SEVENTY-NINTH REPORT
of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1989, through December 31, 1989

* William Walter Redman, Jr., Chairman

Sarah Lindsay Tate, Commissioner

Ruth E. Cook, Commissioner

Julius A. Wright, Commissioner

Robert O. Wells, Commissioner

** Charles H. Hughes, Commissioner

*** Laurence A. Cobb, 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

---

* Appointed Chairman July 1, 1989, replacing Robert O. Wells as Chairman
** Appointed April 3, 1989, replacing Robert K. Koger
*** Appointed August 14, 1989, replacing Edward B. Hipp

CONTENTS

LETTER OF TRANSMITTAL

December 31, 1989

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, 1989, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1989, and ending December 31, 1989.

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

William W. Redman, Jr., Chairman

Sarah Lindsay Tate, Commissioner

Ruth E. Cook, Commissioner

Julius A. Wright, Commissioner

Robert O. Wells, Commissioner

Charles H. Hughes, Commissioner

Laurence A. Cobb, Commissioner

Sandra J. Webster, Chief Clerk

ORDERS AND DECISIONS PRINTED

1989 ANNUAL REPORT OF ORDERS AND DECISIONS
of the
North Carolina Utilities Commission

Table of Orders and Decisions Printed

NOTE: For General Orders, see Index on page 679

PAGE

DOCKET NO. M-100, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: The American National Standards Institute (ANSI) has updated its 1987 Edition of the National Electrical Safety Code, said update being ANSI C2.1990. The Commission is of the opinion that, unless significant cause is shown otherwise, the 1990 Edition of the National Electrical Safety Code should be adopted as the safety rules of this Commission for electric and communications utilities under its jurisdiction.

By Order issued October 18, 1989, in Docket No. M-100, Sub 89, the Commission published proposed revisions to its Rules R8-26 and R9-1, and specified that unless protests or requests for hearing were received within 30 days after the date of said Order, the Commission would determine the matter without public hearing. No comments were received.

IT IS, THEREFORE, ORDERED as follows:

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

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

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of December 1989.

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

APPENDIX A

Rule R8-26. Safety Rules and Regulations - The rules and regulations of the American National Standards Institute entitled "National Electrical Safety Code", ANSI C2, 1990, 1990 Edition, is hereby adopted by reference as the electric safety rules of this Commission and shall apply to all electric utilities which operate in North Carolina under the jurisdiction of the Commission.

Rule R9-1. Safety Rules and Regulations - The rules and regulations of the American National Standards Institute entitled "National Electrical Safety Code", ANSI C2. 1990, 1990 Edition, is hereby adopted by reference as the communication safety rules of this Commission and shall apply to all telephone and telegraph utilities which operate in North Carolina under the jurisdiction of the Commission.

DOCKET NO. M-100, SUB 117

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Proposed Rulemaking - Request to Amend	)	ORDER DENYING
Commission Rules R4-4 and R4-12	)	PROPOSED
Pursuant to N.C.G.S. § 62-152.1	)	RULE REVISIONS

BY THE COMMISSION: On March 9, 1989, the North Carolina Intrastate Petroleum Rate Committee (the Petroleum Rate Committee) of the North Carolina Trucking Association, Inc. (NCTA), filed a petition in this docket whereby the Commission (NCUC or Commission) was requested to amend Commission Rules R4-4 and R4-12 pursuant to G.S. 62-152.1 to:

1. Require statutory notice of non-uniform reductions from uniform bulk petroleum rates established pursuant to G.S. 62-152.1; and

2. Prohibit private tariff filings by parties to joint rate agreements approved pursuant to G.S. 62-152.1.

In support of its petition, the Committee states, among other things, that:

(1) For the purpose of achieving a stable rate structure, it is the policy of this state to fix uniform rates for the same or similar services by carriers of the same class. G.S. 62-152.1(b).

(2) Despite the statutory policy favoring uniform rates for similar services by carriers of the same class, uniform bulk petroleum rates filed by NCTA as agent for participating carriers and approved by the Commission are being circumvented and undercut by "private" tariffs filed by participating carriers. Frequently, these deviating tariffs are filed without justification data, and they are allowed to become effective on less-than-statutory notice. The result is an unstable bulk petroleum rate structure and an unstable North Carolina petroleum transportation industry.

(3) NCTA Petroleum Tariff No. 5-V which is participated in by most of the major petroleum carriers and which is approved by the North Carolina Utilities Commission after scrutiny of study carrier justification data, is, in effect, the only regulated bulk petroleum tariff. Further, this regulation is essentially one-way (increases only). "Private" and independent tariffs which may constitute unfair or destructive competitive practices in violation of statutory policy are virtually unregulated.

(4) This situation can be substantially remedied by the proposed rule amendments.

On April 6, 1989, the Commission entered an Order in this docket initiating a rulemaking proceeding to consider the amendments to Rules R4-4 and R4-12 proposed by the Petroleum Rate Committee. The Commission solicited comments on the proposed rule revisions from all interested parties.

WHEREUPON, the parties to this proceeding subsequently filed the following

COMMENTS

PHILLIPS 66 COMPANY

On May 12, 1989, Phillips 66 Company filed comments in opposition to the proposals of the Petroleum Rate Committee and requested the Commission to take the following actions in response to the proposed rulemaking:

1. Retain all rules as currently written today.

2. Allow independent tariff filings to continue subject to current regulatory oversight with waiver of statutory notice when the situation warrants.

3. Allow existing rate differentials to continue with the carriers remaining responsible only to Commission oversight and not to other competing carriers in a Standing Rate Committee.

Phillips 66 Company is an integrated petroleum company which markets petroleum and petroleum products in the State of North Carolina. In 1988, Phillips shipped a total intrastate volume of 252.3 million gallons of bulk petroleum products by truck in North Carolina, of which 132.2 million gallons moved via for-hire common carriage.

Phillips asserts that changes to the North Carolina rules are unnecessary and that the existing rules are adequate as currently written. The NCUC currently has the power that the Petroleum Rate Committee says it needs. Rates may be established without the 30 day statutory notice but only with NCUC approval and oversight. "Private" tariffs and individual tariffs are not nonregulated as the Petroleum Rate Committee asserts in its proposal.

Phillips takes the position that through the mechanism provided in Rule R4-4, the NCUC can make its decision on rate filings on a case-by-case basis and then decide to grant or not grant a waiver of the statutory notice based on the merit or lack of merit of each situation. This approach recognizes the reality of the marketplace in the bulk petroleum shipping business. Frequent and unpredictable supply disruptions at pipeline and marine facilities make quick reaction a necessity of the bulk petroleum trucking business. It is important that the ultimate consumer is able to avoid supply disruptions and get product at an economical price. Transportation charges are an integral part of their cost of doing business.

Situations arise where time limits hinder more than they help. It is not beneficial for a North Carolina carrier to lose business to an interstate carrier due to the inability to react in the time frame dictated by the marketplace. The business doesn't sit in a holding pattern waiting for regulatory action or action by a Standing Rate Committee.

Phillips does not take issue in this proceeding with the statutory notice requirements of the North Carolina General Statutes and Rule R4-4 which require 30 days' notice of rate changes. However, when statutory notice is deemed to be necessary, 30 days should be treated as the maximum time frame within which

carriers and shippers can expect to resolve routine rate adjustments. A period in excess of 30 days is unacceptable and will put an undue burden on intrastate transport businesses and their customers. This is due to the fact that most interstate carriers don't operate under such time constraints and can react quickly to market conditions. Excessive delays at the state level serve only to weaken intrastate carriers by eroding their traffic base as interstate alternates are viable alternatives in the bulk petroleum business. North Carolina terminals are in competition for volumes with terminals in the surrounding states of Georgia, South Carolina, Tennessee, and Virginia.

Phillips states that one reason it supports the continuation of independently filed tariffs is the response time. Rate associations by their nature serve to delay the process. Time requirements are added for notice to member carriers, time is allowed for member response to the proposed rate change and then rates are set for discussion at a Standing Rate Committee meeting. In the best of circumstances these steps add a minimum of 30 days to the process, if it is uncontested by the committee members. The time required to file a rate has suddenly jumped to 60+ days since it must be filed with the NCUC for the statutory 30 day tariff notice requirement after the Standing Rate Committee has reviewed and approved the proposal.

According to Phillips, this example is a "best case" situation. What actually happens is that some members of Standing Rate Committees often "abuse" their administrative oversight. Carrier representatives who oppose proposals initiate tactics to delay or kill the rate change. Quite often undue pressure is brought to bear upon the nonconforming carrier at these meetings to hold the line on rate scales. While the proponent may eventually win out over these influences the time requirement very quickly moves into the 90-120+ day realm which most definitely is not market responsive.

Phillips takes the position that the way to avoid this administrative gridlock is to allow carriers to retain their right to publish independent tariffs. These are not "private" tariffs as asserted in the Petroleum Rate Committee's petition but independently published "public" tariffs. They are public records open to all as set forth in Rule R4-3. They are and will continue to be filed with and reviewed by the NCUC as required in Rule R4-4 subject to the minimum filing requirements in Rule R4-3.

The Petroleum Rate Committee's petition draws attention to G.S. 62-152.1(b) which states that the policy of the NCUC "..will be to fix uniform rates for the same or similar services by carriers of the same class". According to Phillips, this responsibility must be reviewed in light of G.S. 62-152.1(e) that says:

> "....there is accorded to each party the free and unrestrained right to take independent action...."

This makes it obvious that it was not the intent of the North Carolina General Statutes that all rates be "uniform", or identical. If this were the case the independent action provision would be contrary to the spirit of the law and would also be useless verbiage. The statute is designed to allow rate differences. The "uniform" provision should be interpreted to apply to a

general uniformity of a rate's profitability or to its contribution to a firm's overhead and expenses.

According to Phillips, all transport firms are not generic clones. They share common markets and common operating realities. Through different management, physical facilities, equipment, and personnel each carrier is a unique operating entity. The efficient operator should be able to use that advantage in the marketplace and the transportation consumer should be afforded the opportunity to share in that savings. A single "uniform" (identical) rate scale for a class of carriers penalizes the North Carolina consumer. Generic rate scales are based on "average" operations, "average" expenses and "average" management practices. The inefficient carriers drag other carriers down to their level and discourage efficiencies and productivity gains. Freedom for independent action will either remove the inefficient from the market or compel them to become efficient. The NCUC should take a position to nurture the good operators and not take a position which will perpetuate and encourage the bad.

The Petroleum Rate Committee in its petition also refers to G.S. § 62-259 and references the NCUC goal "to encourage and promote harmony among all carriers and to prevent discrimination, undue preferences or advantages, or unfair or destructive competitive practices between all carriers". According to Phillips, the Committee failed to include the initial part of that same section of the statute which states as part of that same goal:

> "....to promote and preserve adequate economical and efficient service to all communities of the State by motor carriers."

Phillips states that the tone and implication of the Petroleum Rate Committee's petition is that there is an automatic presumption that rate reductions represent discrimination, undue preference or advantage, or unfair or destructive competitive practice. Phillips asks who is being discriminated against when the consuming public is not afforded the opportunity to take advantage of motor carrier efficiencies reflected in lower rate scales? Again, emphasis is needed to the fact that these individually filed tariffs are public records by statute and not secret. Federal antitrust takes the position that the discussion of rates by nonparticipants to a movement is a destructive competitive practice.

CENTRAL TRANSPORT, INC.

On May 25, 1989, Central Transport, Inc., filed comments in opposition to rule changes proposed by the Petroleum Rate Committee. Central Transport is a common carrier in intrastate commerce in North Carolina engaged, among other things, in the transportation of liquid and dry commodities in bulk under the authority granted to it by this Commission. It is not primarily involved in the transportation of petroleum in bulk, but it is involved in the transportation of items such as liquid chemicals in bulk in tank trucks.

Central Transport opposes the proposed rule changes and the petition of the Committee in its present form for the following three reasons.

First, while the petition is apparently intended to correct a factual situation just affecting petroleum carriers, the amendments are to the rules of the Commission applicable to all carriers, petroleum and non-petroleum alike.

Thus, the proposed rule changes could impact other carriers and other shippers who have no interest in the transportation of petroleum in bulk in North Carolina. One of those other carriers which could be impacted by such a rule change is Central Transport. Central Transport takes the position that any changes that may be adopted should be restricted in a way to make clear the Commission's intention not to affect in any way carriers other than petroleum carriers.

Second, Central Transport believes that proposed rule changes would be bad policy for the Commission to adopt even if they were limited to petroleum carriers because they might be considered a precedent for the regulation of other carriers. The statute relied on by the Petroleum Rate Committee, G.S. 62-152.1, is obviously not intended to prevent competition between carriers but only "unfair or destructive competition". The Committee does not allege facts showing that any North Carolina petroleum carrier has been significantly harmed by "unfair or destructive competitive" practices caused by non-uniform bulk petroleum rates or private company tariff filings. Central Transport submits that in the absence of such a showing by the Committee the Commission cannot grant the relief sought.

Third, Central Transport's position is that carriers should be free to publish rates by joining other carriers in an industry or "Bureau" tariff and that they should also be free to publish rates in a "Company" or private tariff. Those carriers should also be free to publish some rates in Bureau tariffs and other rates in Company tariffs as long as they do not conflict. Under no circumstances does Central Transport agree that carriers should be forced to publish only industry or Bureau tariffs or rates.

Central Transport opposes the petition of the Committee in its present form and opposes the adoption of the rule changes proposed in this docket. Central Transport submits that, if any such changes are to be considered by the Commission, notice should be given to all carriers and shippers and an evidentiary hearing should be held to afford all parties a full and adequate opportunity to be heard before any such changes in rules are adopted.

CAROLINA UTILITY CUSTOMERS ASSOCIATION, INC.

On May 26, 1989, the Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene in this docket and comments in opposition to the proposed amendments to Rules R4-4 and R4-12. CUCA states that a mandatory requirement of 30 days' notice of non-uniform tariff reductions from uniform bulk petroleum rates would be unnecessary and illegal. CUCA asserts that the Commission is a creation of the Legislature and possesses only those powers specifically conferred on it by the Legislature. The Commission can neither increase nor diminish its statutory authority by way of rules that it adopts. Only the Legislature has the authority to change the Commission's statutory authority. G.S. 62-134(a) provides in part:

> "The Commission, for good cause shown in writing, may allow changes in rates without requiring the 30 days' notice, under such conditions as it may prescribe."

The Commission is specifically granted the authority "for good cause shown in writing" to waive the 30 days' notice requirement. According to CUCA, for

the Commission to categorically say it will not waive the 30 day notice requirement even if good cause were shown exceeds the Commission's statutory authority. The first requested amendment should be disallowed.

CUCA asserts that the second requested amendment which attempts to "prohibit private tariff filings by parties to joint rate agreements approved pursuant to G.S. 62-152.1" also runs afoul of the Commission's statutory authority. G.S. 62-152.1(e) requires that each party to a joint rate agreement must be accorded "the free and unrestrained right to take independent action. . ."

Accordingly to CUCA, the second requested amendment of the Petroleum Rate Committee is a blatant attempt to circumvent this statutory provision and restrain the rights of parties to take independent action. Approval of the requested amendment would violate the Commission's statutory authority and, therefore, would be illegal.

AMERICAN FURNITURE MANUFACTURERS ASSOCIATION

On May 30, 1989, the American Furniture Manufacturers Association (AFMA) filed comments in opposition to the rule amendments proposed by the Petroleum Rate Committee. AFMA is a non-profit trade association representing over 350 furniture manufacturing companies in the United States, with over 120 of such members located within the State of North Carolina. Other members having plant locations in North Carolina bring a total membership interest of over 150 furniture manufacturing firms. In addition to the members manufacturing all types of household and institutional furniture, AFMA represents over 75 suppliers of raw materials, machinery, and services also located in North Carolina who provide materials and services to the furniture industry.

AFMA opposes both of the requested amendments for the following reasons:

First, a requirement of 30 days' notice of non-uniform tariff rate reductions from uniform petroleum rates is contrary to the powers of the Commission. Only the State Legislature has the power to specifically amend the North Carolina public utility laws to be administered by the Utilities Commission. Granting of relief by the Commission is only authorized "for good cause shown in writing," allowing the Commission to waive the 30 day notice requirement.

Second, the requested amendment which would restrict or prohibit private tariff filings of parties to joint rate agreements is in violation of G.S. 62-152.1(e).

The AFMA asserts that the second amendment requested by the Petroleum Rate Committee is an attempt to restrict "the free and unrestricted right to take independent action," and would circumvent the statutory provisions and the right of parties to take independent action.

The AFMA notes that the second paragraph of the proposed rule is not restricted to any particular group of carriers and would, if adopted, prohibit private tariff filings by any carrier that participated in a joint ratemaking agreement. Although members of AFMA are involved with petroleum as a fuel source to operate their plants and has an interest in the Petroleum Carriers'

proposal, transportation of petroleum fuel for the members' use is minimal to the transportation of furniture and other supplies and materials used in the production of furniture. It is, therefore, the opinion of the membership that the application of the rule, if it is approved, should be restricted to tariffs provided by the petroleum carriers.

EXXON COMPANY, U.S.A.

On May 30, 1989, Exxon Company, U.S.A., filed comments in opposition to the proposed rule amendments. Exxon states that contrary to the Petroleum Rate Committee's representation that the Commission is failing to meet its statutory duties, the Committee's proposals themselves are inconsistent with the Commission's statutory authority. G.S. 62-134(a) requires the availability of a mechanism for granting changes in rates without an automatic 30 days' notice when there is good cause. The second proposal is also in conflict with G.S. 62-152.1(e) which mandates that the "unrestrained right to take independent action" of each party to a joint agreement must be preserved.

Exxon subscribes to the view that economic regulation of trucking is unnecessary and generally impedes innovation and efficiency. Exxon states that its experience in many states with trucking rate regulation is that innovations and efficiencies are stymied by burden of proof requirements, and long, costly delays between applications and approvals. In such states, high transportation costs and inflexible service terms are a significant deterrent to economic development.

In contrast, Exxon states that the Commission's current policies and practices appear to reflect an impartiality between shippers and carriers which preserves the broader public interest in maintaining a business climate that is attractive for economic growth and development. Rather than allowing itself to be drawn into the eternal fight over how high is too high or how low is too low, the Commission has wisely set a course that neither compels nor precludes any individual carrier from expeditiously and inexpensively adopting a rate structure that is responsive to its own efficiencies, the needs of its customers and changes in the marketplace. Without such a progressive attitude, the "uniformity" advocated by the NCTA would have likely prevented the introduction of many volume discount concepts now widely accepted in the industry and, in turn, reduced the attractiveness of North Carolina's business climate.

Exxon's experience indicates that the North Carolina tank truck industry is both strong and stable. Exxon states that it has never lacked for either the availability or interest of carriers to serve its needs. The Commission's current policies and practices have permitted the development of the innovative rate structures and carrier-shipper partnerships comparable to those in adjacent states. Such partnerships contribute to higher and more stable levels of equipment utilization for carriers resulting in efficiency-driven cost savings which are shared by shippers, carriers and consumers alike. This approach to transportation regulation appears to fulfill both the Commission's statutory obligations and the broader public interest in ensuring that transportation services and rates advance rather than impede the State's economic development.

Exxon requests the Commission to dismiss the Petroleum Rate Committee's petition without a hearing on the grounds that it is clearly contrary to both statutory requirements and the public interest.

SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC.

On May 31, 1989, the Southern Motor Carriers Rate Conference, Inc. (SMCRC) filed comments in this docket in response to the Order of April 6, 1988, instituting this rulemaking proceeding. SMCRC is the tariff publishing agent for 33 motor common carriers of general commodities which currently participate in North Carolina intrastate Tariff NCUC SMC 304-I. These carriers provide service between all points in the State for a wide variety of transportation users engaged in all types and sizes of commercial and industrial enterprises. Services performed under the terms of this tariff are priced pursuant to a joint ratemaking agreement approved by the Commission in an Order dated August 31, 1988, in Docket No. T-825, Sub 229-A, under the provisions of G.S. 62-152.1 and Commission Rule R4-12. Joint ratemaking responsibility under the agreement is vested exclusively in a rate committee consisting of an authorized representative of every carrier participating in the tariff and expressing a desire to participate in such joint ratemaking activities. Revenues derived from shipments moving under the provisions of tariff NCUC SMC 304 series were in excess of $80 million in 1988, and consequently, the SMCRC carriers have a substantial interest in any proposal affecting pricing activities under their approved agreement.

