltd.
W-218, Sub 43 (4-11-88)

Mid South Water Systems, Inc. - Order Closing Docket in Complaint of Mike Noble and Other Residents of Harbor Town Subdivision, Alexander County,
W-720, Sub 64 (1-7-88)

Mid South Water Systems, Inc. - Order Closing Docket in Complaint of John K. Addu and Other Residents of Autumn Community, Cabarrus County
W-720, Sub 65 (11-1-88)

Mid South Water Systems, Inc. - Recommended Order in Complaint of William H. Lawrence, President, Swiss Pine Lake Water Company, Spruce Pine
W-720, Sub 71 (1-14-88)

Mid South Water Systems, Inc. - Order Closing Docket in Complaint of Chas M. Lineberry, President, Mallard Head Condominiums, Charlotte
W-720, Sub 72 (1-5-88)

Mid South Water Systems, Inc. - Recommended Order Requiring Improvements in Complaint of Carl Santinelli
W-720, Sub 73 (4-28-88)

ORDERS AND DECISIONS LISTED

Mid South Water Systems, Inc. - Order Keeping Docket Open for Six Months in Complaint of Wexford Subdivision Homeowners' Association of Charlotte
W-720, Sub 76 (2-17-88)

North Topsail Water and Sewer, Inc. - Order Closing Docket in Complaint of Dale J. K. Muhlenberg
W-754, Sub 6 (11-7-88)

North Topsail Water and Sewer, Inc. - Recommended Order Granting Complaint of Ralph Sasser, President, Golden Acres Property Owners Association and Requiring Sewer Service
W-754, Sub 7 (7-29-88)

North Topsail Water and Sewer, Inc. - Order Dismissing Appeal, Affirming Order of July 29, 1988, and Requiring Compliance with Order by July 1, 1989
W-754, Sub 7 (12-30-88)

North Topsail Water and Sewer, Inc. - Recommended Order Granting Complaint of James D. Davis & Sons, J. D. Davis, and Kathleen Davis, d/b/a
W-754, Sub 8 (10-5-88)

North Topsail Water and Sewer, Inc. - Final Order Overruling Exceptions and Affirming Recommended Order in Complaint of James D. Davis & Sons, J. D. Davis and Kathleen Davis, d/b/a (Commissioner Hipp dissents.)
W-754, Sub 8 (12-22-88)

Pinehurst Water and Sewer Company - Order Closing Docket in Complaint of Daniel P. Wienig
W-6, Sub 15 (11-23-88)

R.O.E. Water Utility Company, Jack B. Jenkins, d/b/a - Recommended Order Granting Complaint of Sue Gull and the Concerned Homeowners Group of Rolling Oaks Estates
W-820, Sub 2 (9-23-88)

Rollingwood Water System, Inc. - Order Closing Docket in Complaint of Brian M. Pollock
W-428, Sub 1 (9-26-88)

Spring Water Company - Order Declaring Emergency in Complaint of Eugenia Clark and Oak Haven Home Owners Association and Appointing the City of Raleigh as Emergency Operator
W-337, SUb 8 (2-10-88)

Spring Water Company - Order Closing Docket in Complaint of Eugenia Clark and Oak Haven Home Owners Association
W-337, Sub 8 (3-30-88)

Walsh Chemical Company, Maurice J. Walsh - Order Authorizing Discontinuance of Service on and After July 1, 1988, in Complaint of Mid South Water Systems, Inc., and Closing Docket
W-720, Sub 77 (5-19-88)

ORDERS AND DECISIONS LISTED

DECLARING UTILITY STATUS

Company	Docket Number	Date
G & F Utilities	W-940	2-18-88
Governors Club Development Corporation	W-947	6-22-88
Harrco Utility Corporation	W-796, Sub 2	5-13-88
Harrco Utility Corporation	W-796, Sub 3	5-13-88
Horse Creek Farms Utility Company	W-888, Sub 2	6-24-88
Ogden Village Utilities, Inc.	W-836, Sub 1	7-22-88
Primary Utilities, Inc.	W-948, Sub 1	10-7-88
S-A Utilities, Inc.	W-951	11-1-88
Sapphire Lakes Utility Company	W-941	3-17-88
Shearwater Utility Company	W-942	6-15-88
Tarheel Utility Management, Inc.	W-827, Sub 4	6-8-88
Tarheel Utility Management, Inc.	W-827, Sub 3	6-20-88