The SMCRC states that paragraph (1) of the proposed rule deals solely with the question of whether statutory notice should be required in connection with non-uniform reductions from uniform bulk petroleum rates established under a joint ratemaking agreement. As a group, the SMCRC carriers have no interest in the pricing activities of any other types of carriers, and consequently, they take no position on whether the Commission's rules should be modified to incorporate the amendment suggested in paragraph (1) of the proposed rule for the account of the bulk petroleum carriers.

According to the SMCRC, paragraph (2) of the proposed rule is not restricted to any particular group of carriers, and its adoption would prohibit private tariff filings by any carrier that participated in a joint ratemaking agreement approved under G.S. § 62-152.1. As with paragraph (1) of the proposed rule, the SMCRC carriers take no position on whether paragraph (2) should be adopted for the account of any other group of carriers, but are opposed to its adoption to govern private tariff filings of general commodity carriers.

With respect to general commodities transportation, the SMCRC states that North Carolina intrastate pricing is extremely competitive, with a number of carriers participating in rates published pursuant to one or more of the three approved joint ratemaking agreements, and a host of additional competitors who publish their rates in independent or private tariffs. Whether jointly or independently established, most carriers price their services by establishing discounts off a general scale of rates related by weight and distance (class rates). This scenario is simply a reflection of the fact that most shippers appear uninterested in comparing the specific rates of a number of competing carriers, opting instead for the more efficient comparison of overall discount

levels in conjunction with a recognized and rational rate structure such as the type fostered by the joint rate agreements.

According to the SMCRC, the use of private tariffs, in which carriers publish their discount levels for various customers, has greatly expanded recently due to the need of carriers to react quickly to the virtually unregulated pricing activities of many independent filers. Thus, the use of private tariffs is not a matter of discretion but simply a reaction to competitive pressures from outside forces over which the carriers have no control.

The SMCRC carriers are opposed to the outright elimination of private tariffs because the proposed rule does nothing to treat the cause of the problem - the "unbridled, market driven competition of many independent filers." As long as major competitors are operating in the marketplace without similar restraints, the SMCRC states that it is unreasonable to believe the bureau carriers would deliberately tie their own hands by the elimination of a necessary competitive tool. If the proposed rule is adopted, a more logical reaction would be for these carriers to simply opt out of the joint rate agreement and to publish their own private class tariff in conjunction with their existing discount tariffs. Unfortunately, instead of further compliance with the statutory policy favoring uniform rates for similar services by carriers of the same class, the elimination of private tariffs by carriers party to joint rate agreements would appear to accomplish the opposite result.

THE PROBLEM ACCORDING TO THE SMCRC

Although not preceded by a similar change in the law, the SMCRC states that motor carrier pricing in North Carolina over the past several years has pretty much followed in the footsteps of pricing initiatives developed in response to the competitive environment created by the passage of the Motor Carrier Act of 1980. Joint or collective pricing has tended to establish the class rate levels, rationalized by weight and distance, as the "reference" or "posted" price which carriers and shippers alike have come to regard as the beginning point for negotiations to arrive at the actual rates to be assessed on specific shipments. Even some independent filers have adopted this pricing approach by publishing the collective class rate scales in their own tariff system.

The SMCRC asserts that, until recently, the carriers tended to publish their negotiated prices or discount levels in the joint tariff which also contained the class rate scales. However, as competition for the available traffic has intensified, carriers have perceived a need to react more quickly to changes in competitive conditions. Consequently, since the discount practices of the independent tariff filers were perceived as being largely unregulated, with changes occurring also at the point of shipment, many carriers who also participate in joint tariffs have been forced to adopt the pricing tactics of the independent filers in order to remain competitive. Consequently, a number of these carriers have already published voluminous private discount tariffs, which, if continued unabated, threaten not only the elimination of the value of the class rate structure as a posted price system, but more importantly, the ability of a number of carriers to continue to provide service to the public at depressed price levels. In this respect, the SMCRC states that the bankruptcy of a large number of major interstate carriers

stands as a monument to the wait-and-see attitude which has dominated the fundamentally flawed thinking of a number of federal regulators.

THE SMCRC'S SUBSTITUTE PROPOSAL

The SMCRC states that, while it is certainly not inaccurate to conclude that the "destructive discount/private tariff problem" is largely the product of the shortening of the publication notice period for rate changes, the Commission should resist the idea that a lengthening of public notice by itself will solve the problem. There are many legitimate situations where carriers and shippers alike need and demand the opportunity to react quickly to competitive situations, and consequently, the restoration of full statutory notice to every rate change by itself could have the undesirable effect of restraining legitimate and lawful competition. The regulatory goal should be to find a procedure which accommodates the needs of the carriers and shippers to react quickly to competitive conditions if justified but which provides a means to protect the public against unfair or destructive price competition.

In this respect, the SMCRC carriers believe the "destructive discount problem" can be solved by adopting and implementing a regulatory policy in connection with less than truckload (LTL) rates which:

(a) Establishes a rate reasonableness standard in connection with rates or discounts published on short notice which discourages unjustified below-cost pricing driven by extreme market forces.

(b) Achieves full disclosure of the existence of any discounts to the shipping public at large by requiring tariff identification of the customer on any rate or discount published to apply only for specific account numbers.

(c) In order to permit both carriers and shippers to adjust to a new pricing environment, provides a six-month moratorium or cooling-off period which freezes changes in the rate structure outside of a zone comprised of both the lowest and highest rates on any given shipment via any carrier.

WENDELL TRANSPORT CORPORATION AND SOUTHERN OIL TRANSPORTATION COMPANY

On May 31, 1989, Wendell Transport Corporation (Wendell) and Southern Oil Transportation Company (Southern) filed comments in opposition to the rule amendments proposed by the Petroleum Rate Committee. Wendell and Southern oppose the proposed changes to Rules R4-4 and R4-12 and assert that the changes would not promote the best interest of either the public or the utilities involved and would be contrary to the North Carolina statutes. The job of the North Carolina Utilities Commission is to regulate utilities according to the dictates of the statutes and in pursuit of the policies established by the North Carolina Legislature. In doing this, the NCUC must maintain a reasonable balance between the public interest and regulation of competition in utilities. See Utilities Commission v. Carolina Coach Company, 261 N.C. 384, 389 (1964).

The Petroleum Rate Committee has referred in its petition to the statutory policy favoring uniform rates for similar services by carriers of the same class. Although G.S. 62-152.1(b) does state this policy, Wendell and Southern

assert that this is not the only statement of policy which is applicable in this proceeding. Both G.S. 62-2 and 62-259 contain further statements of policy which must be considered. G.S. 62-2(1) states that the policy of North Carolina is also "to provide fair regulation of public utilities in the interest of the public." The statements of policy in the statutes make it clear that the public interest in reliable and economical utility services is an extremely important consideration. Wendell and Southern contend that the present rules promote this policy, as well as providing sufficient regulation for utility rates.

Although the NCUC clearly has the power to regulate rates, Wendell and Southern state that it was never intended by the statute that all rates be identical, as the Petroleum Rate Committee's petition implies. The NCUC must consider many different factors in setting rates, including the effective rates of movement of traffic by the carrier or carriers for which rates are prescribed and the need of the public for adequate and efficient transportation service at the lowest costs consistent with the furnishing of the service. G.S. 62-146(h).

According to Wendell and Southern, the rules presently give the NCUC and the carriers in North Carolina the flexibility they need to meet the demands of the market. This was recognized by the United States Supreme Court in Southern Motor Carriers Rate Conference, Inc. v. United States, 471 U.S. 48, 85 L.Ed 2d 36, 105 S.Ct. 1721 (1985). In the course of deciding that the Sherman Act is not applicable to private carriers acting under joint rate agreements pursuant to state statute, the Court analyzed the effects of the North Carolina statute as follows:

> "Most common carriers probably will engage in collective rate making, as that will allow them to share the costs of preparing rate proposals. If the joint rates are viewed as too high, however, carriers individually may submit lower proposed rates to the Commission in order to obtain a larger share of the market. Thus, through self-interested actions of private common carriers, the States may achieve the desired balance between the efficiency of collective rate making and the competition fostered by individual submissions." 471 U.S. at 59, 105 S.Ct. at 1728.

The Court recognized that compelling all carriers to participate in collective ratemaking would reduce the range of regulatory alternatives available to the State. According to Wendell and Southern, the NCTA's proposed amendment to Rule R4-12 appears to be directly contrary to G.S. 62-152.1(e). That section provides that the Commission cannot approve any joint rate agreement among carriers unless it "finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action after any determination arrived at through such procedure." Obviously, the North Carolina Legislature intended for carriers to be able to have rates which deviate from rates set under any joint rate agreement, and the current rules provide for this.

Wendell and Southern concur with the Phillips 66 Company in its statements concerning establishment of rates without 30 days' statutory notice. As a practical matter, requiring 30 days' notice for all rate changes would make it almost impossible to compete with interstate carriers. Due to the nature of

the bulk petroleum shipping business, flexibility and the ability to act quickly is necessary in ratemaking. The present regulations allow sufficient flexibility so that intrastate carriers can compete with interstate carriers. It also promotes the public interest in lower rates. A carrier who is able to operate efficiently and profitably while charging lower rates should not be punished just because another carrier is unable to do so.

"An uncontrolled legal monopoly in an essential service leads, normally and naturally, to poor service and exorbitant charges." Utilities Commission v. General Telephone Company of the Southeast, 281 N.C. 318, 335 (1972). The North Carolina statutes give the NCUC discretion and flexibility in regulating utility rates to promote good service and reasonable charges. Wendell and Southern assert that the proposal of the NCTA amounts to an attempt by the Association and larger carriers to put the smaller carriers out of business, and to make the entire bulk petroleum transportation business their own monopoly. They wish to protect themselves from competition from carriers who are able to provide good service at a lower cost. According to Wendell and Southern, it is clearly not in the best interest of the public or of the carriers to permit such a result.

According to Wendell and Southern, the current rules provide sufficient oversight and regulation of tariffs, promoting both the best interests of the utility carriers and the public. They state that determination made by the NCUC in this proceeding will have a very substantial impact on them and their customers. The effect of the proposed changes on Wendell would be to diminish greatly its ability to respond to changes in the marketplace and to compete with other carriers. Also, its customers would be charged higher rates. Wendell and Southern state that they are already operating at acceptable profit margins and are providing good service to their customers. Therefore, Wendell and Southern request that the NCUC do as follows in response to the proposed rulemaking:

1. Retain Rules R4-4 and R4-12 as currently written.

2. Allow the filing of independent tariffs to continue, subject to regulatory oversight with waiver of statutory notice when the situation warrants.

3. Allow existing rate differentials to continue with carriers remaining responsible only to oversight by the NCUC and not to other competing carriers in a standing rate committee.

4. Rule that to deny the right to file independent tariffs would be contrary to G.S. 62-152.1(e).

NORTH CAROLINA TRAFFIC LEAGUE

On May 31, 1989, the North Carolina Traffic League (NCTL or League) filed comments in opposition to the rule amendments proposed by the Petroleum Rate Committee. The NCTL is an organization of fifty-five (55) companies which operate facilities and conduct business within the State of North Carolina. Its members represent the traffic, transportation, distribution, and logistics functions of their respective companies. The NCTL was incorporated in 1929 to

represent the member companies before the NCUC in matters affecting their common interests in transportation costs and issues.

The League opposes both requested amendments as proposed by the Petroleum Rate Committee of the NCTA. That opposition is based on the League's belief that mandatory requirements to provide a 30 days' notice of non-uniform rate reductions by any type carrier which operates in North Carolina is unnecessary. Such notification can only be viewed as a purely restrictive measure by competing carriers to limit the ability of another carrier to take independent rate action.

The League contends that any effort to mandate rigid statutory notice is counter to the "...free and unrestrained right..." given to carriers by the Legislature when it enacted G.S. 62-152.1.

The League opposes the prohibition of filing private tariffs by carriers who are parties to joint rate agreements for similar reasons. The League believes that the right of carriers to take independent action in rate filings would be effectively negated if they did not have the right to publish those rates in bureau or private tariffs as they see proper. If the bureau, or its carrier membership, opposed all substantial rate changes by its members, what options would the individual carrier have open to it if the right to make private tariff publications was eliminated? The League sees this proposal as extremely damaging to the entire transportation industry within North Carolina if the Commission accepts the arguments presented by the Petroleum Rate Committee.

The League sees the requested amendments as potentially unfair and destructive competitive practices which can be exercised by bureau carriers to force majority rule on its membership. North Carolina's shippers have directly benefited from the improved competition and enhanced ratemaking flexibility that G.S. 62-152.1(e) permits. The League contends that the NCUC has only followed the intent of its mandated goals by permitting independent rate action by carriers without creating an artificially restrictive environment which can only benefit those carriers with a vested interest in curtailing competition.

The North Carolina Traffic League therefore objects to any change in the existing Commission interpretation or application of G.S. 62-152.1, or any change in Rules R4-4 or R4-12. The League requests the petition of the Petroleum Rate Committee be disallowed in its entirety.

MERRITT TRUCKING COMPANY, INC.

On May 31, 1989, Merritt Trucking Company, Inc. (Merritt), filed the following comments:

First, Merritt does not disagree with the requirements of statutory notice of reductions in bulk petroleum rates, as well as requirements to justify such reductions as would be deemed necessary by the Utilities Commission.

Second, Merritt does not disagree with every aspect of the second recommendation made by by Petroleum Rate Committee. However, private tariff filings should never be prohibited by those carriers who are not parties to joint rate agreements. Nor should the intent of G.S. 62-152.1 be construed to

mean "IDENTICAL" rates. A petroleum carrier should never be forced to operate at rate levels determined by a group of its competitors. The variety of factors affecting necessary rate levels for one carrier may affect another to a greater or lesser degree or not at all. Each rate filing should be judged on its own merits relative to the needs and performance of the carrier itself. Also, no carrier should be allowed to operate at rate levels which would be predatory and subsidized by its interstate operations or operations within other states.

MOTOR CARRIERS TRAFFIC ASSOCIATION, INC.

On June 1, 1989, the Motor Carriers Traffic Association, Inc. (MCTA), filed its comments regarding the rulemaking. The Association consists of over 100 common carriers engaged in all types of traffic within the State of North Carolina and operates under a joint ratemaking agreement approved by the Commission.

The MCTA states that paragraph (1) of the proposed rule deals only with the Petroleum Tariff and would require statutory notice on non-uniform reductions from such tariff. Since the MCTA does not publish a Petroleum Tariff, it takes no position on this paragraph of the proposed rule as long as it is only confined to the Bulk Petroleum Carriers. The MCTA does, however, take exception to paragraph (2) of the proposed rule prohibiting private tariff filings by any carrier which is a party to a joint ratemaking arrangement approved under G.S. 62-152.1.

The MCTA states that meeting competition is one of the primary reasons for publishing private tariffs and the time it takes to put a publication in a bureau tariff is too long to meet such competition.

The MCTA takes no position on whether the proposed rules should be adopted for any other group of carriers, but states that the proposed rules should not be adopted for general commodity carriers.

INFINGER TRANSPORTATION COMPANY, INC.

On June 1, 1989, Infinger Transportation Company, Inc. (Infinger), filed comments in opposition to the recommendations of the Petroleum Rate Committee. Infinger is a common carrier operating in the State of North Carolina under a certificate issued by the Commission. Infinger provides, among other services, transportation of petroleum and petroleum products in bulk tank vehicles. Infinger publishes its rates for these services in a company-issued tariff, and is not a member of the NCTA Motor Freight Tariff No. 5-V.

Infinger states that it does not take issue with the Petroleum Rate Committee's statement concerning the required 30 days' notice for rate changes, but does feel that the NCUC should be allowed to approve rates and allow rates to be published on a shorter time frame when compelling reasons justify doing so. Taking into account the State's highly competitive business environment, carriers must be able to respond when sources of supply within the marketplace change due to price fluctuations or product availability. Tariff changes on less than 30 days' notice are being granted for all types of commodities, and the transportation of petroleum and petroleum products, which is essential to virtually all industries, should have the same flexibility. Infinger states that by not allowing less-than-statutory notice on tariff filings, carriers and

the general shipping public in surrounding states would have an economic advantage over North Carolina.

The North Carolina Intrastate Petroleum Rate Committee represents a group of bulk petroleum and petroleum product carriers which participate in the Motor Freight Tariff No. 5-V. Infinger states that the participating members currently comply with the provisions of the Motor Freight Tariff only when their specific needs are being met by the Petroleum Rate Committee. According to Infinger, the Petroleum Rate Committee's petition appears to be requesting the NCUC to require that the participating members of the Motor Freight Tariff No. 5-V not be allowed to publish other rates which conflict with said tariff. Infinger submits that if there is a problem with non-compliance by members of the Motor Freight Tariff, policing of the membership should be left to the NCTA.

In order for each trucking company to operate in today's competitive environment, Infinger states that it is imperative that they have the ability to take independent action in order to meet their specific needs and also serve the needs of the general shipping public. A carrier is now allowed to publish rates by becoming a party to a collective ratemaking agreement under approval of the NCUC, or by publishing rates in a private "company" tariff. Each carrier should continue to be free to be a party to a motor freight tariff for a given commodity and still publish a "company" tariff for other commodities, as long as the rates do not conflict with each other. The request from the NCTA for uniform bulk petroleum rates among all carriers in the same freight classification would be contrary to the transportation policy of the Commission. Each carrier should be allowed the right to establish tariff rates based on their individual costs and operating efficiency. To require a carrier to become a party to a motor freight tariff, or to publish the same level of rates in a private "company" tariff would be contrary to the interest of the carrier and the general shipping public of North Carolina. Infinger asserts that the positive results of independent action can contribute to the strength and viability of the trucking industry within the State of North Carolina.

Infinger recommends that the Petroleum Rate Committee's request for a rulemaking proceeding should be denied by the Commission, without a hearing.

MARATHON PETROLEUM COMPANY

On June 1, 1989, the Marathon Petroleum Company (Marathon) filed comments in opposition to the rule amendments proposed by the Petroleum Rate Committee. Marathon shipped a total of 88 million gallons of intrastate volume in North Carolina in 1988 with 70 million gallons being moved via for-hire common carriers. Marathon states that the proposed amendments would have a negative impact on Marathon and its North Carolina customers and that the existing Commission rules are satisfactory as currently written.

According to Marathon, the present Commission rules give the NCUC the power that the NCTA says the Commission needs. The NCUC can make a decision on rate filings on an individual basis and can determine if a waiver of statutory notice can be granted. The waiver of statutory notice is necessary to allow the bulk petroleum shipping business to react to supply disruptions with pipelines, terminals and marine facilities, and to minimize the costs and inconvenience to the consumer. If the proposed amendment is enacted, there

will be situations where North Carolina carriers will lose business to an interstate carrier because of their ability to react to market conditions.

It is Marathon's contention that the intent of G.S. 62-152.1(e) that says:

". . .there is accorded to each party the free and unrestrained right to take independent action. . ."

is not to establish uniform (identical) tariffs as the Petroleum Rate Committee surmises from G.S. 62-152.1(b), but to establish uniformity in a rate's profitability and/or its contributions to a particular company's overhead and expenses. Marathon feels that the customer is best served by allowing carriers the right to publish independent tariffs. These are not "private" as asserted in the Petroleum Rate Committee's petition but independently published "public" tariffs. As set forth in Rule R4-3, all records are available to the public. In addition, they are currently and will continue to be filed with and reviewed by the NCUC as required in Rule R4-4.

According to Marathon, as with any industry, some companies operate more efficiently than others due to such factors as management foresight, creativity, productivity, personnel and equipment. The low-cost operator should be able to take advantage of his efficiency, and the transportation consumer should be afforded the opportunity to do likewise through independent tariffs. The uniform rate scale for a class of carriers penalizes the North Carolina consumer. These rate scales are based on "averages" that tend to raise the cost of doing business and allow the inefficient operator to remain in business, which has a negative impact on tariff rates. The uniform tariff does not force the carrier to operate in the most efficient manner and the ultimate cost of this inefficiency is borne by the consumer.

When a common carrier issues an independent tariff, Marathon takes the position that the consuming public is the winner with the lower rates. Such independent tariffs are a matter of public record by statute and are not secret. The independent tariff causes companies to re-examine their method of doing business and will compel them to become efficient to compete in the marketplace. The North Carolina consumers will be the victims if uniform (identical) tariffs are required because all transportation costs are an expense that is passed on to the customer.

Marathon requests that the NCUC do the following in response to the proposed amendment:

1. Allow the present Commission rules to stand as they are written today.

2. Continue to allow independent tariffs to be filed under the present format of regulatory oversight with a waiver of statutory notice when necessary.

CHEVRON U.S.A. INC.

On June 19, 1989, Chevron U.S.A. Inc. (Chevron) filed comments in opposition to the proposed rule revisions. Chevron, a shipper of bulk liquid petroleum products from locations in the State of North Carolina to destinations within the State, is opposed to passage of Docket No. M-100, Sub

117. According to Chevron, the present Commission rules and regulations are adequate to protect the interests of the citizens of North Carolina. The proposed changes, if approved, will impose unnecessary regulations that will have an adverse effect on North Carolina's shippers of bulk petroleum products and North Carolina's citizens.

For instance, Chevron asserts that changing Rule R4-4 to require statutory notice of all proposed rate changes will impose higher costs on shippers when an emergency situation arises. Publication on less-than-statutory terms is necessary to protect the shipping public from paying inflated class or mileage rates when unforeseen emergency situations require shipment from alternate supply sites. Publishing rate changes on less-than-statutory notice is a long established regulatory principle. Chevron requests that the Commission decline this "ill-conceived" proposal.

Chevron is also opposed to proposed amendment number two. According to Chevron, enactment of this regulation will prevent carriers from operating in what they perceive to be their own best interests. If approved, amendment number two will not give petroleum carriers the same freedom of choice accorded other carriers in North Carolina. Petroleum carriers should be allowed the same rights as other classes of carriers. If they want to publish their own tariff and also belong to NCTA Tariff 5-V, they should be allowed that choice. The Petroleum Rate Committee should not be allowed to dictate these choices through Commission rules. The Petroleum Rate Committee refers to "private tariffs" as if there is something secretive or underhanded about such tariffs. Chevron thinks this type of tariff is more correctly called a "Carrier Tariff". There is nothing private about such tariffs. They are public documents that are filed with the Commission. Carriers are required to post them and provide copies to anyone who requests them. Chevron believes that this proposal will work to the detriment of North Carolina carriers and petroleum shippers because it will cause carriers to drop out of NCTA Tariff 5-V and further fragment the transportation industry.

TRANSPORT SOUTH, INC.

On June 19, 1989, Transport South, Inc., filed a petition to intervene in this docket and requested the Commission to deny the proposed rulemaking for the following reasons:

> "1. Rule R4-4. A mandatory requirement to provide a thirty day notice of non-uniform rate reductions by any type carrier which operates in North Carolina would be a restrictive measure by competing carriers, and would make it almost impossible to compete with interstate carriers. Further, it would adversely affect the public interest.
>
> "2. Rule R4-12. The Commission cannot approve any joint rate agreement among carriers unless it finds that under the agreement there is accorded to each party the "free and unrestrained right to take independent action."

According to Transport South, requiring 30 days' notice for all rate changes is impracticable and fails to account for the reality of the bulk petroleum shipping business. These companies must be able to act quickly and

need sufficient flexibility to allow them to compete with interstate carriers. Inability to compete results in higher prices to consumers and therefore the public interest would be compromised. The NCUC must maintain a reasonable balance between the public interest and regulation of competition in utilities. See Utilities Commission v. Carolina Coach Co., 260 N.C. 384 (1964). Amending Rule R4-4 will tip the balance to the detriment of the public.

Further, a mandatory requirement of 30 days' notice is contrary to the Commission's power conferred on it by the Legislature.

G.S. § 62-134(a) provides in part:

> "The Commission, for good cause shown in writing, may allow changes in rates without requiring the thirty days notice, under such conditions as it may prescribe."

Transport South states that if the rules are amended as requested by the Petroleum Rate Committee, the Commission in essence would be saying that it would not waive the 30 days' notice even if good cause were shown. This would be an abdication of statutory responsibility created by the Legislature and impressed upon the Commission.

In regard to "private" tariffs, N.C.G.S. § 62-152.1(e) provides:

> "The Commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action after any determination arrived at through such procedure." (Emphasis added).

Transport South takes the position that by requesting that "private" tariffs be eliminated, the Petroleum Rate Committee is attempting to restrict "the free and unrestrained right" of fellow carriers. The language of the statute guarantees the preservation of the right of carriers to have rates which deviate from rates set under any joint rate agreement.

Transport South believes that the consuming public is best served by allowing carriers the right of publishing independent tariffs. The low-cost operator should be rewarded and not punished for passing on savings to the consumer through efficient operations. The Petroleum Rate Committee is attempting to put small carriers, who provide good service at a lower cost, out of business. The effect of the proposed changes on Transport South, Inc., will greatly diminish its ability to react to changes in the marketplace and to compete with other carriers. The ultimate loser will be the general public.

PETROLEUM RATE COMMITTEE

On June 19, 1989, the Petroleum Rate Committee filed the following comments in clarification of its position:

> "The comments filed by other parties indicate some misunderstanding of the Committee's position in this proceeding. The Committee's initial proposals in this proceeding are merely two

partial remedies for the present instability in North Carolina bulk petroleum transportation rates. Other more satisfactory remedies may exist. The problem, however, is real and should be addressed. It is not in the public interest to continue to allow established bulk petroleum transportation rates to be undercut by independent tariffs which are allowed to go into effect without justification and without notice.

"There is a statutory policy in favor of uniform rates for similar services by carriers of the same class. Petroleum carriers constitute a class of carriers. Most of their relatively small number participate in Tariff No. 5-V. The rates in Tariff No. 5-V are approved by the NCUC after scrutiny of study carriers justification data. However, reductions from these rates by both participating and non-participating carriers are allowed to go into effect without notice or justification. This is one-way regulation. The result is instability in the rate structure. This instability can be remedied by requiring justification and notice so that there will be opportunity for protest and hearing. It is not essential that thirty-days' notice be given in all cases. Several commenting parties have argued that G.S. 62-134 allows the Commission for good cause shown in writing to allow changes to rates on less-than-statutory notice. The statute does not contemplate, however, that the Commission allow changes without any notice whatsoever. Adequate notice, whether thirty days or some lesser time, is required.

"The Committee's proposal that parties to joint rate agreements be prohibited from filing "private" tariffs is merely another method of assuring adequate notice of reduced rates. If participating carriers follow the procedure for independent action, which the joint rate agreements are by law required to have, there is notice. Several commenting parties argue, however, that there is a competitive need for participating carriers to be able to file independent tariffs. If there is such a need, notice and justification should still be required. With proper notice and opportunity for hearing, competing carriers will be able to protest and protect themselves from unfair competition at non-compensatory rates."

The Petroleum Rate Committee requested the Commission to conduct a hearing to consider amending or applying its rules to require: (1) justification of reductions from established uniform rates and (2) adequate notice of such reductions.

THE ATTORNEY GENERAL

On June 19, 1989, the Attorney General filed comments in this docket which provided, in pertinent part, as follows:

G.S. 62-152.1 provides in pertinent part that the Commission may set uniform rules on the same or similar service by carriers of the same class. However, G.S. 62-152.1(e) goes on to provide:

"(e) The Commission shall not approve under this section any agreement which established a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action after any determination arrived at through such procedure." (Emphasis added).

G.S. 62-152.1(h) further provides:

"(h) Parties to any agreement approved by the Commission under this section and other parties are, if the approval of such agreement is not prohibited by subsection (d) or (e) of this section, hereby relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with the terms and conditions prescribed by the Commission."

"Construed together, these two provisions appear to suggest that exemption from antitrust action is contingent upon the ability of competitive carriers to negotiate contractual rates for transporting goods that differ form group rates. Interference with this statutory scheme by the proposed rule change may risk the possibility of antitrust action."

The Attorney General further stated as follows:

"Upon information and belief, transportation is not a natural monopoly in the nature of electric service where the need for extensive right-of-way agreements and capital intensive production methods make competition economically wasteful. Indeed, some scholars suggest that transportation should not be regulated as to rates at all. See, for example, David Boies, Minimum Rate Regulation by the Interstate Commerce Commission," 68 Columbia Law Review 599 (1968):

"This decision [to allow the I.C.C. to regulate trucking] seems particularly anomalous in light of the nature of the trucking industry. Characterized by easy entry, few important economies of scale, mobility of resources, and the division of the market among a comparatively large number of firms, it seems an almost ideal industry for the effective operation of competition. . .

"There are apparently two explanations of this extension [of regulation]. First, Congress responded to pressure from trucking companies to limit competition in order to protect earnings. . .

"The second explanation of the extension of minimum rate regulation to motor carriers lies in the threat such carriers posed to the efficacy of the existing railroad cartel. . ."

The Attorney General concluded his comments by suggesting that amending the rules as requested by the Committee, absent an extensive fact finding in the nature of an adversarial hearing, would not be wise policy.

THE PUBLIC STAFF

On July 5, 1989, the Public Staff offered the following comments, in pertinent part:

> "Having reviewed the petition of the North Carolina Intrastate Petroleum Rate Committee of the NCTA and the comments filed in response to the Commission's Orders in this docket, the Public Staff believes the Committee has identified a problem which the Commission may wish to address. We have serious doubts, however, about the desirability as well as the legality of amending Rules R4-4 and R4-12 as the Committee initially proposed. Alternative amendments, such as those proposed by the Southern Motor Carriers Rate Conference, Inc., may be more appropriate and worthy of consideration.
>
> "For these reasons, the Public Staff recommends that the Commission schedule an evidentiary hearing to determine whether the present practice under Rule R4-4 is in the public interest and, if it is not, whether the Commission's rules can be amended to accommodate the interests of all parties."

CON-WAY SOUTHERN EXPRESS

On July 6, 1989, Con-Way Southern Express (Conway) filed comments in this docket. Con-Way is a less-than-truckload common carrier which holds intrastate authority in the State of North Carolina. In 1988, Con-Way transported 424,838,002 pounds of freight with 72,702,006 pounds transported entirely within the State of North Carolina.

Con-Way is not currently a party to joint rate agreements; however, these proceedings may have hidden ramifications against common carriers like Con-Way in that rate changes whether they be an increase or decrease may ultimately require 90 days or more to become effective.

According to Con-Way, the Petroleum Rate Committee was wrong in stating that "private" tariffs and individual tariffs are nonregulated by the NCUC. These tariffs are subject to the same statutory notice as are standard Bureau tariffs. The NCUC may approve any rate or tariff on less-than-statutory notice upon approval and oversight.

One reason Con-Way supports independently filed tariffs is response time. By not being a member of rate associations, Con-Way states that it can file rate changes without waiting for "member" carriers to join the item or initiate tactics to delay the rate change. This allows Conway's customers to enjoy cost savings, which the Company passes along as a result of operational efficiencies.

Conway requests the NCUC to do the following in response to the proposed rulemaking:

1. Retain all rules as currently written today.

2. Allow independent tariffs to continue with waiver of statutory notice subject to current regulatory oversight when the situation warrants.

3. Should any such changes be considered by the NCUC, notice should be given to all carriers and shippers and an evidentiary hearing should be held to afford all parties a full and adequate opportunity to be heard before any such changes are adopted.

WHEREUPON, the Commission now reaches the following

CONCLUSIONS

G.S. 62-134(a) provides, in pertinent part, as follows:

"(a) Unless the Commission otherwise orders, no public utility shall make any changes in any rate which has been duly established under this Chapter, except after 30 days' notice to the Commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The public utility shall also give such notice, which may include notice by publication, of the proposed changes to other interested persons as the Commission in its discretion may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed and in force at the time and kept open to public inspection. The Commission, for good cause shown in writing, may allow changes in rates without requiring the 30 days' notice, under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such public utility."

G.S. 62-259 is also pertinent to this proceeding and provides as follows:

"In addition to the declaration of policy set forth in G.S. 62-2 of Article 1 of Chapter 62, it is declared the policy of the State of North Carolina to preserve and continue all motor carrier transportation services now afforded this State; and to provide fair and impartial regulations of motor carriers in the use of the public highways in such a manner as to promote, in the interest of the public, the inherent advantages of highway transportation; to promote and preserve adequate economical and efficient service to all the communities of the State by motor carriers; to encourage and promote harmony among all carriers and to prevent discrimination, undue preferences or advantages, or unfair or destructive competitive practices between all carriers; to foster a coordinated statewide motor carrier service; and to conform with the national transportation policy and the federal motor carriers acts insofar as the same may be practical and adequate for application to intrastate commerce."

Commission Rule R4-3(a) provides that all transportation tariffs and supplements shall be filed with the Commission at least 30 days before the date upon which they are proposed to become effective. However, Commission Rule R4-4 allows transportation companies to file applications for permission to change or establish rates, rules, or other provisions on less-than-statutory notice. Any such application must set forth a brief explanation of the reasons which support the relief being requested.

Over the years, the Commission has developed a practice of allowing transportation tariff rate reductions and even some increases to become effective on less-than-statutory notice. Pursuant to Rule R4-2, all transportation tariffs are filed with the Transportation Rates Division of the Public Staff for review. If the tariff involves a rate reduction to become effective on one or more days' notice, the Commission allows the tariff to become effective as filed if it is found to be in compliance with all applicable rules regarding filing requirements. The Transportation Rates Division of the Public Staff then advises the Commission in writing and verbally during the Regular Commission Staff Conference on Monday of each week of all applications processed during the previous week on less-than-statutory notice. The Commission has adopted this procedure primarily as a means of facilitating the implementation of transportation rate decreases to the benefit of the shipping public.

The Petroleum Rate Committee has requested the Commission to amend Rule R4-4 to require statutory notice of non-uniform reductions from uniform bulk petroleum rates established pursuant to G.S. 62-152.1. The vast majority of the comments offered in this proceeding oppose the change to Rule R4-4 proposed by the Petroleum Rate Committee. The Commission has carefully reviewed those comments and concludes that good cause exists to deny the Petroleum Rate Committee's request to amend Rule R4-4. The comments offered by the opposing parties on this point are convincing. For the same reason, the Commission also finds good cause to deny the Petroleum Rate Committee's request to amend Rule R4-12 to prohibit private tariff filings by parties to joint rate agreements approved pursuant to G.S. 62-152.1. The Commission is of the opinion that G.S. 62-134 allows all companies, including those who are parties to joint ratemaking agreements, to file independent tariffs on less-than-statutory notice. Furthermore, the Commission believes that enforcement and policing of the joint ratemaking agreement in question is and properly should be the responsibility of the NCTA and not the NCUC. In addition, we note that the MCTA, which like the NCTA operates under a joint ratemaking agreement, takes the position that meeting competition is one of the primary reasons for publishing private tariffs and that the time it takes to put a publication in a bureau tariff is too long to meet such competition.

The Commission also agrees with the comments offered by Exxon to the effect that the current transportation policies and practices in effect in this State are meant to reflect an impartiality between shippers and carriers which preserves the broader public interest in maintaining a business climate that is attractive for economic growth and development. Furthermore, our intent is to neither compel nor preclude any individual carrier from expeditiously and inexpensively adopting a rate structure that is responsive to its own efficiencies, the needs of its customers, and changes in the marketplace. The Commission must consider many different factors in setting just and reasonable transportation rates, including the need of the public for adequate and

efficient transportation service by carriers at the lowest cost consistent with the furnishing of such service. G.S. 62-146(h).

In its reply comments, the Petroleum Rate Committee appears to have modified its initial position and now requests the Commission to conduct a hearing to consider amending or applying our transportation rules to require justification of reductions from established uniform rates and adequate notice of such reductions. The Commission has generally found that the justification usually given in support of tariff filings made on less-than-statutory notice is that the changes are necessary to meet competitive pressures and/or to implement negotiated rates. We believe that this degree of justification is sufficient to meet the requirements of G.S. 62-134(a) and Rule R4-4 and that there is no need to require any further degree of justification for rate reductions proposed to be implemented on less-than-statutory notice. The Commission has also been influenced by those comments which reference the fact that the Interstate Commerce Commission allows interstate tariff filings on less-than-statutory notice; i.e., one day's notice for new or reduced rates and seven working days' notice for increased rates after receipt by the ICC. See 49 CFR 1312.4. Carriers operating on an intrastate basis in North Carolina and the general shipping public in this State should not be disadvantaged by an inability to have intrastate rate reductions implemented expeditiously on less-than-statutory notice. Furthermore, the Commission does not believe that the Petroleum Rate Committee has demonstrated good cause in support of its request for a public hearing in this docket. We note that the Committee is supported in its request for a public hearing by the Public Staff. Nevertheless, this is a rulemaking proceeding and, as such, the Commission concludes that the written comments offered by numerous parties form a sufficient basis upon which to decide the issues raised in this docket without the necessity of holding a public hearing. On the basis of those comments, the Commission concludes that Rules R4-4 and R4-12 should not be amended at this time.

For all of the reasons set forth above, the Commission also finds good cause to deny without prejudice the SMCRC's substitute proposal. The Commission is not convinced, at least at this point in time, that the problems asserted by the SMCRC (and the Petroleum Rate Committee) are of such magnitude and severity so as to now require further investigation and/or hearing. The NCTA and SMCRC are certainly free to file formal complaints against any and all carriers which they believe to be engaging in unfair or destructive price competition. They may also appear before the Commission at our Regular Monday Staff Conferences to request that individual tariff filings that have been allowed to become effective on less-than-statutory notice be suspended and investigated.

In summary, the comments collectively offered in this case fail, in the mind of the Commission, to show that Rules R4-4 and R4-12 as currently written and applied encourage and promote destructive disharmony among carriers operating in North Carolina. Nor has there been any showing that the rules and practices in question result in any significant degree of discrimination, undue preferences or advantages, or unfair or destructive competitive practices between all carriers. As pointed out by several parties in this proceeding, it is also the transportation policy in this State ". . .to promote and preserve adequate economical and efficient service to all the communities of the State by motor carriers." The Commission is of the opinion, and so concludes, that

Rules R4-4 and R4-12, as currently constituted, are consistent with all of the declarations of policy set forth in G.S. 62-2 and G.S. 62-259. For that reason, the Commission finds good cause to deny the requests made by the Petroleum Rate Committee and the SMCRC to amend the rules in question.

Accordingly, the proposed rule revisions at issue in this docket are denied.

IT IS, THEREFORE, ORDERED that the rule revisions proposed in this docket by the Petroleum Rate Committee of the NCTA and the substitute proposal made by the SMCRC be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of October 1989.

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

DOCKET NO. M-100, SUB 118

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking to Establish Regulatory Fee Pursuant to G.S. 62-302	)	ORDER ADOPTING RULE IMPLEMENTING REGULATORY FEE FOR PUBLIC UTILITIES

BY THE COMMISSION: On August 12, 1989, the North Carolina General Assembly enacted Ratified Senate Bill 1320 (Chapter 787 of the 1989 Session Laws) entitled "An Act to Establish Regulatory Fees for Public Utilities to Defray the Cost to the Utilities Commission and the Public Staff of Regulating Public Utilities in the Interest of the Public." Ratified Senate Bill 1320 amended Article 14 of Chapter 62 of the General Statutes by adding a new section, G.S. 62-302, entitled "Regulatory fee." This act became effective on July 1, 1989, and applies to North Carolina jurisdictional revenues earned by public utilities on and after that date. It will expire on June 30, 1991, unless extended by the General Assembly.

G.S. 62-302 creates a regulatory fee to be paid quarterly by the public utilities regulated by the North Carolina Utilities Commission. This fee is to be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public.

For the 1989-90 fiscal year, the fee is 0.12% of each public utility's North Carolina jurisdictional revenues for each calendar quarter or $6.25, whichever is greater. The statute defines the term "North Carolina jurisdictional revenues" as "all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction."

For fiscal years beginning after June 30, 1990, the General Assembly will set the percentage rate of the regulatory fee by law. The percentage rate may

not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of money maintained in the reserve fund may not exceed the estimated cost of operating the Commission and the Public Staff for the then current fiscal year. If either the Commission or Public Staff or both have a revenue shortfall during a fiscal year, the Commission has the authority to impose a temporary regulatory fee surcharge. However, the total fee imposed on the public utilities may not exceed 0.25%.