DISCONTINUANCE OF SERVICE

Duncan Water Company - Order Granting Discontinuance of Water Utility Service in Peach Orchard Subdivision in Belmont, and to Allow Service to be Provided by the City of Belmont, Gaston County
W-483, Sub 1 (6-16-88)

Faw, Frances S. - Order Allowing Discontinuance of Water Utility Service in Eastview Acres Subdivision, Catawba County, and Cancelling Franchise
W-87, Sub 9 (6-29-88)

Miller, R. B., Jr. - Order Allowing Discontinuance of Service in Miller Development Nos. 1 and 3, Caldwell County, Cancelling Franchise, and Requiring Continued Operation of System Serving Miller Development No. 2
W-493, Sub 3 (9-20-88)

Piedmont Construction and Water Company, Inc. - Order Allowing Discontinuance of Water Utility Service in Clearview Acres Subdivision, Alexander County and Cancelling Franchise
W-262, Sub 34 (3-4-88)

NAME CHANGE

Hasty Water Utilities, Inc. - Order Approving Merger and Name Change to Hasty Utilities, Inc., d/b/a Hasty Water Utilities
W-736, Sub 41 (10-5-88)

The Lake Summit Corporation - Order Approving Name Change to Lake Summit Water System, a South Carolina Partnership
W-58, Sub 5 (6-22-88)

ORDERS AND DECISIONS LISTED

RATES

Acqua, Inc. - Recommended Order Approving Rate Increase on Condition for Water Utility Service in Meadowbrook Subdivision, Catawba County and Requiring Improvements
W-270, Sub 3 (5-17-88)

Bald Head Island Utilities, Inc. - Order Approving Availability Rates for Water and Sewer Service
W-798, Sub 1 (3-8-88)

Bayview Water Works - Recommended Order Granting Partial Rate Increase for Water Utility Service in Bayview Subdivision, Beaufort County
W-565, Sub 4 (11-28-88)

Blue Creek Utilities, Inc. - Recommended Order Granting Increase for Sewer Utility Service in Its Franchised Area, Onslow County
W-857, Sub 1 (8-12-88)

CWB Utilities, Inc. - Recommended Order Granting Increase for Sewer Utility Service in Piney Green Shopping Center, Onslow County
W-852, Sub 1 (6-27-88) Order Adopting Recommended Order (6-27-88)

East Rutherford Water System - Order Granting Increase for Water Utility Service in Crestview Subdivision, Rutherford County
W-527, Sub 2 (9-26-88)

Grandfather Golf and Country Club Utility, Inc. - Recommended Order Granting Partial Rate Increase for Water and Sewer Utility Service in All Its Service Areas, Avery County
W-755, Sub 1 (5-5-88)

Hickory Hills Service Company, Inc. - Recommended Order Granting Rate Increase for Water Utility Service in Hickory Hills Subdivision, Lenoir County
W-460, Sub 5 (7-18-88) Order Adopted (7-18-88)

Hoopers Valley Estates Water Company, Inc. - Order Granting Rate Increase for Water Utility Service in Hoopers Valley Estates, Henderson County
W-794, Sub 1 (5-18-88)

Horse Shoe Sewer Company - Order Granting Rate Increase for Sewer Utility Service in Hunter's Glen Subdivision, Henderson County, and Requiring Public Notice
W-916 (2-12-88)

Hydraulics, Ltd. - Recommended Order Approving Partial Rate Increase for Water Utility Service in All of Its Service Areas
W-218, Sub 48 (9-16-88) Order Adopting Recommended Order (9-16-88)

Jackson Utility Company - Order Requiring Customers to Connect to Meters and for Authority to Increase Rates for Water and Sewer Utility Service in Its Service Areas, Jackson County
W-448, Sub 2 (4-15-88)

LaGrange Waterworks Corporation - Recommended Order Approving Partial Rate Increase for Water and Street Lighting Service in All Service Areas in North Carolina
W-200, Sub 20 (5-27-88) Order Adopting Recommended Order (5-27-88)

MAM Water and Sewer Corporation - Recommended Order Granting Rate Increase for Sewer Utility Service in Its Service Areas, Durham County
W-772, Sub 1 (5-24-88)

Mountains Utility Company - Recommended Order Granting Partial Rate Increase for Water and Sewer Utility Service in Fairfield Mountains Development, Rutherford County
W-808, Sub 2 (1-26-88)