The fee is imposed on a quarterly basis and is due approximately 45 days after the end of each calendar quarter. Every public utility subject to the fee must submit a report to the Commission each calendar quarter stating the amount of its North Carolina jurisdictional revenues for the preceding quarter. The Commission has developed a form (NCUC FORM RF) entitled "Public Utility Regulatory Fee Report" for distribution to all public utilities in this State. Each utility must also submit any supporting documentation that the Commission may by rule require.

Utilities now filing quarterly reports with the Commission in compliance with the Commission's ongoing surveillance program (NCUC FORMS E.S.-1, G.S.-1, and T.S-1) shall include as an integral part of those quarterly reports a schedule setting forth a detailed reconciliation of the North Carolina jurisdictional revenues reflected in those reports to the level of North Carolina jurisdictional revenues reflected in the Public Utility Regulatory Fee Report (NCUC FORM RF) for the same quarterly reporting period. This requirement is effective immediately.

Utilities not now filing quarterly reports shall include as an integral part of their annual reports to be filed with the Commission a schedule setting forth a detailed reconciliation of the total North Carolina jurisdictional revenues reflected in those annual reports to the level of North Carolina jurisdictional revenues reflected in the four quarterly Public Utility Regulatory Fee Reports encompassed by the 12-month period on which the annual report is based. This requirement is effective January 1, 1990.

All monies collected by the Commission and the Public Staff will be deposited in a special fund created by G.S. 62-302. The fund will be known as the "Utilities Commission and Public Staff Fund". The fund will be held by the State Treasurer in an interest bearing account with the interest and other income derived from the Fund credited to the Fund. Unexpended funds will remain in the Fund and will not revert to the General Fund. The money in the Fund may only be spent pursuant to appropriation by the General Assembly.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Ratified Senate Bill 1320 became effective on July 1, 1989. The Commission has developed a rule which is designed to implement G.S. 62-302. That rule, which is designated R15-1, is attached to this Order as Appendix A. It is effective immediately. The parties to this proceeding will now be afforded an opportunity to review the attached rule and to propose amendments or additions to that rule. A copy of this Order and Rule R15-1 will be mailed

to each and every public utility regulated by the North Carolina Utilities Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R15-1 is hereby adopted as a rule of the Commission effective the date of this Order.

2. That the Chief Clerk shall mail a copy of this Order and Appendix A to each and every public utility regulated by the North Carolina Utilities Commission.

3. That any public utility, the Public Staff, the Attorney General, or other intervenors may file comments, including proposed amendments, regarding Rule R15-1 not later than 30 days from the date of this Order. The parties may also file reply comments not later than 45 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of September 1989.

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

APPENDIX A

CHAPTER 15
REGULATORY FEE FOR PUBLIC UTILITIES

Rule R15-1. Regulatory Fee.

(a) Fee Imposed. G.S. 62-302 requires each public utility regulated by the North Carolina Utilities Commission to pay a quarterly regulatory fee to the Commission which shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public.

(b) Rate.

(1) For the 1989-90 fiscal year, the regulatory fee shall be the greater of (i) twelve hundredths percent (0.12%) of each public utility's North Carolina jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents ($6.25) each quarter.

(2) For fiscal years beginning on or after July 1, 1990, the regulatory fee shall be the greater of (i) a percentage rate, established by the General Assembly by law, of each public utility's North Carolina jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents ($6.25) each quarter.

(3) The percentage rate may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Commission and the Public Staff for the upcoming fiscal year. In

calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated increase or decrease in North Carolina jurisdictional revenues.

(4) If the Commission, the Public Staff, or both experience a revenue shortfall, the Commission shall implement a temporary regulatory fee surcharge to avert the deficiency that would otherwise occur. In no event may the total percentage rate of the regulatory fee plus any surcharge established by the Commission exceed twenty-five hundredths percent (0.25%).

(5) As used in this rule, the term "North Carolina jurisdictional revenues" means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction. For telecommunications companies, all revenues and other receipts derived from access charges and yellow pages advertising are to be included as North Carolina jurisdictional revenues.

(c) When Due. The regulatory fee imposed by G.S. 62-302 is due and payable to the Commission on or before the 15th day of the second month following the end of each quarter. Each public utility subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on the form prescribed by the Commission. The report shall state the public utility's total North Carolina jurisdictional revenues for the preceding quarter. Receipts shall be reported on an accrual basis. The form of the report shall be as set forth in the Appendix to this Chapter. (NCUC FORM RF).

If a public utility's report for the first quarter of any fiscal year shows that application of the percentage rate would yield a quarterly fee of twenty-five dollars ($25.00) or less, the public utility shall pay an estimated fee for the entire fiscal year in the amount of twenty-five dollars ($25.00). If, after payment of the estimated fee, the public utility's subsequent returns show that application of the percentage rate would yield quarterly fees that total more than twenty-five dollars ($25.00) for the entire fiscal year, the public utility shall pay the cumulative amount of the fee resulting from application of the percentage rate, to the extent it exceeds the amount of fees, other than any surcharge, previously paid.

(d) Use of Proceeds. A special fund in the Office of the State Treasurer, the "Utilities Commission and Public Staff Fund," shall be created. The fees collected pursuant to G.S. 62-302 and all other funds received by the Commission and the Public Staff shall be deposited in the Utilities Commission and Public Staff Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Monies in the Fund shall only be spent pursuant to appropriation by the General Assembly.

The Utilities Commission and Public Staff Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of the Fund shall revert to the General Fund. All funds credited to the Utilities Commission and Public Staff Fund shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public as provided by Chapter 62 of the North Carolina General Statutes.

(e) Supporting Data. Upon request of the Commission or the Public Staff, a utility shall supply supporting data and workpapers substantiating its Public Utility Regulatory Fee Report (NCUC FORM RF).

Utilities now filing quarterly reports with the Commission in compliance with the Commission's ongoing surveillance program (NCUC FORMS E.S.-1, G.S.-1, and T.S-1) shall include as an integral part of those quarterly reports a schedule setting forth a detailed reconciliation of the North Carolina jurisdictional revenues reflected in those reports to the level of North Carolina jurisdictional revenues reflected in the Public Utility Regulatory Fee Report (NCUC FORM RF) for the same quarterly reporting period.

Utilities not now filing quarterly reports shall include as an integral part of their annual reports to be filed with the Commission a schedule setting forth a detailed reconciliation of the total North Carolina jurisdictional revenues reflected in those annual reports to the level of North Carolina jurisdictional revenues reflected in the four quarterly Public Utility Regulatory Fee Reports encompassed by the 12-month period on which the annual report is based. This requirement is effective January 1, 1990.

(f) Failure to File. Failure to complete and file the Public Utility Regulatory Fee Report (NCUC FORM RF) and to make payment of the regulatory fee as prescribed may result in the imposition of a penalty, a fine, or both.

NCUC FORM RF
Adopted 9/89

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

PUBLIC UTILITY REGULATORY FEE REPORT
FOR THE QUARTER ENDED SEPTEMBER 30, 1989

_____
Company Name

_____
Mailing Address **City** **State** **Zip Code**

Line No.	Description (a)	Amount (b)
1.	Total North Carolina jurisdictional revenues (See Instruction No. 1 on reverse)	$
2.	Less uncollectible revenues	$
3.	Revenues subject to regulatory fee (Line 1 minus Line 2)	$
4.	Statutory regulatory fee percentage rate	.0012
5.	**Amount of regulatory fee due** (See Instruction Nos. 2 & 3 on reverse).	$

CERTIFICATION

I hereby certify that the information contained in this report is true to the best of my knowledge and belief.

_____ _____
Authorized Signature and Title Date

_____ (___)_____
Contact Person Telephone No.

NOTE: This report and payment of the regulatory fee are due no later than November 15, 1989. (See Instruction No. 4 on reverse.)

The Public Utility Regulatory Fee is imposed pursuant to N.C. General Statute 62-302.

NCUC FORM RF
Adopted 9/89

INSTRUCTIONS

1. **The term "North Carolina jurisdictional revenues" means** all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction. For telecommunications companies, all revenues and other receipts derived from access charges and yellow page advertising are to be included as North Carolina jurisdictional revenues.

2. The minimum regulatory fee for all public utilities subject to the jurisdiction of the North Carolina Utilities Commission is $25.00 annually. (See Instruction No. 3)

3. The amount to be shown on Line 5 is the greater of Line 4 multiplied by Line 3 or $25.00 except as noted below:

(a) The minimum fee of $25.00 is due when a public utility's report for the first quarter of any fiscal year shows that application of the percentage rate, shown on Line 4, would yield a quarterly fee of $25.00 or less. The $25.00 minimum fee is also considered to be an estimated fee for the entire fiscal year.

(b) If, after payment of the estimated fee, the public utility's subsequent quarterly report(s) show that application of the percentage rate would yield quarterly fees which total more than $25.00 for the entire fiscal year, the public utility shall pay the cumulative amount of the fee resulting from application of the percentage rate, to the extent it exceeds the amount of fees, other than any surcharge, previously paid. **NOTE** - A fee greater than $25.00 will be required when annual revenues exceed $20,834.00. ($20,834.00 x .0012 = $25.00)

(c) A report for each quarter is required even if no additional fee is due.

4. **DATE DUE** - The Public Utility Regulatory Fee Report and payment of the regulatory fee is due and payable to the North Carolina Utilities Commission quarterly on or before the 15th day of the second month following the end of each calendar quarter. Thus, the quarterly due dates are November 15, February 15, May 15, and August 15.

5. **MAIL TO** - The Public Utility Regulatory Fee Report along with a check or money order in the amount of the regulatory fee should be mailed to the Finance and Budget Group, North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510.

6. **QUESTIONS** - For assistance in completing this report, please call (919)733-5265 or write to the address contained in Instruction No. 5 above.

Failure to complete and file this report and to make payment of the regulatory fee as prescribed may result in the imposition of a penalty, a fine, or both.

This form (i.e., NCUC FORM RF) may be duplicated in its entirety.

DOCKET NO. M-100, SUB 118

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking to Establish Regulatory Fee Pursuant to G.S. 62-302	))	ORDER REAFFIRMING AND INTERPRETING RULE R15-1

BY THE COMMISSION: On August 12, 1989, the North Carolina General Assembly enacted Ratified Senate Bill 1320 (Chapter 787 of the 1989 Session Laws) entitled "An Act to Establish Regulatory Fees for Public Utilities to Defray the Cost to the Utilities Commission and the Public Staff of Regulating Public Utilities in the Interest of the Public." Ratified Senate Bill 1320 amended Article 14 of Chapter 62 of the General Statutes by adding a new section, G.S. 62-302, entitled "Regulatory fee." This act became effective on July 1, 1989, and applies to North Carolina jurisdictional revenues earned by public utilities on and after that date. It will expire on June 30, 1991, unless extended by the General Assembly.

G.S. 62-302 creates a regulatory fee to be paid quarterly by the public utilities regulated by the North Carolina Utilities Commission. This fee is to be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public.

On September 15, 1989, the Commission entered an Order in this docket adopting Rule R15-1 to implement G.S. 62-302 and the resulting regulatory fee for public utilities. The rule was made effective September 15, 1989, the date of issuance of the Order. The parties to this docket were allowed 30 days to file comments, including proposed amendments to Rule R15-1.

WHEREUPON, the parties to this proceeding subsequently filed the following

COMMENTS

NORTH CAROLINA POWER

North Carolina Power filed comments on October 13, 1989, in which it notes that Rule R15-1(b)(5) defines "North Carolina jurisdictional revenues" as "all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction." North Carolina Power requests clarification with respect to what specific categories of "Other Operating Revenues," if any, are to be included in total North Carolina jurisdictional revenues for purposes of calculating the quarterly regulatory fee. North Carolina Power's most recent North Carolina jurisdictional cost of service study reflects Forfeited Discounts, Miscellaneous Service Revenues, Sales of Water, Rent from Electric Property and Other Electric Revenues in the Other Operating Revenues category. While North Carolina Power asserts that such revenues were not intended to be included in the calculation of jurisdictional revenues for purposes of the quarterly regulatory fee, the Company states that it has been advised by Commission staff personnel that the intent of the statute was to include all categories of other operating revenues approved in its last general rate case.

For that reason, North Carolina Power states that additional clarification of the definition of "North Carolina jurisdictional revenues" is necessary.

In the event that a portion of Other Operating Revenues are to be included along with jurisdictional electric revenues in determining revenues subject to the quarterly fee, North Carolina Power asserts that Rule R15-1(b) must be amended to specify the allocation basis (factors) to be applied to Other Operating Revenues for purposes of determining the jurisdictional portion. North Carolina Power currently allocates a portion of its Miscellaneous Service Revenues, Rent from Electric Property (subcategories), and Other Electric Revenue (subcategories) using nine different allocation factors. North Carolina Power recommends the use of composite factors developed from the latest year-end cost of service study, based on the methodology approved in each utility's last general rate case.

North Carolina Power states that Rule R15-1(e) requires utilities to reconcile their North Carolina jurisdictional revenues disclosed in the quarterly NCUC Form ES-1, Schedule 4, with the revenues to be reported in the quarterly Public Utility Regulatory Fee Report (NCUC Form RF). The reconciliation is required on a separate schedule included in the quarterly NCUC Form ES-1 Report. In ES-1, Schedule 4, total sales of electricity are assigned while other electricity revenues are allocated on a composite factor calculated from the prior year-end jurisdictional cost of service study.

According to the Company, Rule R15-1 does not specify whether a composite factor may be used in determining the quarterly amount for inclusion in the NCUC Form RF or whether a current factor must be developed. The total amount of revenue (for North Carolina Power) subject to allocation is only approximately .09% of total jurisdictional revenue on an annual basis. North Carolina Power assumes that this factor is likewise de minimus for other North Carolina utilities. Accordingly, North Carolina Power recommends the use of the same composite factor as used in the NCUC ES-1 Report in order to avoid any inconsistency in amounts reported.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

Southern Bell filed comments in this docket on October 16, 1989, whereby the Commission was requested to amend Rule R15-1(b)(5) to delete the reference to revenues from "yellow pages advertising" as being subject to the regulatory fee calculus as North Carolina jurisdictional revenues. Southern Bell sets forth the following two arguments in support of its position.

1. The Inclusion Of Yellow Pages Revenues Is Contrary To Legislative Intent

Southern Bell asserts that during the legislative process that led to the enactment of Ratified Senate Bill 1320, the General Assembly specifically excluded yellow pages revenues from the definition of "jurisdictional revenues" in subsection (b)(4). Southern Bell states that in a draft of S.B. 1320, the General Assembly had defined "North Carolina jurisdictional revenues" as:

> "all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, plus all yellow page advertising

> revenues, but not including tap-on fees or any other form of contribution in aid of construction." (Emphasis supplied by Southern Bell).

Southern Bell then notes that the General Assembly, in the final version of S.B. 1320, deleted the phrase "plus all yellow page advertising revenues." Thus, Southern Bell takes the position that the legislative history of Ratified S.B. 1320 evinces legislative intent to specifically exclude yellow pages revenues from the calculus used to determine the regulatory fee.

Southern Bell further notes that Commission Rule R15-1(b)(5) provides, in pertinent part, as follows:

> "For telecommunications companies, all revenues and other receipts derived from access charges and yellow pages advertising are to be included as North Carolina jurisdictional revenues." (Emphasis supplied by Southern Bell).

According to Southern Bell, this language constitutes an attempt to amend the statute by Commission rule, which is beyond the power of the Commission and is, indeed, contrary to the intention of the General Assembly in enacting S.B. 1320, as shown by the legislative history of that bill. Accordingly, Southern Bell recommends that Rule R15-1 be amended to delete the above-quoted language and that the instructions to NCUC Form RF at paragraph 1 be amended to delete the second sentence of that paragraph, which contains the same language.

2. Yellow Pages Revenues Should Not Be Included In The Regulatory Fee Computation Because They Are Not "North Carolina Jurisdictional Revenues"

In S.B. 1320, the General Assembly defined "North Carolina jurisdictional revenues" as "all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule . . ." Southern Bell takes the position that yellow pages revenues are not "realized from intrastate tariffs. . .;" nor are they "rates. . . (or) charges approved or allowed by the Commission or collected pursuant to Commission order or rule. . ." Thus, it is Southern Bell's opinion that revenues derived from yellow pages advertising are not "North Carolina jurisdictional revenues," as that term was defined by the North Carolina General Assembly, and those revenues should not be used in calculating the amount of regulatory fee.

Moreover, Southern Bell asserts that the service that produces those revenues--yellow pages advertising--is not a regulated service and is not subject to Commission jurisdiction. In support of its position, Southern Bell notes that the Supreme Court of North Carolina has held that "(t)he business of carrying advertisements in the yellow pages of its directory is not part of a telephone company's public utility business." Gas House, Inc. v. Southern Bell Tel. and Tel. Co., 289 N.C. 175, 184, 221 S.E.2d 499, 505 (1976) (hereafter "Gas House"). Southern Bell then notes that the Supreme Court subsequently held that those revenues were properly includable in ratemaking proceedings, even though yellow pages advertising is an unregulated service. State ex rel. Utilities Commission v. Southern Bell Tel. and Tel. Co., 307 N.C. 541, 299 S.E.2d 763 (1983) (hereafter "Southern Bell"). According to the Company, the Court was careful in Southern Bell, however, to avoid overruling

the Gas House case and, therefore, crafted its opinion in Southern Bell so that those two cases could be read together. According to Southern Bell, it is clear that while yellow pages revenues may be considered by the Commission in ratemaking, the provision of those services is not a public utility enterprise and is not subject to Commission jurisdiction. State ex rel. Utilities Commission v. Southern Bell Tel. and Tel. Co., 377 S.E.2d 772 (N.C. Ct. App. 1989). Accordingly, Southern Bell takes the position that inclusion of yellow pages revenues in the calculus for determining the regulatory fee is an attempt to extend Commission jurisdiction to a service that the North Carolina Supreme Court has held is not a regulated service.

CAROLINA TELEPHONE AND TELEGRAPH COMPANY

Carolina Telephone Company filed comments in this docket on October 17, 1989, on the following two issues:

1. Inclusion Of Yellow Pages Advertising Revenues In Jurisdictional Revenues

According to Carolina, the initial draft of the regulatory fee statute specifically provided that yellow pages advertising revenues would be included in jurisdictional revenues. However, after further negotiation and discussion, Carolina states that the reference to yellow pages advertising revenues was deleted from the bill. Under the bill as enacted, the definition of "North Carolina jurisdictional revenues" excluded any reference to yellow pages advertising revenues.

On the basis of the discussion and negotiations that took place in enacting the bill, Carolina asserts that it had a good-faith belief and understanding (which it believed was shared by all other parties) that yellow pages advertising revenues would not be subject to the regulatory fee. Consequently, Carolina states that it was both surprised and disturbed to see that under Commission Rule R15-1, yellow pages advertising revenues would be subject to the fee.

Carolina states that the most logical explanation it can offer as to why the Commission chose to re-insert yellow pages revenues into the definition of jurisdictional revenues is that the Commission is concerned that its authority to consider yellow pages advertising revenues for ratemaking purposes might be eroded by the new legislation dealing with the regulatory fee. Carolina opines that perhaps the Commission is concerned that exclusion of yellow pages revenues for regulatory fee purposes would jeopardize its authority to consider yellow page revenues for ratemaking purposes. Whatever reason(s) the Commission may have had for its action, Carolina states that it wishes to emphasize that its position that yellow pages revenues should be excluded from the regulatory fee is not meant as an indirect challenge to the Commission's authority to include yellow pages revenues for ratemaking purposes.

Carolina requests and recommends that the Commission delete the language from Rule R15-1 which would include yellow pages advertising revenues in the definition of "North Carolina jurisdictional revenues." Carolina believes that such exclusion would be consistent with the intent of the statute, and with the general understanding among the parties involved in negotiating passage of the bill that yellow pages revenues would not be subject to the fee. Carolina further states that it believes that the Commission can (and perhaps should)

include appropriate language in its final Order promulgating the regulatory fee rule that exclusion of yellow pages revenues for purposes of the regulatory fee is in no way a waiver of the Commission's authority to include yellow pages revenues for ratemaking purposes.