Overhills Water Company, Inc. - Recommended Order Approving Partial Rate Increase for Water Service in All Its Service Areas in North Carolina
W-175, Sub 9 (12-14-88) Order Adopting Recommended Order (12-14-88)

Piedmont Carolina Construction, Inc. - Recommended Order Approving Rate Increase on Condition for Water Utility Service in Eastbrook Acres Subdivision, Catawba County, and Requiring Improvements
W-768, Sub 2 (5-17-88)

Powder Horn Mountain Utilities, Inc. - Order Approving Rates for Water Utility Service in Powder Horn Mountain Subdivision, Watauga County
W-478, Sub 1 (2-17-88)

Powder Horn Mountain Utilities, Inc. - Order Clarifying Schedule of Rates for Water Utility Service in Powder Horn Mountain Subdivision, Watauga County
W-478, Sub 1 (5-2-88)

River Run Utilities, Inc. - Order Adopting Recommended Order for Authority to Increase Rates for Sewer Service in River Run Shpping Center, Brunswick County
W-853, Sub 1 (6-17-88) Errata Order (6-27-88)

Rolling Springs Water Company - Order Establishing Rates for Water and Sewer Utility Service in Its Service Areas, Harnett County, Suspending Rates, Approving Interim Rates Subject to Refund, Scheduling Hearing and Requiring Public Notice
W-313, Sub 3 (2-18-88)

Rolling Springs Water Company - Recommended Order Granting Partial Rate Increase for Water and Sewer Utility Service in Its Service Areas, Harnett County
W-313, Sub 3 (9-7-88)

Ruff Water Company, Inc. - Interlocutory Order Granting Rate Increase for Water Utility Service in Its Service Areas, Gaston County
W-435, Sub 8 (6-24-88)

Ruff Water Company, Inc. - Recommended Order Granting Partial Rate Increase for Water Utility Service in Its Service Areas, Gaston County
W-435, Sub 8 (9-14-88) Errata Order (9-16-88)

Sentry Utilities, Inc. - Recommended Order Granting Increase in Rates and Charges for Sewer Utility Service in Springdale Acres Subdivision, Onslow County
W-811, Sub 3 (11-16-88) Recommended Order Adopted (12-2-88)

Skyview Water System, Inc. - Recommended Order Approving Partial Rate Increase for Water Utility Service in Skyview Subdivision, Gaston County
W-293, Sub 3 (9-16-88)

Sunset Park Utilities, Inc. - Recommened Order Granting Partial Rate Increase for Water and Sewer Utility Service in Its Service Areas, Cumberland County
W-178, Sub 1 (1-7-88)

SALES AND TRANSFERS

Anderson Creek Water Company - Order Allowing Transfer of Ownership of the Water Utility Systems Serving Harnett Lakes Section V, Harnett Lakes Section VI, and Cimarron Mobile Home Park Subdivisions, Harnett County, from Anderson Creek Water Company to South Central Water and Sewer District of Harnett County (Owner Exempt from Regulation) and Cancelling Franchise
W-336, Sub 2 (9-20-88)

Bradshaw Water Company - Order Approving Transfer of Franchise to Provide Water Utility Service in Gallagher Trails, Biltmore Estates, and Shangri-la Subdivisions, Gaston County, and Two Points Subdivision, Mecklenburg County, from Oehler Water Company and Approving Rates
W-103, Sub 6 (1-20-88)

Cape Fear Utilities, Inc. - Order Allowing Transfer of Ownership of Water Utility System Serving Olde Towne Subdivision, Brunswick County, to Leland Sanitary District (Owner Exempt from Regulation)
W-279, Sub 19 (11-22-88)

Carolina Water Service, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in Wolf Laurel Subdivision, Madison and Yancey Counties, from Bald Mountain Development Corporation and Approving Rates
W-354, Sub 61 (6-29-88)

Carolina Water Service, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in Robin Lakes, Southern Plaza, Rollingwood, Foxfire, South Haven, Lakewood, Rita Pines, Hickory Hills, and Bellwood Subdivisions, Wayne County, from Wells Investment Corporation, d/b/a Genoa Water System and Approving Rates
W-354, Sub 62 (3-23-88) Errata Order (3-29-88) Order Denying Motion for Amendment, Rescission, or Reconsideration of Commission Order (7-5-88)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Water Utility Service in Eastgate, Tanglewood Estates, and Tanglewood South, Cumberland County, from Vander Water Company, Inc. and Approving Rates
W-354, Sub 65 (3-23-88) Errata Order (3-29-88) Order Denying Motion for Amendment, Rescission, or Reconsideration of Commission Order (7-5-88)

Carolina Water Service, Inc., of North Carolina - Recommended Order Approving Transfer of Franchise to Provide Water and Sewer Service in White Oak Plantation Subdivision, Johnston County, from White Oak Utilities, Inc., and Approving Rates
W-354, Sub 66 (6-8-88)

Carolina Water Service of North Carolina - Order Approving Transfer of Franchise to Provide Water Utility Service in Sherwood Forest Subdivision, Transylvania County, from Sherwood Forest Utility, Inc., and Approving Rates
W-354, Sub 67 (8-30-88)

Fisher Utilities, Inc. - Order Approving Authority to Sell the Water System Serving Greenbriar Subdivision to the Town of Garner (Owner Exempt from Regulation)
W-365, Sub 29 (8-31-88)

Forest Acres Water Company - Order Approving Transfer of Franchise to Provide Water Utility Service in Forest Acres Subdivision, Alexander County, to Forest Acres Water Corporation (Owner Exempt from Regulation)
W-626, Sub 1 (3-29-88)

Goose Creek Utility Company - Order Approving Transfer of Water System in Fairfield Plantation, Union County, to the Union County Public Works, Owner Exempt from Commission Regulation
W-369, Sub 10 (5-18-88)

Harnett Lakes Water Company, Inc. - Order Approving Transfer of Ownership of the Water Utility System Serving Harnett Lakes Subdivision, Harnett County, to South Central Water and Sewer District of Harnett County (Owners Exempt from Regulation)
W-210, Sub 3 (5-10-88)

Hasty Water Utilities, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in 15 Subdivisions, Wake County, from Hasty Water Utilities, Inc., to the City of Raleigh, which is Exempt from Regulation by the Commission
W-736, Sub 39 (9-12-88)

Heater Utilities, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in 21 Service Areas, Wake County, from Glendale Water, Inc., and Approving Rates
W-274, Sub 44 (4-21-88)

Heater Utilities, Inc. - Recommended Order Allowing Transfer of Franchise to Provide Water Utility Service in Nottingham Forest Subdivision, Wake County, from Buffaloe Water Systems, Inc., and Approving Rates
W-274, Sub 46 (10-27-88)

Heater Utilities, Inc. - Recommended Order Approving Transfer of Franchises to Provide Water Utility Service in 63 Service Areas in Wake, Johnston, and Franklin Counties, from Hasty Utilities, Inc., d/b/a Hasty Water Utilities
W-274, Sub 50 (12-29-88) Order Adopting Recommended Order (12-29-88)

Hydraulics, Ltd. - Order Approving Transfer of Franchise to Provide Water Utility Service in Kynwood Subdivision, Forsyth County, from Clear-Flow Utilities and Approving Rates
W-218, Sub 36 (6-29-88) Errata Order (7-25-88)

Hydraulics, Ltd - Recommended Order Approving Transfer of Franchise to Provide Water Utility Service in Canterbury Trails, Randolph County, from Routh and Hennis, Inc., and Approving Rates
W-218, Sub 46 (8-22-88)

Hydraulics, Ltd. - Order Granting Transfer of Franchise to Provide Water Utility Service in Shade Tree Acres and Kimberly Court Subdivisions, Rowan County, from Jim L. Shuping, d/b/a Shade Tree Acres Water System and Kimberly Court Water Systems, and Approving Rates
W-218, Sub 47 (7-8-88)

Hydraulics, Ltd. - Order Approving Transfer of Franchise to Provide Water Utility Service in Beechwood Cove and Hidden Valley Subdivisions, Chatham County, from Beechwood Cove Utility, and Approving Rates
W-218, Sub 49 (7-19-88)

Hydraulics, Ltd. - Order Approving Transfer of Franchise to Provide Water Utility Service in Lancer Acres Subdivision, Randolph County, from Hurley Rush, and Approving Rates
W-218, Sub 50 (9-7-88)

Hydraulics, Ltd. - Recommended Order Allowing Transfer of Franchise to Provide Water Utility Service in Crestview Subdivision, Rowan County, from Jim Shuping, d/b/a Crestview Water Systems, Inc., and Approving Rates
W-218, Sub 51 (10-24-88)