2. Inclusion Of Access Charges In Jurisdictional Revenues

According to Carolina, the inclusion of access charges under Rule R15-1 creates a potential "double impact" that raises significant policy issues which the Commission should recognize and consider in its deliberations. The imposition of the regulatory fee on access charge revenues which the local exchange companies derive from interexchange carriers will ultimately be passed on to end-users in the rates charged by the interexchange carriers. The Commission should be aware of this potential "double impact" that inclusion of access charges will create.

REPLY COMMENTS OF THE PUBLIC STAFF

The Public Staff filed reply comments in this docket on October 30, 1989, in which it addressed the following three issues:

1. Yellow Pages Revenues

The Public Staff states that it strongly disagrees with the assertion of Southern Bell that yellow pages revenues are not "jurisdictional revenues." According to the Public Staff, both before and since the breakup of the Bell monopoly, the Commission has routinely allowed the publishing of yellow pages and the collection of revenues associated with the advertisements. In determining Southern Bell's additional revenue requirement in general rate cases, the Commission has historically included the revenues from yellow pages operations among miscellaneous revenues, which, together with local and toll service revenues, make up total operating revenues. For example, the Public Staff notes that had it not been for revenues derived from yellow pages advertising, Southern Bell's rate increase in its last rate case, Docket No. P-55, Sub 834, would have been $28,456,000 higher than it actually was. If those revenues had been excluded, tariffed rates and charges, which clearly produce revenues subject to the assessment, would have been higher. In the Order from which the Company appealed in Southern Bell, the Commission said:

> "The classified directory, in which advertising appears, is an integral part of providing adequate telephone service; thus, the absence of the classified directory would diminish the value of telephone service to the Company's customers. Finally, this Commission has consistently over the years included directory advertising revenues and costs in determining Southern Bell's total cost of service." 71st Report of NCUC Orders and Decisions 669, 692 (April 3, 1981).

The Public Staff states that implicit in each of these decisions is the Commission's allowance or approval of the enterprise that produces the revenues, whether that enterprise be yellow pages operations or other miscellaneous activities such as pole rentals. As the Supreme Court noted in Southern Bell:

"Under G.S. 62-42(5) [sic - should be 62-42(a)(5)] the Commission has the authority to order the utility to take action to secure reasonably adequate service for the public's need and convenience. Undoubtedly yellow pages could fall within this provision." 307 N.C. at 547.

The Public Staff further notes that in June 1984, the Commission approved the transfer of certain assets related to Southern Bell's directory operations to BellSouth Advertising and Publishing Corporation (BAPCO). Docket No. P-55, Sub 839. While Southern Bell did not concede the Commission's jurisdictional authority to prohibit the transfer, the Company did represent that the publishing fee to be paid by BAPCO was designed "to provide the same net contribution to Southern Bell's revenue requirements that it would have received had BAPCO not been formed." Testimony of Victor A. Jarvis, page 4, lines 11-13. The issue of the retention percentage or publishing fee was reserved for the Company's pending general rate case, Docket No. P-55, Sub 834. In that case, the Commission concluded "that the fair and reasonable revenue retention factor to be utilized in determining the representative level of directory contribution in this proceeding is 48.5%." 74th Report of NCUC Orders and Decisions 590, 603 (November 9, 1984). The contract provided for a retention factor of 42.5%, but the Commission rejected that percentage and explicitly withheld approval of the whole contract. Id. at 602-603.

The Public Staff takes the position that the Commission has obviously had substantial regulatory involvement with the revenues generated by yellow pages. The fee required by G.S. 62-302 is a user fee enacted for "the purpose of defraying the cost of regulating public utilities." The General Assembly clearly intended to include yellow pages revenues as jurisdictional revenues. According to the Public Staff, the language of G.S. 62-302 lawfully can and does include yellow pages revenues.

The Public Saff further notes that Carolina and Southern Bell both argue, however, that legislative history demonstrates that the General Assembly did not intend to cover yellow pages revenues. Both companies rely on a Senate amendment to Senate Bill 928 that deleted a specific reference to yellow pages revenues. According to the Public Staff, that amendment was proposed to the Senate Finance Committee by Chairman William W. Redman, Jr., who specifically said, "Because the Utilities Commission believes that yellow pages revenues are collected pursuant to Commission Order, we believe that those revenues are, for that reason, already included in the term 'North Carolina jurisdictional revenues' without the necessity of being specifically mentioned in the legislation." The Public Staff further notes that Chairman Redman prefaced his remarks to the committee by stating that he was endorsing the amendment "[a]t the request of the local telephone companies," who "object to the specific references to yellow page revenues because no other revenue sources are specifically mentioned."

Thus, the Public Staff takes the position that the legislative history shows yellow pages revenues were undoubtedly covered by the term "jurisdictional revenues" and that the only reason for dropping the language was apparently to satisfy the local telephone companies' desire not to be singled out. It certainly did not indicate any belief that the revenues were exempt from the assessment. Therefore, the Public Staff strongly disagrees

with the telephone companies' interpretation of the legislative history and states that the Commission should not change Rule R15-1.

2. Access Charges

The Public Staff notes that Carolina has also alerted the Commission to a potential "double impact" if access charges are included as jurisdictional revenues. The Public Staff recognizes the issue Carolina has identified but does not believe it is a problem. This potential is realized in several areas of utilities regulation. A prime example would be when one regulated electric utility purchases power from another. Thus, normal utility business practices frequently result in this "double impact," and the Public Staff does not believe access charges are a special category. Rules R15-1 does not create any special hardship on any industry and is a fair way of assessing a user fee. The rule should not be changed.

3. Other Operating Revenues

North Carolina Power has raised issues relating to "Other Operating Revenues." According to the Public Staff, the language of the statute clearly includes those revenues within "North Carolina jurisdictional revenues." The only question, then, is how they should be allocated.

The Public Staff agrees that some allocation methodology is needed and, after discussions with North Carolina Power, proposes the following procedure. In determining quarterly miscellaneous revenues that cannot be directly assigned to the North Carolina retail jurisdiction, the electric utility should allocate these revenues by using a composite factor. That composite factor should be based on the company's most recent year-end per books jurisdictional cost-of-service study consistent with the last general rate case methodology as approved by the Commission. When the utility files its fourth quarterly report of miscellaneous operating revenues, that final report should be based on the current year's per books jurisdictional cost-of-service study also consistent with the Commission-approved methodology. This final report, however, should include a true-up of revenues previously reported on the basis of the composite allocation factor. This procedure will eliminate the need to perform quarterly cost-of-service studies to determine revenues subject to the Commission's rule.

REPLY COMMENTS OF CAROLINA TELEPHONE AND TELEGRAPH COMPANY

Carolina filed reply comments in this docket on October 30, 1989, in which it stated that to the best of its knowledge, information and belief, the North Carolina Utilities Commission has never issued an Order establishing rates for yellow pages directory advertising. According to Carolina, yellow pages advertising services are provided under contract, and not under tariffs which are required for a jurisdictional service offering. Carolina takes the position that yellow pages advertising revenues do not meet the definition under the new statute that limits the regulatory fee to ". . . all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule. . ."

Carolina states that it firmly believes that the legislative intent in enacting the bill which provides for the regulatory fee (Senate Bill 1320) was

that yellow pages advertising revenues would not be subject to the fee. This legislative intent is particularly evidenced by the fact that the reference to yellow pages advertising revenues (which was present in the initial draft of the bill) was removed from the bill in the form that was finally enacted, and that the reference to yellow pages advertising revenues was deleted from the bill after considerable negotiation and discussion among representatives of the telephone industry, representatives of the Utilities Commission, and the legislative sponsors of the bill.

FURTHER COMMENTS OF SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

On November 8, 1989, Southern Bell filed a response in opposition to the reply comments filed by the Public Staff. According to Southern Bell, Chairman Redman's statement before the legislature addressed the belief of the Commission, not the law. That is, what Chairman Redman said to the Senate Finance Committee was that the Commission "has always treated yellow page revenues for ratemaking purposes as North Carolina jurisdictional revenues. . ." He further said that "the Utilities Commission believes that yellow page revenues are collected pursuant to Commission Order. . ." and that "we believe that those revenues are, for that reason, already included in the term 'North Carolina jurisdictional revenues'. . ." Finally, he concluded that in agreeing to the amendment, "the Commission . . . (was) not in any way waiving . . . (its) position that yellow page revenues are properly included in the cost of service of the local telephone companies."

Thus, Southern Bell states that it is clear from a close reading of the statement that Chairman Redman did not say, and the Senate Finance Committee did not have before it a statement, that yellow pages revenues would be included in the calculus for determining the regulatory fee. Rather, Chairman Redman, besides stating what the Commission believed, merely said that "yellow page revenues are properly included in the cost of service of the local telephone companies." Southern Bell then notes that the law in North Carolina is that yellow pages revenues are included by the Commission in ratemaking proceedings, and that is all that Chairman Redman said to the Senate Finance Committee and thus all that the Senate Finance Committee had before it when it amended Senate Bill 1320 to delete yellow pages revenues from the definition of "North Carolina jurisdictional revenues."

Southern Bell further states that it does not know what was in the collective mind of the Senate when it amended Senate Bill 1320 or what other statements were before the Senate Finance Committee at the time that the language including yellow pages revenues was deleted from the statute. Southern Bell notes that in attempting to determine legislative intent in accordance with the accepted canons of legislative construction, and with respect to this enactment, all we do know is that yellow pages revenues were excluded from the statute. This exclusion, Southern Bell submits, is the best and most reliable barometer of legislative intent, based upon well-established and well-recognized canons of construction. 73 Am Jur 2d, Statutes, § 171 (1974). Statements made to a legislative committee, on the other hand, especially when there is no record of the full proceedings of that committee, are generally regarded as unreliable. 73 Am Jur 2d, Statutes, § 174 (1974). For these reasons, Southern Bell contends that including yellow pages revenues in the calculus for determining the regulatory fees is directly contrary to

legislative intent, as manifested in the final version of the regulatory fee statute.

Southern Bell also states that the Public Staff argues that yellow pages revenues are collected pursuant to Commission order or tariff. But Southern Bell then asks, where is the tariff? Where is the Order? Where is the rule approving the provision of yellow pages service, or establishing rates for that service? Where is an Order allowing the service? According to Southern Bell, all the Public Staff can muster in answer to these questions is "implication." The Company then goes on to state that the answer to the question is that there is no order or tariff or rule approving yellow pages, because that service is not provided pursuant to Commission order, rule or tariff, because the Commission does not have jurisdiction over that service, except to consider those revenues for ratemaking purposes.

Accordingly, Southern Bell again urges the Commission to exclude yellow pages revenues from the term "North Carolina jurisdictional revenues."

WHEREUPON, the Commission reaches the following

FINDINGS AND CONCLUSIONS

G.S. 62-302 creates a regulatory fee to be paid quarterly by the public utilities regulated by the North Carolina Utilities Commission. This fee is to be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public.

For the 1989-90 fiscal year, the fee is 0.12% of each public utility's North Carolina jurisdictional revenues for each calendar quarter or $6.25, whichever is greater. The statute defines the term "North Carolina jurisdictional revenues" as "all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction."

By Order entered in this docket on September 15, 1989, the Commission adopted Rule R15-1 to implement the provisions of G.S. 62-302 regarding the regulatory fee. Subsection (b)(5) of that rule provides as follows:

> "As used in this rule, the term 'North Carolina jurisdictional revenues' means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction. For telecommunications companies, all revenues and other receipts derived from access charges and yellow pages advertising are to be included as North Carolina jurisdictional revenues." (Emphasis added).

In defining the term "North Carolina jurisdictional revenues" for telecommunications companies to include all revenues and receipts derived from access charges and yellow pages advertising, the Commission was merely codifying two specific revenue sources which we have always treated as jurisdictional revenues. We included this definition in Rule R15-1 in order to

make it clear with regard to yellow pages revenues in particular that those revenues would in fact be subject to calculation and payment of the regulatory fee. We took this precaution primarily for two reasons.

First, many of the LECs, including Southern Bell in particular, have historically taken the position that yellow pages revenues are not North Carolina jurisdictional revenues and should not be subject to consideration as a component of the ratemaking process. The Commission strongly disagrees with that position. In the Order from which the Company appealed in the Southern Bell case, the Commission specifically concluded that:

> "The classified directory, in which advertising appears, is an integral part of providing adequate telephone service; thus, the absence of the classified directory would diminish the value of telephone service to the Company's customers. Finally, this Commission has consistently over the years included directory advertising revenues and costs in determining Southern Bell's total cost of service." 71st Report of the NCUC Orders and Decisions, p. 692.

In the Southern Bell case, the North Carolina Supreme Court expressly rejected a narrow and restrictive interpretation of a telephone company's public utility function as defined in the Public Utilities Act. For instance, in response to Southern Bell's contention that its directory operations were not an essential part of its public utility function because the transmission of messages across telephone lines did not depend on the availability of yellow pages, the Court said:

> ". . . Although Southern Bell is technically correct in its contention that actual transmission of messages across telephone lines is not dependent on the existence of the yellow pages, such an interpretation of the public utility function is far too narrow. Southern Bell's utility function is to provide adequate service to its subscribers. To suggest that the mere transmission of messages across telephone lines is adequate telephone service is ludicrous." 307 N.C. at 544.

Finally, in explicitly affirming the Commission's finding that the classified directory (or yellow pages) is an integral part of providing adequate telephone service, the Supreme Court stated that:

> ". . . Through G.S. 62-30 and G.S. 62-32 the legislature has granted the Commission 'such general power and authority to supervise and control public utilities of the State as may be necessary. . .' G. S. 62-30. 'The Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish . . . reasonable service of the kind it undertakes to furnish and fix and regulate the reasonable rates and charges to be made for such service.' G.S. 62-32(b).
>
> "Although G.S. 62-30 and G.S. 62-32 appear to provide the Commission with ample authority to include directory advertising in ratemaking proceedings, Southern Bell argues that G.S. 62-3(23)d limits that authority by providing: 'If any person conducting a public utility

> shall also conduct any enterprise not a public utility, such enterprise is not subject to the provision of this Chapter.' § 62-3(23)d. In response to this contention we simply point out that the directory advertising operation of Southern Bell is not a separate enterprise from the transmission of telephone messages. The yellow pages are a very useful and beneficial component in providing telephone service to the public." (Emphasis added). 307 N.C. at 545.

By Order entered in Docket No. P-55, Sub 834, on January 9, 1984, the Commission specifically held that directory revenues and costs should be included in the calculation of Southern Bell's North Carolina intrastate jurisdictional revenue requirement and that directory revenues are generated because of the integral relationship of the directory to telephone service. 74th Report of NCUC Orders and Decisions, pp. 598, 601. Thus, it is clear that the Commission has consistently treated yellow pages revenues as jurisdictional revenues. That being the case, the Commission is of the opinion that yellow pages revenues are, and should also be treated as, jurisdictional revenues for purposes of the regulatory fee imposed by G.S. 62-302. The fee required by G.S. 62-302 is a user fee enacted for "the purpose of defraying the cost of regulating public utilities." The Commission has historically had substantial regulatory involvement with the revenues generated by yellow pages as well as adjudicating consumer complaints generated by the yellow pages. It is, therefore, appropriate to apply the regulatory fee to yellow pages revenues in order to defray the cost of such regulation.

Our second reason for including a specific reference to yellow pages revenues in Rule R15-1 was to make clear our position that those revenues are in fact subject to the regulatory fee notwithstanding the amendment to Senate Bill 928 by which the Commission itself proposed to delete the specific reference to yellow pages revenues. Chairman William W. Redman, Jr., made the following statement on behalf of the Commission during his appearance before the Senate Finance Committee in support of the amendment:

> "At the request of the local telephone companies, the Utilities Commission has agreed to amend this bill to delete the phrase 'plus all yellow page advertising revenues,' on page 2 at lines 10 through 11 of Senate Bill 928. The Utilities Commission has always treated yellow page revenues for ratemaking purposes as North Carolina jurisdictional revenues and has been supported in that decision by the North Carolina Supreme Court. The local telephone companies object to the specific reference to yellow page revenues in this legislation because no other revenue sources are specifically mentioned. Because the Utilities Commission believes that yellow page revenues are collected pursuant to Commission Order, we believe that those revenues are, for that reason, already included in the term 'North Carolina jurisdictional revenues' without the necessity of being specifically mentioned in the legislation. We wish to make it clear, however, that by agreeing to this amendment, the Commission is not in any way waiving our position that yellow page revenues are properly included in the cost of service for local telephone companies"

We agree with the Public Staff that the above-quoted statement did not indicate any belief on our part that yellow pages revenues would be exempt from the fee assessment.

In conclusion, we hereby reaffirm Rule R15-1(b)(5) in view of the fact that yellow pages revenues are clearly collected pursuant to Commission Order as detailed above. Furthermore, the duty to publish and distribute directories to each telephone subscriber is, in the first instance, one that emanates from the Commission pursuant to rule and tariff. In this regard, Section A2.3.11 of the General Subscriber Service Tariffs entitled "Provision and Ownership of Directories" mandates that Southern Bell and the other local exchange companies shall publish directories for dissemination to their subscribers to facilitate the use of telephone service. New directories must be issued by the LECs approximately every twelve (12) months. This tariff was filed and allowed to become effective pursuant to G.S. 62-130 and G.S. 62-134, both of which deal with the Commission's authority to make or change "rates."

G.S. 62-3(24) sets forth an expansive definition of the term "rate" as follows:

> "Rate" means every compensation, charge, fare, tariff, schedule, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility, for any service product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification. (Emphasis added).

G.S. 62-131(b) provides that every public utility shall furnish adequate, efficient, and reasonable service. The Public Utilities Act also sets forth an expansive definition of the term "service" in G.S. 62-3(27); i. e., ". . . any service furnished by a public utility, including . . . any ancillary service . . . used in connection with such service." (Emphasis added).

Under G.S. 62-42(a)(5), the Commission may also require a public utility to perform any acts necessary "to secure reasonably adequate service . . . to serve the public convenience and necessity." Our Supreme Court has held that the yellow pages operations of a telephone company could fall within the purview of this statutory provision. 307 N.C. at 547.

Thus, it is clear from the foregoing that the LECs have a duty to publish and disseminate telephone directories for the purpose of facilitating the use of telephone service. The manner in which that duty is discharged is properly subject to oversight and regulation by the Commission. The decision to make yellow pages advertising an incidental or ancillary service component of its directories was a business decision. However, such advertising is a directory-related service which the Commission and our Supreme Court have previously determined to be an integral part of providing adequate telephone service. The yellow pages are a single entity, an intermingled package, which cannot be separated into classified listings and advertisements. The use of directories by the LECs to sell advertising is ancillary to the operation of their public service which is sufficient to bring the revenues in question within the definition of the term "North Carolina jurisdictional revenues" as set forth in G.S. 62-302.

The Commission also affirms the inclusion of access charges within the definition of North Carolina jurisdictional revenues as set forth in Rule R15-1 for purposes of the regulatory fee. Notwithstanding the so-called potential "double impact" identified by Carolina Telephone Company, access charges are clearly jurisdictional revenues as defined in G.S. 62-302. Rule R15-1 does not create any special hardship on any industry or any utility within an industry and is a fair way of assessing a user fee to defray the cost of regulation.

We also agree with the Public Staff and North Carolina Power that an allocation methodology should be developed to determine the allocation factors to be applied to Other Operating Revenues for purposes of determining the jurisdictional portion of such revenues. Therefore, in determining quarterly miscellaneous revenues that cannot be directly assigned to the North Carolina retail jurisdiction, each electric utility should allocate those revenues by using a composite factor. That composite factor should be based on the company's most recent year-end per books jurisdictional cost-of-service study consistent with the last general rate case methodology as approved by the Commission. When the utility files its fourth quarterly report of miscellaneous operating revenues, that final report should be based on the current year's per books jurisdictional cost-of-service study also consistent with the Commission-approved methodology. The final report should, however, include a true-up of current calendar year revenues previously reported on the basis of the composite allocation factor developed for the previous calendar year. This procedure will eliminate the need to perform quarterly cost-of-service studies to determine revenues subject to Rule R15-1.

IT IS, THEREFORE, ORDERED that Rule R15-1 is hereby reaffirmed and interpreted in conformity with the provisions of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of November 1989.

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

DOCKET NO. E-100, SUB 57

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Biennial Determination of Avoided Cost Rates For Sale and Purchase of Electricity Between Electric Utilities and Qualifying Facilities - 1988/1989	)	ORDER ESTABLISHING STANDARD RATES AND CONTRACT TERMS FOR QUALIFYING FACILITIES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 29, 1988.

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

APPEARANCES:

For the Respondents:

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

William Larry Porter, Associate General Counsel and Ellen T. Ruff, Deputy General Counsel, Duke Power Company, Post Office Box 33189, Charlotte, North Carolina 28242
For: Duke Power Company

Edgar M. Roach, Jr., Hunton and Williams, Attorneys at Law, Post Office Box 109, Raleigh, North Carolina 27602
For: Virginia Electric and Power Company, d/b/a North Carolina Power

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

For the Intervenors:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605
For: Carolina Utility Customers Association, Inc. (CUCA)

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

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

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

BY THE COMMISSION: These proceedings are the fifth biennial proceedings held by this Commission pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act of 1979 (PURPA) and the Federal Energy Regulatory Commission (FERC) regulations implementing those provisions which delegated responsibilities in that regard to this Commission. These proceedings are also held pursuant to the responsibilities delegated to this Commission pursuant to N.C.G.S. 62-156(b) to establish rates for small power producers as that term is defined in N.C.G.S. 62-3(27a).

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

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

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

The Commission at the outset determined to implement Section 210 of PURPA and the related FERC regulations by holding biennial proceedings. The instant proceeding is the fifth such proceeding to be held by this Commission since the enactment of PURPA. In the prior biennial proceedings, the Commission has determined separate avoided cost rates to be paid by five of the electric utilities to the respective qualifying facilities (QFs) which are interconnected with them. The Commission has also reviewed and approved other related matters involving the relationship between the electric utilities and

the respective qualifying facilities interconnected with them, such as terms and conditions of service, contractual arrangements, and interconnection charges.

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

On July 13, 1988, the Commission issued its Order Establishing Biennial Proceeding, Requiring Data and Scheduling Public Hearing. That Order made Carolina Power and Light Company (CP&L), Duke Power Company (Duke), Virginia Electric and Power Company, d/b/a North Carolina Power in North Carolina (VEPCO), Nantahala Power and Light Company (Nantahala) and Western Carolina University (WCU) parties to the proceeding to establish the avoided cost rates each is to pay for power purchased from qualifying facilities pursuant to the provisions of Section 210 of PURPA and the FERC regulations implementing those provisions and to establish the rates each is to pay for power purchased from small power producers as required by G.S. 62-156. The Order required each of the five electric utilities to file certain specified data and any direct testimony by September 2, 1988. The Order further required the parties to file (1) copies of comments filed with the Federal Energy Regulatory Commission (FERC) with respect to certain pending Notices of Proposed Rulemaking (NOPRs) and (2) testimony as to the impact of the proposed rulemakings.

On July 20, 1988, Duke Power requested an extension of time for providing information and filing direct testimony until September 16, 1988. On July 25, 1988, Carolina Power & Light requested the same extension of time as Duke. On July 29, 1988, the Public Staff filed a motion to continue the hearing until November 29, 1988, and to change the filing dates to give all parties additional time. By Order dated August 1, 1988, the Commission rescheduled the hearing for November 29, 1988, required the utilities to file the required information by September 16, 1988, and all other parties to intervene and file direct testimony by November 4, 1988.

The Attorney General filed Notice of Intervention on July 28, 1988. On September 12, 1988, Carolina Industrial Group for Fair Utility Rates (CIGFUR-II), an industrial group comprised of Federal Paper Board Company, Inc., Huron Chemicals of America, Inc., LCP Chemicals & Plastics, Inc., Monsanto Company, Texasgulf, Inc., and Weyerhauser Company, filed a Petition to Intervene. The Commission allowed CIGFUR II to intervene by Order issued September 14, 1988. On September 19, 1988, Carolina Utility Customers Association, Inc. (CUCA), filed a Motion to Intervene. By Order dated September 21, 1988, the Commission allowed CUCA to intervene.

On November 4, 1988, the Public Staff also filed a motion requesting the Commission to initiate a generic investigation into whether a competitive bidding program should be adopted in a separate docket because of the complexity of the issues. On November 23, 1988, CP&L filed a response to the Public Staff's motion requesting that it be denied as premature. On November 28, 1988, Duke filed a response requesting that it be denied as duplicative and unnecessary. The Public Staff filed a reply on December 2, 1988, clarifying its position and stating that its intention was to separate the issues from the avoided cost proceeding. The Public Staff requested consideration of the matter in a separate proceeding, potentially as part of a least cost proceeding, rather than an immediate hearing.

On November 18, 1988, WCU filed a motion requesting that its testimony be copied into the record without the presence of its witness and that it be excused from appearing at the hearing. In support thereof, Western Carolina filed the stipulations agreeing to the above executed by all of the parties. By Order dated November 28, 1988, the Commission granted Western Carolina's motion.

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

The utilities and the Public Staff filed their testimony as required by the Commission's Order of August 1, 1988. No other party filed testimony. The matter came on for hearing on November 29, 1988, as previously noticed and scheduled. The prefiled testimony of George W. Wooten offered on behalf of WCU was copied into the record without Mr. Wooten being present to testify. Pursuant to the stipulation of all the parties, the prefiled testimony of Nantahala witness N. Edward Tucker, Jr., was copied into the record without Mr. Tucker being present to testify.

VEPCO presented the testimony of a panel consisting of its employees as follows: E. Paul Hilton, Manager of Rates, who adopted the prefiled testimony of James E. McIntyre; James P. Carney, Economic Analysis Manager; Daniel J. Green, Director, Planning Services; and Gary L. Edwards, Manager of Capacity Acquisitions. Witness Hilton presented a revised Rate Schedule 19 - Power Purchases from Cogeneration and Small Power Production Qualifying Facilities and a revised Rate Schedule 19H - Power Purchases at Levelized Rates from Cogeneration and Small Power Production Qualifying Facilities. Witness Carney presented testimony describing how the Company had calculated its avoided costs for capacity and how the avoided capacity costs and the avoided energy costs had been translated into payments for qualifying facilities. Witness Green presented testimony discussing the Company's Differential Revenue Requirement methodology which is the basis of the Company's avoided energy costs and how the yearly generation mixes from the Company's hypothetical resource plan were used to determine avoided energy costs. Witness Edwards discussed the Company's standard contracts and competitive bidding process, and the Company's recent decision to order four new combustion turbines.

Duke Power Company presented the testimony of a panel consisting of its employees as follows: John N. Freund, Manager of Rate Design; Walter E. Sikes, Manager, Rates; and Kenneth B. Keels, Jr., Industrial Marketing Specialist in the Marketing and Rates Department. Witness Freund explained the calculations supporting the Company's proposed revised standard rates available to

qualifying facilities under its proposed Rate Schedule PP. Witness Sikes testified concerning the Company's position in regard to customer owned generation and its willingness to purchase the output of such generation, and he testified regarding the risks related to long-term levelized rate contracts. Witness Keels testified regarding the Company's experience with qualifying facilities, and he presented the Company's standard Purchased Power Agreement which is used to develop the standard contract.

Carolina Power & Light Company offered the testimony of G. Wayne King, Supervisor of Rate Studies for CP&L. Witness King presented the Company's proposed Cogeneration and Small Power Producer Schedule CSP-12, which is based on avoided cost projections. He testified that the proposed schedule CSP-12 is an update of the Company's existing schedule CSP-10 and is based on the methodology previously approved by the Commission.

The Public Staff presented the testimony of Danny P. Evans, Financial Analyst, Economic Research Division of the Public Staff. Witness Evans recommended changes to the rate schedules proposed by CP&L and Duke Power Company. With respect to CP&L, he found the proposed energy and capacity credits in Schedule CSP-12 to be reasonable and the methodology used to determine them to be consistent with that approved by the Commission in prior avoided cost proceedings, but he objected to CP&L's proposal to increase the monthly seller charges by 20%. With respect to Duke Power, witness Evans found that Duke had failed to incorporate one of the three modifications ordered by the Commission in the last two proceedings. He, therefore, adjusted Duke's proposed capacity credits to reflect a 20% reserve margin rather than the 89% availability factor used by Duke. With respect to VEPCO, witness Evans stated the Public Staff supported the changes recommended by Virginia Electric in its proposed Schedule 19H on an experimental basis with review in two years, or sooner if any complaints are received.

Mr. Joe R. Ellen, Jr., the developer and owner of Rocky River Power Plant, testified on behalf of himself.

Subsequent to the hearing other filings were made and orders issued which are a matter of record.

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

FINDINGS OF FACT

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

(1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rate and other relevant factors or (2) set by arbitration.

2. VEPCO should continue to offer standard levelized rate options, as described in Finding of Fact No. 1, except VEPCO may offer, on an experimental basis, a levelized energy mix with adjustable fuel prices in place of a levelized energy payment.

3. CP&L and Duke should offer nonhydroelectric qualifying facilities contracting to sell generating capacities of more than five megawatts the options of contracts at the variable rates set by the Commission or contracts at negotiated rates and terms. Nonhydroelectric qualifying facilities of more than five megawatts capacity desiring to sell generating capacity to VEPCO should participate in VEPCO's competitive bidding process for obtaining additional capacity.

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

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

6. Western Carolina University's proposed Small Power Production Supplier Reimbursement Formula is reasonable and appropriate.

7. Proposed Rate Schedules 19 and 19H for VEPCO are reasonable and appropriate with the proviso that the levelized generation mix option is approved on an experimental basis only.

8. Proposed Rate Schedule CSP-12 for Carolina Power and Light Company is reasonable and appropriate.

9. Proposed Rate Schedule PP for Duke Power Company is reasonable and appropriate except the proposed capacity credits should be revised to include the Public Staff's adjustments to reflect a 20% reserve margin instead of the 89% availability factor used by Duke.

10. The interconnection practices of the utilities were not an issue of controversy and should not be revised in this proceeding. The determinations made and the standards established in the last biennial proceeding, therefore, should continue to apply.

11. The Commission should not undertake a generic investigation of competitive bidding at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence in support of this finding is contained in the testimony of Duke witness Sikes, and Public Staff witness Evans.

A major issue in prior avoided cost proceedings has been whether the Commission should require the electric utilities to offer long-term levelized

rates to qualifying facilities as standard rate options. Long-term levelized rates are permitted, but not required, by the regulations implementing Section 210 of PURPA. The commentary to the regulations includes the following:

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

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

Prior to the 1984 avoided cost proceeding (Docket No. E-100, Sub 41A), CP&L and Duke were required to offer standard long-term levelized rate options to all qualifying facilities. VEPCO was required to offer such options only to small power producers as defined in G.S. § 62-3(27a), i.e., hydroelectric facilities of 80 megawatts or less capacity. The standard long-term levelized rate options were ordered by this Commission in order to encourage the development of cogeneration and small power production facilities. As a result of concerns raised by the utilities and the Public Staff in the Sub 41A proceeding with respect to the effect of these options, the Commission revised this requirement and limited the standard long-term levelized rate options to hydroelectric facilities of 80 MW or less and to nonhydroelectric qualifying facilities with generating capacities of five megawatts or less.

In this proceeding CP&L and Duke proposed no change in the availability of long-term levelized rates. However, Duke witness Sikes expressed concern about the potential impact of fixed long-term levelized rates on the ratepayers. These concerns included the inherent uncertainty in projecting avoided costs, the risk of default on the contract by the QF, and the collection of overpayment from the QF in the event of default. He stated that any increase in the availability of fixed long-term levelized rates could increase the risk of Duke's other customers subsidizing QFs.

Upon cross-examination by counsel for CUCA, Public Staff witness Evans stated that the Public Staff continued to support the present limitation on the availability of standard long-term levelized rates. He noted that the present limited availability encourages small QFs which might have difficulty negotiating a contract with a utility but also limits the risks to ratepayers present in long-term levelized rates.

The Commission has carefully considered the testimony and the arguments presented by all parties, and concludes that the present limited availability of long-term levelized rates should be continued. The Commission set the present limited availability of long-term levelized rates in the 1984 avoided

cost proceeding and continued such limitations in the last biennial proceeding in 1986. The Commission finds that the current limitations are supported by the Orders in both those proceedings, as well as the evidence presented in this hearing.

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

We further conclude that CP&L and Duke should continue to offer such standard rate options to nonhydroelectric qualifying facilities contracting to sell generating capacities of five megawatts or less. As noted in the Order from the last proceeding, the risks associated with a nonhydroelectric qualifying facility in the event of a default on a long-term levelized rate contract of five megawatts or less capacity is relatively small in terms of dollar exposure and impact on supply when contrasted with the risks associated with such a default on a larger contract. In addition, standard rate options will tend to encourage small projects, the owners of which probably would not have the resources or the expertise to negotiate with the utility.

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

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence in support of this finding is contained in the testimony of VEPCO witness Hilton and Public Staff witness Evans.

Witness Hilton testified that VEPCO's proposed Schedule 19 provides long-term capacity rates with the option of either a levelized generation mix with adjustable fuel prices or the approved variable energy payment. He further testified that proposed Schedule 19H provides a levelized capacity payment with a levelized generation mix. A QF on Schedule 19H would receive a levelized capacity payment that remains fixed for the contract term. The energy payment would be determined based on a fixed hypothetical generation mix combined with the corresponding energy purchase prices updated every two years to reflect changes in VEPCO's fuel costs. Witness Hilton stated that this method of payment is fairer to ratepayers given the difficulty of predicting energy costs over long-term periods. He further testified that he believed that this option meets the requirements of PURPA and the North Carolina General Statutes noted herein.

Public Staff witness Evans testified that VEPCO's change from a long-term levelized energy payment to a long-term levelized generation mix, with an adjustment for changes in fuel costs after approval by the Commission in a biennial avoided cost proceeding, may have merit. He further testified that the Public Staff would not be opposed to it being approved on an experimental basis for VEPCO with review in two years, or sooner if any complaints are received.

The Commission agrees that VEPCO's proposed change from a levelized energy payment to a levelized generation mix with adjustable fuel costs may have merit. We note that no party objected to this proposal. Therefore, the Commission concludes that VEPCO should offer a long-term levelized capacity payment and, on an experimental basis, a long-term levelized generation mix with adjustable fuel prices for 5-year, 10-year and 15-year periods as standard options to qualifying facilities which are either (a) hydroelectric generating facilities 80 megawatts or less capacity which are owned or operated by a small power producer as that term is defined in G.S 62-3(27a) or (b) any other qualifying facility which contracts to sell generating capacity of five megawatts or less. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rate and other relevant factors or (2) set by arbitration.

VEPCO witness Hilton also requested the Commission to consider limiting the availability of long-term levelized rate options to qualifying facilities contracting to sell generating capacity of 1 MW or less instead of 5 MW or less. He said the 1 MW limit is consistent with the level proposed by FERC. As discussed elsewhere herein, the Commission has concluded that the risks associated with default by a nonhydro qualifying facility on a long-term levelized rate option of 5 MW or less capacity is not excessive, and that the standard rate options should continue to be available to small projects which have less resources and expertise for negotiations with the utility.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

As in the two previous avoided cost proceedings, the Commission continues to believe that nonhydroelectric QFs contracting to sell greater than 5 MWs of generating capacity to either CP&L or Duke should have the options of the variable rates set by the Commission herein or rates derived by free and open negotiation with the utility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As in past proceedings, the Commission concludes in this proceeding that appropriate protection for the utilities against any financial loss they might suffer if a qualifying facility with a long-term contract at levelized rates defaults after receiving overpayments during the early part of the contract is a matter best left to negotiation between the utilities and those nonhydroelectric qualifying facilities contracting to sell more than five megawatts capacity. The Commission will not require such protection for hydroelectric qualifying facilities or for nonhydroelectric qualifying facilities contracting to sell less than five megawatts capacity.

VEPCO's competitive bidding solicitation program has been explained to the Commission, and the Commission concludes that nonhydroelectric facilities desiring to sell generating capacity of more than five megawatts to VEPCO should participate in that bidding process.

Negotiated contracts between a utility and a qualifying facility should, upon execution, be submitted to the Commission and such contracts will be accepted for filing. Such contracts, after being filed, shall be subject to review in the context of the utility's next filed general rate case or by a complaint proceeding, just as would any other contract by the utility.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

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

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

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

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

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

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence pertaining to WCU's calculation of avoided costs is contained in the testimony and exhibits of WCU witness Wooten, which were stipulated into the record without Mr. Wooten being called to the stand. WCU does not generate its own electricity but buys its power wholesale from Nantahala Power and Light Company at rates approved by the FERC. The avoided cost formula proposed by WCU would reimburse a qualifying facility based on the rates charged to WCU by Nantahala at any point in time, and is the same formula approved by the Commission in Docket No. E-100, Sub 53. No party challenged the avoided cost formula proposed by WCU. The Commission concludes that the proposed Small Power Production Supplier Reimbursement Formula should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence pertaining to VEPCO's calculations of avoided costs is contained in the testimony and exhibits of VEPCO witnesses E. Paul Hilton, James P. Carney, Daniel J. Green and Gary L. Edwards and Public Staff witness Danny Evans.

As in the last proceeding, VEPCO used the differential revenue requirement methodology to estimate its avoided energy and capacity credits. Essentially, this involved the use of a production costing model, PROMOD, and a capacity expansion planning model, EGEAS, to estimate the effect on energy and capacity costs assuming a hypothetical addition of 200 MW of QF capacity. However, in this proceeding the Company has assumed that this additional QF capacity block could displace a number of different types of capacity instead of only the combined cycle unit used previously.

Public Staff witness Evans stated that although he had not investigated VEPCO's methodology extensively, the Company's proposed rates appeared reasonable in comparison to the rates he recommended for CP&L and Duke.

VEPCO additionally proposed other changes to Schedules 19 and 19H and to the associated standard contracts. The proposed change of most consequence is the substitution of a levelized generation mix for a levelized energy payment in Schedule 19H, which has been discussed elsewhere herein. Other changes include updating the meter reading and processing charges, including a new option for paying interconnection costs and clarifying and updating the language. These proposed changes were unopposed.

The Commission concludes that VEPCO's proposed Schedules 19 and 19H are reasonable and should be approved, with the proviso that the levelized generation mix option in Schedule 19H is approved on an experimental basis only. We further conclude that the modifications proposed by VEPCO to its standard contracts with QFs are reasonable and should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING FACT NO. 8

The evidence pertaining to CP&L's avoided cost rates is contained in the testimony and exhibits of CP&L witness G. Wayne King and Public Staff witness Danny Evans.

Witness King testified that the rates in CP&L's proposed Cogeneration and Small Power Producer Schedule CSP-12, were based on the same methodology the Commission approved in deriving those rates approved in Docket No. E-100, Sub 53. He stated that the Company used a new production costing model, ENPRO, instead of PROMOD to estimate the energy credit. Witness King testified that the avoided capacity cost was based on the cost of a 75 MW combustion turbine which was $338/kW in 1989 dollars.

CP&L proposed two additional changes in its rate schedule. The Company proposed to include nine holidays as off-peak hours. Also, witness King proposed that the monthly seller charge be increased by 20 percent. He contended that CP&L's answer to the Public Staff's Interrogatory No. 1, Item 20, which was admitted into evidence as CP&L Exhibit 8, supported the proposed increase in that it showed the basis for the customer costs for CP&L's small and large general service customers.

Public Staff witness Evans found, based upon his investigation, CP&L's methodology and the proposed energy and capacity credits in Schedule CSP-12 to be reasonable. He objected to the proposed increase in the seller charge, however, on the grounds that CP&L produced insufficient evidence, including its response to the Public Staff's interrogatory, that these specific costs have increased. CP&L witness King contended that the charges for administering a contract with a qualifying facility is analogous to the customer charge for a retail customer, and represents the cost of meter reading, billing, customer service and information, record keeping, and miscellaneous overhead.

As indicated by questions from its counsel, CUCA contended that both avoided capacity costs and energy costs should be based on the same type generating unit, not a combination of capacity costs based on a combustion turbine and energy costs based on system average incremental costs.