LaGrange Waterworks Corporation - Order Approving Transfer of a Portion of Water Utility Service on Morganton Road, Cumberland County, to the Public Works Commission of the City of Fayetteville (Owner Exempt from Regulation)
W-200, Sub 21 (8-3-88)

Mid South Water Systems, Inc. - Order Approving Transfer of Water Utility System in Cross Creek Subdivision, (Formerly Moss Lake Subdivision), Cleveland County, to Upper Cleveland County Sanitary Water District (Owner Exempt from Regulation)
W-720, Sub 93 (8-9-88)

Piedmont Construction and Water Company, Inc. - Order Allowing Transfer of Water Utility System in Clearview Acres Subdivision, Alexander County, to Alexander County-Sugarloaf Water District, and Closing Docket
W-262, Sub 35 (11-3-88)

Rayco Utilities, Inc. - Order Approving Transfer of Franchise to Provide Sewer Utility Service in Piedmont Crescent Country Club, Aridyne Corporation, Quarry Hills Country Club, and Piedmont Crescent Professional Village, Alamance County, and Approving Rates
W-899, Sub 6 (11-29-88)

Scotsdale Water and Sewer, Inc. - Order Approving Transfer of Franchise to Provide Water and Sewer Utility Service in Scotsdale Subdivision, Cumberland County, and Water Utility Service in Royal Acres, Legend Hills, Colonial Heights-S (Malibu Drive Section), and Colonial Heights-N, Wake County, from W. E. Caviness, d/b/a Touch and Flow Water Systems
W-883 (1-21-88)

Sierra Villa Water Company, Inc. - Order Approving Transfer of Water Utility System in Sierra Villa Subdivision, Harnett County, to South Central Water and Sewer District of Harnett County (Owner Exempt from Regulation)
W-867, Sub 1 (6-29-88)

Spring Water Company, Inc. - Order Approving Franchise to Transfer the Water Utility Service in Oak Haven Subdivision, Wake County, to the City of Raleigh
W-337, Sub 9 (2-16-88)

Superior Well Supply Company, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in Vestavia Subdivision, Cleveland County, to Upper Cleveland County Sanitary District (Owner Exempt from Regulation) and Cancelling Franchise
W-524, Sub 3 (1-11-87)

Tart's Investment Corporation - Order Approving Transfer of Water Utility System Serving Hickory Hills Subdivision, Harnett County, to South Central Water and Sewer District of Harnett County (Owner Exempt from Regulation)
W-741, Sub 1 (7-19-88)

West Wilson Water Corporation - Recommended Order Approving Transfer of Water Utility Service in Colonial Heights Subdivision, Wilson County, from William M. Lamm, and Approving Rates; Recommended Order Approving Transfer of Water Utility Service in Oakdale Subdivision, Wilson County, from Cora Jane Lavan, and Approving Rates
W-781, Subs 2 and 3 (8-23-88) Errata Order (8-29-88)

West Wilson Water Company - Order Granting Transfer of Water Utility Service in Suburban Heights Subdivision, Wilson County, from Robert L. Pittman, d/b/a Suburban Heights Water System, Reddings Watercare, Inc., Emergency Operator, and Approving Rates
W-781, Sub 4 (9-27-88)

White Oak Community Water System, S & M Investment Co., Inc., d/b/a - Order Approving Transfer of Water Utility System Serving McIntyre-Davis Subdivision, Cleveland County, to Upper Cleveland County Sanitary District (Owner Exempt from Regulation)
W-520, Sub 2 (3-23-88)

SECURITIES

Belvedere Utility Company, Inc. - Order Approving Stock Transfer from United States Development Corporation to Carolina Water Service, Inc., of North Carolina
W-809, Sub 1 (3-23-88) Errata Order (3-29-88) Order Denying Motion for Amendment, Rescission, or Reconsideration of Commission Order (7-5-88)

Ogden Village Utilities, Inc. - Order Approving Stock Transfer and Sale of Real Estate
W-836, Sub 2 (11-1-88)

West Wilson Water Corporation - Recommended Order Approving Stock Transfer from William A. Marlowe, Jr., to James D. Moyer
W-781, Sub 1 (4-7-88)

TARIFFS

Birchwood Farms, Inc. - Order Approving Tariff Change
W-656, Sub 2 (6-24-88)