The Commission has heard extensive arguments on the appropriate methodology for determining avoided costs in prior proceedings. The Commission continues to observe that capacity costs are avoided only at the time of the

system peaks, while energy costs are avoided round the clock. Therefore, avoided capacity costs should be based on a peaking unit while avoided energy costs should be based on system average incremental costs. Based upon the evidence presented in this proceeding and for reasons cited in the previous Orders, the Commission continues to find that energy credits may be based on system average incremental costs and capacity credits may be based on the cost of a combustion turbine generating unit.

The Commission thus concludes that the methodology used by CP&L to derive its proposed avoided costs in Schedule CSP-12 is appropriate. However, the Commission rejects the contention that CP&L has not supported its proposed increase in the seller charges. The Company has provided workpapers supporting the customer charges approved in the Company's last general rate case, and such customer charges are comparable to the seller charges proposed herein even though they were classified by type of customer rather than by contract capacity. We therefore conclude that proposed Schedule CSP-12 is reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence pertaining to Duke's avoided cost rates is contained in the testimony and exhibits of Duke witness John N. Freund and Public Staff witness Danny Evans.

Witness Freund testified that Duke had determined its avoided energy and capacity costs as it had in previous proceedings. The energy costs were based on a simulation of Duke's system with and without 100 MW of hypothetical QF capacity. The capacity costs were based on the estimated installed cost of an 80 MW combustion turbine, which he stated was $433.47/kW. Mr. Freund explained that Duke's estimated cost was higher than that used in the last proceeding because it was now based on an 80 MW unit, rather than a more efficient 150 MW unit, and it would be installed at a new site rather than at an existing site.

Public Staff witness Evans testified the methodology used by Duke is basically the same as that used by CP&L and approved by the Commission in the previous proceeding. He noted that Duke had incorporated in its rates two of the three modifications ordered by the Commission in the last proceeding. Mr. Evans recommended that Duke's proposed use of an 87% availability factor again be rejected, and consistent with the Commission's prior orders and practice, a 20% reserve margin be used instead to account for avoided reserves. Mr. Evans also testified that based upon his investigation he found the combustion turbine cost figure used by Duke to be higher than other neighboring utilities.

Duke witness Freund contended that use of the 89% availability factor was an appropriate substitute for use of a 20% reserve margin in calculating avoided capacity costs, and that the 89% availability factor enabled a qualifying facility to earn more than 100% of the avoided costs if it could operate 100% of the time.

The Commission finds the methodology used by Duke to be generally appropriate for determining avoided costs. The Commission further finds that the reserve margin component of avoided capacity costs should be based on a 20% reserve margin. This finding is consistent with the Commission's determination in previous proceedings and with CP&L's reserve margin adjustment. The

Commission is not persuaded that a QF should operate less than 100% of the time in order to earn the full capacity credit, although it is persuaded that such capacity credit should include a reserve margin component. The Commission concludes that proposed Schedule PP for Duke is reasonable and appropriate, except the capacity credits should be revised to reflect the Public Staff's reserve margin adjustment.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

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

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence in support of this finding is contained in the testimony of all parties and generally in the records of the Commission.

In its Order of July 13, 1988, initiating this proceeding, the Commission requested the parties (1) to file any comments filed with the FERC concerning the rulemaking proceedings in Docket Nos. RM88-4-000, RM88-5-000, and RM88-6-000, and (2) to address the impact of the parties' positions with respect to these proposed rulemakings.

The utilities' witnesses generally testified that the impact of the FERC's rulemakings was uncertain at this time. Public Staff witness Evans testified that the Public Staff was of the opinion that the Commission should institute a generic investigation into competitive bidding in a separate docket because of the complexity of the issues involved.

Contemporaneously with the filing of its testimony, the Public Staff filed a motion in support of its position on competitive bidding. Duke and CP&L responded that the initiation of a generic proceeding was premature at this time. The Public Staff replied that while an immediate hearing was not requested, consideration in the pending least cost proceeding, or at least concurrently therewith, was urged.

The Commission concludes that it should not undertake a generic investigation of competitive bidding at this time. Such an investigation would be premature in any docket until such time as the position of the FERC is clearer. The motion by the Public Staff should therefore be denied at this time.

IT IS, THEREFORE, ORDERED as follows:

1. That CP&L and Duke shall offer long-term levelized rates for 5-year, 10-year and 15-year periods as standard options to qualifying facilities which are either (a) hydroelectric generating facilities of 80 megawatts or less capacity which are owned or operated by small power producers as that term is defined in G.S. 62-3(27a) or (b) any other qualifying facility which contracts to sell generating capacity of five megawatts or less. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the

utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rate and other relevant factors or (2) set by arbitration.

2. That VEPCO shall offer long-term levelized capacity payments and, on an experimental basis, a long-term levelized generation mix with adjustable fuel prices for 5-year, 10-year and 15-year periods as standard options to qualifying facilities which are either (a) hydroelectric generating facilities of 80 megawatts or less capacity which are owned or operated by small power producers as that term is defined in G.S. 62-3(27a) or (b) any other qualifying facility which contracts to sell generating capacity of five megawatts or less. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rate and other relevant factors or (2) set by arbitration.

3. That CP&L and Duke shall offer nonhydroelectric qualifying facilities contracting to sell generating capacities of more than five megawatts the options of contracts at the variable rates set by the Commission or contracts at negotiated rates and terms, and VEPCO shall offer such facilities the opportunity to participate in its competitive bidding process.

4. That Nantahala and WCU shall not be required to offer any long-term levelized rate options to qualifying facilities.

5. That the rate schedules, contracts and terms and conditions proposed in this proceeding by CP&L, VEPCO, Nantahala and WCU are hereby approved.

6. That the rate schedules, contracts and terms and conditions proposed in this proceeding by Duke are hereby approved, subject to the modification discussed herein. The approved capacity rates for Duke, the only rates that differ from those proposed, are shown on Appendix A attached hereto.

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

8. That the motion filed by the Public Staff on November 4, 1988, seeking to initiate a generic proceeding into competitive bidding is hereby denied at this time.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of March 1989.

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

APPENDIX A
Duke Power Company
Seasonal Capacity Credits
(cents/kwh)

	Peak Season	Off-Season
Variable Rate (Based on 1989-1990 costs)	1.90	1.14
5-Year Fixed Rate (Based on 1989-1993 costs)	2.04	1.22
10-Year Fixed Rate (Based on 1989-1998 costs)	2.25	1.34
15-Year Fixed Rate (Based on 1989-2003 costs)	2.44	1.46

DOCKET NO. G-100, SUB 51

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition to Repeal NCUC Rule R6-19.2) ORDER APPROVING RULE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 9, 1989

BEFORE: Commissioner Julius A Wright, Presiding: Commissioners Sarah Lindsay Tate, Robert O. Wells, Charles H. Hughes, and Chairman William W. Redman, Jr.

APPEARANCES:

For the Public Staff:

David T. Drooz, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For Aluminum Company of America:

Sam Behrends, IV, LeBoeuf, Lamb, Leiby & McRae, Post Office Box 31507, Raleigh, North Carolina 27622-1507

For Carolina Utility Customers Association:

Jerry B. Fruitt, Post Office Box 12547, Raleigh, North Carolina 27605

For Public Works Commission, City of Fayetteville:

Patricia Ryan, Schiff, Hardin & Waite, 1101 Connecticut Avenue NW, Suite 600, Washington, D.C. 20036

Marland C. Reid, Reid, Lewis, Deese & Nance, Post Office Drawer 1358, Fayetteville, North Carolina 28301

For North Carolina Natural Gas Corporation:

Jeffrey N. Surles, McCoy, Weaver, Wiggins, Cleveland & Raper, Post Office Box 2129, Fayetteville, North Carolina 28302

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Post Office Drawer U, Greensboro, North Carolina 27402

For Public Service Company of North Carolina, Inc.:

James M. Day, Burns, Day & Presnell, Post Office Box 10867, Raleigh, North Carolina 27605

BY THE COMMISSION: This docket was opened on October 5, 1988, by the Public Staff Petition which sought the repeal of NCUC Rule R6-19.2 and a new rule for curtailment based on margin. All of the regulated local distribution companies (LDCs) in the state and the Carolina Utility Customers Association (CUCA) filed comments.

The Public Staff filed its response to comments and a proposed order amending NCUC Rule R6-19.2 on December 16, 1988. On January 25, 1989, the Public Staff filed further comments that incorporated many of the suggestions of the LDCs and responded to criticism from CUCA.

Oral argument was held on March 30, 1989. Aluminum Company of America (Alcoa) filed comments in opposition to the petition on April 10, 1989.

A hearing was held pursuant to Commission Order on August 9, 1989. At this hearing, CUCA, the Public Staff, Alcoa, Public Service Company of North Carolina (Public Service), Piedmont Natural Gas Company (Piedmont), and North Carolina Natural Gas Corporation (NCNG) all sponsored witnesses. In addition, the Public Works Commission of the City of Fayetteville was represented by counsel.

Based on the pleadings, testimony, exhibits, and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. NCUC Rule R6-19.2 was adopted to establish a priority system for curtailment of natural gas service to customers during the severe gas shortages in the 1970's. Circumstances have changed and an adequate supply of gas has been available throughout most of the 1980's. The short-term seasonable interruption of a few large customers during cold weather is of a different character from the widespread curtailment in the 1970's. Consequently, the original reason for Rule R6-19.2 no longer exists. Moreover, curtailment by margin will protect high priority customers even if a gas supply shortage develops because the higher priorities pay the higher margins.

2. Public Service Company of North Carolina, Inc. has used curtailment by margin for three years now, rather than curtailment by Rule R6-19.2. Based on this experience, the Company's witness testified: "we definitely believe that curtailment by margin is the correct procedure. . . ." The Commission finds this testimony persuasive.

3. Piedmont Natural Gas Company, Inc. implemented curtailment by margin this past winter, and will continue to do so pending the outcome of this proceeding. Piedmont supports the Public Staff's request.

4. Pennsylvania & Southern supports the Public Staff's request.

5. North Carolina Natural Gas Corporation also supports the idea of changing from the present priority system to a system of curtailment by margin.

6. Rule R6-19.2 as it currently exists is a source of confusion because (1) most natural gas customers in this state are being curtailed on the basis

of margin rather than Rule R6-19.2, and (2) the priorities listed in R6-19.2 do not precisely correspond to the companies' rate schedules.

7. Curtailment by margin will not increase the overall level of curtailment.

8. Because the lowest priority customers generally pay the lowest rates, a change to curtailment by margin will not significantly alter the current practice for those gas utilities and customers who are not already under curtailment by margin. Additionally, since the high priority customers also pay the highest rates, then current rate design principles are supported equally by either curtailment based on priority or margin.

9. For the relatively few customers who will be curtailed in a different order by margin curtailment, the change will be fairer and more economically efficient in terms of how it affects customers as a whole. The customers who will be curtailed earlier than under the present rule will be those who have negotiated rates the lowest below the filed tariff rate. Such customers have the greatest protection from disruption to their operations because the fact that they negotiate means they have access to low-priced alternate fuels. If they value secure gas supply over low rates, they have the option of paying the full tariff rate to avoid being curtailed as early (if at all). Moreover, early curtailment of negotiating customers instead of full margin customers will mean fewer negotiation losses, which in turn means more gas cost savings to be returned to all sales customers.

10. The parties supporting curtailment by margin had some differences as to whether the current rule should be "suspended" or "repealed". NCNG prefers suspension so the current rule can be reinstated quickly if a gas shortage should develop in the future. Public Service advocated total repeal of the rule, and expressed concern that the Public Staff proposal would require meters to be set by the priority classifications. Piedmont recommended the suspension of Rule R6-19.2 and the suspension of all reporting requirements related to the rule. With regard to these differences, the Commission finds:

(a) All the natural gas utilities should continue to report customer consumption on a monthly basis by priority for both existing customers and new customers. This will achieve the greatest continuity with the current reporting requirements and insure that the data and meters are already in place, should a return to curtailment based on priority be appropriate due to changing conditions in the future.

(b) The current NCUC Rule R6-19.2 should be suspended, in order to assure that a timely return to this Rule may be effectuated, should changing conditions in the future require such action.

11. CUCA sponsored several representatives of industrial customers as witnesses. Their status was in the nature of public witnesses testifying on their particular circumstances more than as expert witnesses. In general, they expressed concerns that the proposed rule change would increase the level of uncertainty they had in planning their energy usage. CUCA also filed comments to the effect that there was no compelling reason to change the rule; that the possibility of exceptions to the proposed rule raised more questions than it

answered; that a bidding war between end users could result from the proposed rule; and other concerns.

The Commission finds that these concerns are not substantial enough to prevent the new Rule from being adopted. Some uncertainty will always surround curtailment because weather is a major factor. Customers who pay full margin will be able to estimate their curtailment order relative to other full margin customers just as customers under the present rule can from their priority classification. Negotiating customers will take the risk of early curtailment in exchange for receiving a lower gas rate. The proposed rule is simpler and easier to understand than the present rule. Curtailment by margin has been in operation for three seasons in one franchise area, and one season in another, so its effect and operation are known. The economic efficiency and fairness to customers as a whole is a compelling reason for the change. The Commission already provides for exceptions to its rules (see NCUC Rule R1-30), so that is nothing new with the proposed rule. A "bidding war" is not a risk because the availability provisions of the tariffs limit which rates each customer can qualify for. Also, there is no reason for the utilities to create a "bidding war" among negotiating customers because the utilities are made whole on negotiation losses anyway. In short, the benefits of the proposed rule change far outweigh the concerns expressed by CUCA.

12. Alcoa also opposed changing Rule R6-19.2. The Alcoa witness testified that: "The broader issue centers upon the real need and advisability of departing from a well-known and time-proven curtailment plan to one which basically places control of gas curtailments in the hands of the utilities." The Commission does not agree. Although Alcoa has not been subject to curtailment by margin since it has been on NCNG's system, the majority of gas customers in this state have, and as a result curtailment by margin is well-known and proven just as the present R6-19.2 system is. More importantly, Alcoa is mistaken in asserting that curtailment by margin will place customers at the whim of monopolistic utilities. Rates are set by Commission oversight and approval. Curtailment will strictly follow the Commission-approved rates that are published. The only exceptions will be (1) where the Commission has specifically ordered an exception based on unusual and compelling circumstances, and (2) where the customer is receiving the benefit of negotiating below tariff rates, in which case he has the choice and he will still be curtailed according to the unit margin he pays - not by utility whim. Thus, the utilities will not have any chance to unfairly or unreasonably manipulate the curtailment system based on margin.

Alcoa also argues that the economic efficiency of curtailment by margin is unnecessary because the utilities already earn full margin from all customers due to their ability to offset negotiation losses with gas cost savings. The flaw in this argument is that it ignores the fact that the present curtailment rule results in less gas cost savings to be flowed back to sales customers. Although curtailment by margin will not enhance profits for the utilities, the greater economic efficiency of curtailment by margin will provide a very real benefit to sales customers as a whole.

Alcoa's other concerns are similar to those of CUCA, and after full consideration of the testimony the Commission finds that these concerns are not sufficient reason to retain the present Rule R6-19.2. The benefits of

curtailment by margin as proposed by the Public Staff will outweigh the potential risks.

13. The Commission finds that the proposed Rule R6-19.2 attached to the proposed orders of both the Public Staff and NCNG will best serve the needs of regulated North Carolina gas utilities and their customers at this time.

Based on the foregoing Findings of Fact, the Commission makes the following:

CONCLUSIONS OF LAW

1. The current version of NCUC Rule R6-19.2 should be suspended and replaced at this time with the version contained in Appendix A to this Order.

2. The North Carolina regulated natural gas utilities should continue to file monthly reports with the Commission and Public Staff that show customer consumption by priority.

IT IS, THEREFORE, ORDERED as follows:

1. That the current version of NCUC Rule R6-19.2 shall be suspended and replaced at this time with the version contained in Appendix A to this Order, effective the date of this Order.

2. That monthly reports of customer consumption shall be filed by the natural gas utilities as provided in Conclusion of Law No. 2.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of October 1989.

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

APPENDIX A

Rule R6-19.2. Curtailment of Service.

(a) In the event that a North Carolina retail gas utility cannot supply the demands of all its customers, the utility shall curtail the customers paying the least margin per dekatherm first. This applies to all customers, be they transportation customers, regular sales rate customers, municipal customers or otherwise. However, if operating conditions require some interruption of service to a particular geographical area instead of a utility's entire system, then curtailment by margin should be applied only to those customers within the affected areas.

(b) If it is necessary to interrupt some but not all customers paying the same margin per dekatherm, then, to the extent practicable, service shall be curtailed to the customers paying the same margin per dekatherm on a pro rata basis for the season.

(c) For the convenience of wording in tariffs, the following definitions of priorities by end use will be retained. However, these priorities are not to

be used for purposes of curtailment priorities unless the Commission so orders pursuant to section (d) below.

(i) Priority 1. Residential. Essential Human Needs With No Alternate Fuel Capability. Commercial less than 50 Mcf/day.

1.1 Residential requirements and essential human needs with no alternate fuel capability.
1.2 Commercial less than 50 Mcf/day.

Priority 2. Industrial Less Than 50 Mcf/day. Process, Feedstock and Plant Protection With No Alternate Fuel Capability. Large commercial requirements of 50 Mcf or more per day except for large commercial boiler fuel requirements above 300 Mcf/day.

2.1 Industrial less than 50 Mcf/day.
2.2 Commercial between 50 and 100 Mcf/day.
2.3 Commercial greater than 100 Mcf/day, non-boiler use.
2.4 Commercial greater than 100 Mcf/day, with no alternate fuel capability.
2.5 Industrial process, feedstock and plant protection between 50 and 300 Mcf/day, with no alternate fuel capability.
2.6 Industrial process, feedstock and plant protection between 300 and 3,000 Mcf/day, with no alternate fuel capability.
2.7 Industrial process, feedstock and plant protection greater than 3,000 Mcf/day, with no alternate fuel capability.
2.8 Commercial over 100 Mcf/day (excluding commercial Priorities 2.3 and 2.4 and commercial boiler fuel requirements over 300 Mcf/per day).

Priority 3. All other industrial requirements not greater than 300 Mcf per day.

3.1 Industrial non-boiler between 50 and 300 Mcf per day.
3.2 Other industrial between 50 and 300 Mcf per day.

Priority 4. Non-boiler use between 300 and 3,000 Mcf/day.

Priority 5. Non-boiler use greater than 3,000 Mcf/day.

Priority 6. Boiler fuel requirements of more than 300 Mcf per day but less than 1,500 Mcf per day.

Priority 7. Boiler fuel requirements between 1,500 and 3,000 Mcf/day.

Priority 8. Boiler fuel requirements between 3,000 and 10,000 Mcf/day.

Priority 9. Boiler fuel requirements greater than 10,000 Mcf/day.

(ii) Definitions.

Residential: Service to customers which consists of direct natural gas usage in residential dwelling for space heating, air conditioning, cooking, water heating, and other residential uses.

Commercial: Service to customers engaged primarily in the sale of goods or services, including institutions and governmental agencies, for uses other than those involving manufacturing or electric power generation.

Industrial: Service to customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product, including the generation of electric power.

Plant Protection Gas: Minimum quantities required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel. This includes the protection of such material in process as would otherwise be destroyed but shall not include deliveries required to maintain plant production.

Feedstock Gas: Natural gas used as a raw material for its chemical properties in creating an end product, including atmospheric generation.

Process Gas: Gas use for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls and precise flame characteristics.

Boiler Gas: Gas used as a fuel for the generation of steam or electricity, including the utilization of gas turbines for the generation of electricity.

Alternate Fuel Capability: A situation where the capability to burn a nongaseous fuel is actually installed.

Essential Human Needs: Hospitals, nursing homes, orphanages, prisons, sanitariums, and boarding schools, and gas used for water and sewage treatment.

Emergency Service: Service which if denied would cause shut down of an operation which in turn would result in plant closing.

Margin: Margin is defined as the filed tariff rate per unit of gas or negotiated rate per unit of gas of a customer (exclusive of sales tax), less gross receipts tax, less the cost per unit of gas as determined in the Company's last general rate case or Purchased Gas Adjustment proceeding, adjusted for any temporary decrements or increments in the filed tariff rate.

(d) The Commission may change the curtailment priority system from one of curtailment by margin to curtailment by the end use characteristics listed in the priorities defined in section (c) above, if the Commission so orders, based on good cause shown, upon the Commission's own motion or petition of any interested party. Notice and opportunity to comment shall be given to all North Carolina retail gas utilities, the Public Staff, the Attorney General, and any other parties within the Commission's discretion before such change takes effect.