Brookwood Water Corporation - Order Amending Tariff
W-177, Sub 26 (2-9-88)

Cape Fear Utilities, Inc., and Quality Water Supplies, Inc. - Order Approving Tariff Change (cross-referenced)
W-279, Sub 18 and W-225, Sub 18 (6-8-88)

Eagle Heights Utilities, Inc. - Order Approving Tariff Revision in Increase Rates
W-826, Sub 1 (8-30-88)

Emerald Village Water System - Order Approving Tariff Change
W-184, Sub 5 (11-8-88)

Havelock Development Corporation - Order Amending Tariff
W-223, Sub 7 (9-22-88)

Hudson Cole Development Corporation - Order Amending Tariff
W-875, Sub 1 (1-26-88)

Jackson Utility Company - Order Amending Tariff
W-448, Sub 4 (9-22-88)

Mountains Utility Company - Order Amending Tariff
W-808, Sub 33 (9-22-88)

Northeast Craven Utility Company - Order Amending Tariff
W-696, Sub 4 (9-22-88)

Pinehurst Water Company and Pinehurst Sanitary Company - Recommended Order Allowing Admendment to Tariffs and Denying Attorney General's Motion
W-6, Sub 10; W-6, Sub 11 (8-23-88) Errata Order (8-29-88)

Pineview Water System, John W. Gensinger, d/b/a - Order Approving Tariff Change
W-549, Sub 4 (5-31-88)

Quality Water Supplies, Inc., and Cape Fear Utilities, Inc. - Order Approving Tariff Change (cross-referenced)
W-225, Sub 18 and W-279, Sub 18 (6-8-88)

Rayco Utilities, Inc. - Order Approving Tariff Change
W-899, Sub 5 (6-16-88)

Ridgecrest Baptist Conference Center - Order Approving Tariff Change
W-71, Sub 6 (5-31-88)

Riverbend Estates Water Systems, Inc. - Order Approving Amended Tariff
W-390, Sub 7 (3-8-88)

Scotsdale Water and Sewer, Inc. - Order Approving Tariff Change
W-883, Sub 6 (5-31-88)

Scotsdale Water and Sewer, Inc. - Order Approving Authority to Amend Its Tariff
W-883, Sub 7 (11-1-88)

Viewmont Acres, Gladys B. Haynes and George W. Smith, d/b/a - Order Approving Tariff Revision to Increase Rates and Require Public Notice
W-856, Sub 1 (10-20-88)

Viking Utilities Corporation, Inc. - Order Approving Tariff Change
W-740, Sub 4 (5-31-88)

West Wilson Water Corporation - Order Amending Tariff
W-781, Sub 7 (11-22-88)

TEMPORARY OPERATING AUTHORITY

Carolina Water Service, Inc., of North Carolina - Order Granting Temporary Operating Authority to Transfer the Franchise to Provide Water Utility Service in Saddlewood Subdivision, Gaston County, and Saddlebrook and Mallard Creek Subdivisions, Mecklenburg County, from TET Utility Company, Inc., and for a Certificate of Public Convenience and Necessity to Provide Sewer Utility Service in Saddlewood Subdivision, Gaston County, and Approving Rates
W-354, Sub 68 (11-1-88)

MISCELLANEOUS

Acqua, Inc. - Recommended Order Requiring Continued Improvements and Emergency Service
W-270, Sub 3 (12-21-88)

Cape Fear Utilities, Inc. - Order Closing Docket
W-279, Sub 15 (5-31-88)

Carolina Water Service, Inc., of North Carolina - Order Closing Docket
W-354, Sub 56 (5-31-88)

Jackson Hamlet Water Company - Order Requiring Compliance and Reports (cross-referenced)
W-575, Sub 2; W-575, Sub 3; and W-100, Sub 7 (7-18-88)

Jackson Utility Company - Order Fixing Time to Make Improvements
W-448, Sub 2 (5-4-88)

ORDERS AND DECISIONS LISTED

Powder Horn Mountain Utilities, Inc. - Recommended Order Requiring Improvements Within 60 Days
W-478, Sub 1 (12-29-88)

Scotland Water Company, Kenwyn N. Johnson, t/a - Order Closing Docket in Application for a Certificate to Furnish Water Utility Service in Cedar Circle Subdivision, Scotland County, and Approval of Rates
W-426, Sub 2 (3-29-88)