(e) For end users on the four municipal gas systems served by NCNG, curtailment shall be on the basis of the combined margin they pay to the City and NCNG (i.e., the rate the end user is paying to the City behind NCNG's system rather than the rate the City is paying to NCNG governs those customers' curtailment priority).

(f) During July and August of each year, consumption for each customer for the twelve-months ending June 30 of such year shall 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 on a different rate schedule, the customer shall be automatically reclassified to the proper rate schedule effective the following September 1. In determining consumption, periods of involuntary curtailment shall be excluded.

Each customer reclassified under this rule shall be notified of the change in rate schedule, along with a copy of the tariff sheets applicable to his old and new rate schedule, at least twenty-one days prior to the effective date of change. If the customer, within fourteen days of being notified that a rate 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 shall allow the customer to remain on his original rate schedule.

DOCKET NO. G-100, SUB 53

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Implement) G.S. 62-36A, Which Requires Franchised) Natural Gas Local Distribution Companies)	ORDER ADOPTING RULE
to Report on Plans for Providing) Natural Gas Service in Areas in Which) Natural Gas Service is Not Available)	

BY THE COMMISSION: On June 15, 1989, the General Assembly of North Carolina enacted legislation adding a new section, G.S. 62-36A, to Chapter 62 of the General Statutes. G.S. 62-36A reads as follows:

§ 62-36A. Natural gas planning.

(a) The Commission shall require each franchised natural gas local distribution company to file reports with the Commission detailing its plans for providing natural gas service in areas of its franchise territory in which natural gas service is not available. Initial reports shall be filed at a time set by the Commission, but not later than January 1, 1990. Commission rules shall requires that each local distribution company shall update its report at least every two years.

(b) The Commission shall develop rules to carry out the intent of subsection (a) of this section, and to produce an orderly system

for reviewing current levels of natural gas service and planning the orderly expansion of natural gas service to areas not served.

(c) Within 120 days after all local distribution companies have filed their initial or biennial update reports, the Commission and the Public Staff shall independently provide analyses and summaries of those reports, together with status reports of natural gas service in the State, to the Joint Legislative Utility Review Committee.

G.S. 62-36A was made effective upon ratification.

On July 17, 1989, the Commission instituted a Rulemaking Proceeding to develop rules as required by G.S. 62-36A(b). The Commission ordered that the franchised natural gas local distribution companies regulated by this Commission, the Public Staff and the Attorney General be made parties and, additionally, that other interested persons be served and be invited to intervene. The Commission set a deadline for parties to file comments and proposed rules.

Comments and proposed rules were filed on August 14-15, 1989, by the Public Staff, Piedmont Natural Gas Company (Piedmont), Public Service Company of North Carolina (Public Service), North Carolina Natural Gas Corporation (NCNG), North Carolina Gas Service, and Intervenor Carolina Utility Customers Association. By Order of August 21, 1989, the Commission requested reply comments addressing the first round of comments. Reply comments were subsequently filed on September 5-6, 1989, by Piedmont, NCNG, and Public Service.

On the basis of the comments and reply comments, the Commission drafted a proposed rule. The Commission published the proposed Rule R6-5(11) for comment by Order of September 22, 1989. Comments addressing the proposed rule were filed on October 3 and 5, 1989, by the Public Staff, Piedmont, Public Service, NCNG, and North Carolina Gas Service. The Public Staff filed further comments on October 16, 1989.

On the basis of all of the filings herein, the Commission finds good cause to revise its proposed rule Rule R6-5(11) and to adopt Rule R6-5(11) as attached hereto as Appendix A as a rule of the Commission implementing G. S. 62-36A.

For the most part, the Commission's revisions to proposed Rule R6-5(11) incorporate the specific suggestions of the Public Staff, Piedmont, and NCNG. The Public Staff commented that the original proposed Rule was too general and did not enable the Public Staff to perform its statutory duty of reporting to the Joint Legislative Utility Review Committee. The Commission, therefore, incorporated the specific additional reporting requirement requested by the Public Staff.

Most of the parties to this rulemaking proceeding expressed the opinion that G.S. 62-36A is primarily concerned with expansion of natural gas service into largely unserved areas of a local distribution company's territory, rather than "in-fill" projects in areas already receiving natural gas service. To that end, parties have suggested that some definition or criteria be established to specify the extensions of service subject to reporting. The

Commission has adopted the definition of "extension project" as proposed by Piedmont, which invokes a capital expenditure of $100,000 or more. The plans which must be reported pursuant to Commission Rule R6-5(11)a are plans for extension projects as so defined. The Commission believes this to be a reasonable limitation which will require the reporting of all major extensions of service.

The Commission is particularly interested in the local distribution companies' plans to extend service into counties of their service territories not now receiving service. To that end, Rule R6-5(11)b focuses on unserved counties. LDCs are required to either explain why it is not feasible to serve the county or to provide an extension plan. In this sense, the term "extension plan" is used in a broad sense as the Company's agenda for providing service in unserved areas of its territory.

The Commission has considered the effect of the new rule on existing rules. Existing Rules R6-60, R6-61, and R6-62 relate to gas service outside a local distribution company's franchised territory and, therefore, are not affected by G.S. 62-36A and need not be revised. Existing Rule R6-11 deals with the extension of mains and service lines within a local distribution company's franchised territory; however, no one has suggested that G. S. 62-32A requires that Rule R6-11 be repealed or amended. The Public Staff has suggested that Rule R6-11 "should be subsumed within the new Rule." Piedmont and NCNG have commented that our new Rule should compliment Rule R6-11. The Commission does not find existing Rule R6-11 inconsistent with the reporting requirements of G.S. 62-36A and concludes that Rule R6-11 should remain unchanged at this time.

IT IS, THEREFORE, ORDERED that Commission Rule R6-5(11) should be, and hereby is, adopted.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of October 1989.

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

APPENDIX A

RULE R6-5(11)

(11) Definitions as used herein:

Extension project: Any budgeted or non-budgeted capital expenditure equal to, or in excess of $100,000, that is for the purpose of providing natural gas service to areas of the Company's service territory in which natural gas is not available.

Extension plan: The Company's agenda for providing natural gas service to areas of its franchised territory in which natural gas service is not available.

On or before January 1, 1990, each franchised natural gas distribution company (LDC) shall file reports with the Commission detailing its plans for

providing natural gas service in areas of its franchised territory in which natural gas is not available. Such reports shall be updated at least every two years and, at a minimum, shall include:

(a) Plans for extension projects during the next three year period, including maps showing the proposed routes for natural gas pipelines. Said maps should show the LDC's existing franchise area; areas where gas is currently available, including municipalities and unincorporated areas, showing locations of transmission and high pressure distribution mains outside of corporate limits; and areas in which the LDC plans to offer natural gas service within the next three years, including the location of proposed facilities.

(b) To the extent that the proposed extension projects in an LDC's report do not include expansion into an unserved county in the LDC's service area, the LDC should provide either an extension plan or a general explanation of its reasons why it is not feasible to implement that expansion during the period covered by the report.

(c) After the initial report, each subsequent report should include a list of each extension project completed since the last report, and the current status of and estimated dates of completion for those projects under construction.

(d) Construction budgets for each extension project associated with expansion plans.

(e) Sources and estimated costs of gas supplies to be available for each extension project in the expansion area.

(f) An estimate of customers to be served from each extension project, broken down as to customer class with projected annual revenues from each class and total revenues from all proposed extension projects for each of the next three years.

(g) Economic feasibility studies of the proposed extension projects during the next two year period utilizing the total revenue from (f) above and showing the project's projected impact on the LDC's capital structure, on its revenue requirements, and on future rates and charges to existing customers. In addition, the LDC shall provide a present value analysis, and any other method of economic analysis it wishes to present which addresses the economic feasibility of an extension project.

(h) A financing plan detailing the possible sources of funds to finance the extension projects including, contributions in aid of construction, public financing, the amount and interest costs of new debt financing or the number of common or preferred shares with the estimated price to be received by the utility from such stock issues.

(i) A general statement regarding potential extension projects after the three-year planning period, with the various projects ranked in terms of priority, both on a customer need basis and also on an economic feasibility basis.

(j) The companies shall file with the Commission and Public Staff all workpapers supporting the determinations, analysis, or conclusions contained in the study or studies. Should additional information be required, the LDC will provide such information promptly upon request to the Commission and the Public Staff.

(k) A summary of all requests or inquiries concerning natural gas service from potential large commercial and industrial customers considering locating in an area not currently served by the LDC and the response of the LDC to the potential customer.

DOCKET NO. G-100, SUB 54

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of New Federal Safety Standards as Codified in Title 49 of the Code of Federal Regulations (CFR), Part 199	)	ORDER ADOPTING FEDERAL SAFETY STANDARDS REGARDING CONTROL OF DRUG USE AND AMENDING RULE R6-39

BY THE COMMISSION: As prescribed under Section 5(a) of the Natural Gas Pipeline Safety Act of 1968, and Section 205(a) of the Hazardous Liquid Pipeline Safety Act of 1989, each state agency must certify that it has adopted, as of the date of the certification, each Federal Safety Standard which is applicable to intrastate pipeline transportation under its jurisdiction.

The United States Department of Transportation recently promulgated new Federal Safety Standards contained in 49 CFR, Part 199 entitled "Control of Drug Use in Natural Gas, Liquified Natural Gas, and Hazardous Liquid Pipeline Operations." Part 199 requires operators of pipeline facilities subject to Parts 192, 193, or 195 of Chapter 49 of the Code of Federal Regulations to test employees for the presence of prohibited drugs and to also provide an employee assistance program. Operators with 50 or more employees subject to drug testing under Part 199 are required to comply with Part 199 no later than April 20, 1990, and those employers with fewer than 50 employees subject to drug testing must comply with Part 199 no later than August 21, 1990.

Under the provisions of G.S. 62-50, the North Carolina Utilities Commission has safety jurisdiction over all intrastate natural gas pipeline facilities in North Carolina.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

G.S. 62-31 grants the Commission full power and authority to administer and enforce the provisions of Chapter 62 of the North Carolina General Statutes and to make and enforce reasonable and necessary rules and regulations to that end. G.S. 62-50 grants the Commission specific authority to promulgate and

adopt safety standards for the operation of natural gas pipeline facilities in North Carolina.

The Commission finds good cause to adopt the new Federal Safety Standards contained in 49 CFR, Part 199 related to the control of drug use in natural gas, liquified natural gas, and hazardous liquid pipeline operations. To that end, Commission Rule R6-39 is hereby amended by adding a new subsection (d) as follows:

> (d) The Federal Safety Standards pertaining to the control of drug use in natural gas, liquified natural gas, and hazardous liquid pipeline operations as adopted in 49 CFR, Part 199, and as were in effect on September 19, 1989, and all subsequent amendments thereto, are adopted and shall be applicable to all facilities under the jurisdiction of the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R6-39 be, and the same is hereby, amended in conformity with the provisions of this Order.

2. That the Chief Clerk shall mail a copy of this Order to all natural gas utilities and municipal gas systems subject to the jurisdiction of the North Carolina Utilities Commission.

3. That the Chief Clerk shall transmit a copy of this Order to Mr. James C. Thomas, Acting Director, Office of Pipeline Safety of the United States Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of September 1989.

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 ON RECONSIDERATION AND IRS PRIVATE LETTER RULING

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, February 21, 1989, at 2:00 p.m.

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

APPEARANCES:

For Carolina Telephone & Telegraph Company:

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

For the Concord Telephone Company:

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

For the Public Staff:

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

For the Attorney General:

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

BY THE COMMISSION: On December 20, 1988, the Commission Hearing Panel entered an Order in this docket establishing the Company-specific values of customer premises equipment (CPE) to be transferred, effective December 31, 1987, to unregulated operations for all the independent telephone companies operating within the State with the exception of General Telephone Company of the South, Southern Bell Telephone and Telegraph Company, North State Telephone Company, Pineville Telephone Company, and CONTEL of Virginia. These five companies were excluded from the Commission's decision, therein, since they had been previously addressed in prior Commission Orders. Of the fifteen telephone companies specifically addressed in the Commission Order issued December 20, 1988, two of these filed exceptions to the Order.

On January 19, 1989, Carolina Telephone & Telegraph Company (Carolina) and The Concord Telephone Company (Concord), filed individual motions for reconsideration whereby the Commission was requested to reconsider certain decisions set forth in the Order of December 20, 1988.

By Order entered in this docket on January 24, 1989, the Commission scheduled an oral argument to consider the pending motions for reconsideration.

On February 20, 1989, Carolina and Concord filed separate notices of appeal to the North Carolina Court of Appeals.

On March 6, 1989, General Telephone Company of the South (GTE South) filed a copy of the Private Letter Ruling it had received from the Internal Revenue Service (IRS) concerning the Commission's treatment of excess deferred income taxes related to CPE. This Private Letter Ruling had been required by the Commission in its Order of November 6, 1988, in this docket.

Upon call of the matter for oral argument at the appointed time and place, the parties were present and represented by counsel who offered oral argument in support of their respective motions for reconsideration.

WHEREUPON, the Commission now enters this Order on Reconsideration and IRS Private Letter Ruling.

EXCESS DEFERRED INCOME TAXES

In its motion for reconsideration, Carolina had requested the Commission to reconsider its decision that excess deferred income tax reserves related to CPE should be recorded in a miscellaneous deferred credit account and retained in the regulated operations pending resolution by means of the Private Letter Ruling requested by GTE South per the Commission's November 6, 1988 Order in this docket. At the oral argument, Carolina abandoned its request for reconsideration on this issue.

On March 6, 1989, the Commission received the IRS Private Letter Ruling which had been requested by GTE South in this matter, as had been required by the Commission. In this Private Letter Ruling, dated February 15, 1989, the legal analysis conducted by the IRS resulted in the following ruling:

> Commission's proposed treatment of CPE related excess deferred tax reserves for ratemaking purposes does not comply with the normalization requirements of Sections 167(l) and 168(i)(9) of the Code; the entire deferred tax balance should follow the property which was removed from regulation.

The Commission is aware that this ruling is directed only to the taxpayer who requested it. However, based upon this ruling, the Commission believes it is appropriate to apply it to all the other independent telephone companies included in this docket, since the Commission's treatment in this regard was applied uniformly to all the companies. Therefore, in consideration of the IRS opinion that the excess deferred income taxes at issue are "inseparable from the assets which initially gave rise to the deferral", the Commission finds that it should reverse its decision in this regard. The Commission concludes

that all the independent telephone companies, involved in this docket, should transfer, to their unregulated operations, their excess deferred income tax reserves associated with the CPE assets which were previously approved to be kept in the regulated operations.

TAX TREATMENT OF REGULATORY GAIN

In its December 20, 1988 Order, the Commission determined the economic values of the individual companies' CPE investment and required that the difference between this economic value and the Company's net book value would result in either a gain or loss which should be recorded in the regulated accounts of the local exchange companies (LECs).

Carolina does not object to the gain determined for it, specifically, by the Commission in the amount of $5,631,464. However, Carolina is of the opinion that this gross gain should be recorded on a net of tax basis. In Carolina's opinion, because the Commission determined the regulatory gain using a valuation reflecting the Company's CPE investment as a "going concern" rather than by a simple appraisal of the hardware alone, then the gain should be recorded net of the tax consequences.

The Commission's approach to determine the value using the "going concern" perspective attempted to replicate the purchase price which would have been received by the individual companies had the CPE been sold to a willing buyer in the marketplace. Carolina argued that recording the gross gain rather than the net of tax gain on its regulated books, bestows a benefit to its regulated ratepayers which is greater than the transferor of such business would receive in the marketplace (i.e., economic benefit to regulated ratepayer is overstated). Further, Carolina stated that, likewise, the use of the gross amount of gain to record the unregulated investment would, inappropriately, make the economic burden to the unregulated shareholder be artificially inflated, since the unregulated operations cannot deduct for tax purposes the portion of the unregulated investment in excess of net book value (the gain). In Carolina's view, the amount of gain to be reflected on both Carolina's regulated and unregulated books should be the net of tax gain determined as follows:

Item	Amount
Gross regulatory gain	$5,631,464
State income tax at 7%	(394,202)
Federal income tax at 34%	(1,780,669)
Net of tax regulatory gain	$3,456,593

Concord, also, filed exceptions in this regard, stating that the Commission should have established the regulatory gain as the net of tax amount instead of the gross gain. Concord is of the opinion that using the gross gain instead of the net of tax gain, gives Concord's regulated ratepayers a benefit greater than they would otherwise have received if the transfer of the CPE had taken place on the open market. While on the other side, the use of the gross gain, penalizes Concord's unregulated operations which will not be able to deduct the unregulated investment in CPE in excess of the book value for tax purposes.

At the Oral Argument, the Public Staff agreed with Carolina and Concord that for purposes of booking the gain they should be allowed to record the gain on a net of tax basis. The Commission agrees with Carolina, Concord, and the Public Staff that there are tax effects associated with the transaction which could be reflected by recording the gain on a net of tax basis. Therefore, the Commission concludes that all the companies recording a gain or loss on transfer of the CPE should be allowed the option to book the gain or loss either gross or on a net of tax basis depending upon their individual accounting practices. No matter whether the gain or loss is recorded on the regulated operations at a gross amount or net of tax amount, the future revenue requirements effect of amortization of these amounts by the Commission will recognize the associated tax effects.

AMORTIZATION OF GAIN

In its Order of December 20, 1988, the Commission found that the gains and losses arising out of its CPE valuations should remain in the appropriate regulatory accounts pending direction from the Commission in future proceedings on the appropriate amortization of these balances.

Concord objected to the Commission treatment, in this regard, stating that it ". . .is an unfortunate provision because that's a substantial amount of money even if it's reduced and something ought to be done with it to begin to amortize it."

The Public Staff supported the Commission, in this regard, arguing that ". . .if you amortize it immediately, the ratepayer gets absolutely no benefit which completely guts the entire process in the first place. It completely eliminates the purpose for which we can (sic) conducted the hearing."

The Commission finds no basis to alter its prior decision on this issue and concludes that it is appropriate to delay the amortization of the companies' gains and losses until future proceedings.

CONCORD'S CAPITAL BUDGETING VALUATION

Concord, in its motion for reconsideration, requested that the Commission reconsider its capital budgeting valuation methodology used in establishing the value of Concord's embedded CPE. The Commission, in its Order of December 20, 1988, found that Concord's capital budgeting value of embedded CPE was $1,797,161. Concord sponsored its testimony in this proceeding through its witness Roy W. Long and Dr. James H. Vander Weide who testified on behalf of several telephone companies in this proceeding including Concord. At the evidentiary hearings on this matter, Concord recommended that its capital budgeting value was $627,874. Now, in its motion, Concord is asking the Commission to establish its ". . .embedded CPE value at a level closer to Concord's recommended value".

Concord stated that the Commission ". . .panel, in its order, ignored all of the evidence supplied by the Company in support of the reasonableness of its model and projected units and the unreasonableness of the Public Staff's model and projected units for determining the value of Concord's CPE". The Commission did not ignore the evidence of Concord; it did review and consider the evidence presented by Concord and summarized the evidence as it did for the

other companies, rather than include every position and view presented. The Commission chose to follow the methodology of the Public Staff with one change which was the use of a discount rate of 14.44% (net of tax) for all companies involved, rather than the use of the individual companies' net of tax overall cost of capital from their last general rate case proceedings. In reaching its conclusions, regarding the assumptions used in its capital budgeting valuations, the Commission found that it had adequately and fairly compromised the conflicting issues and the Full Commission, now, based upon its review, affirms the Order in this regard.

Concord's methodology uses a calculation of its annual percentage change in the decline in CPE investment from 1984 through 1987. The average annual increase percentage change in the rate of decline for 1986 and 1987 was 20%. Based upon its knowledge of the equipment, the trends in the CPE rental business, and other factors considered by the management, Concord continued with this 20% increase in the rate of decline for 1988 but accelerated it in the remaining years to 25% in 1989, 35% in 1990, 50% in 1991, and 75% in 1992 (a 5% obsolescence factor adjustment was also included by the Company in each of the last three years). This treatment resulted in the Company's rate of decline in its investment ranging from 7.61% up to 59.20% by 1992. Concord's model also reflects an adjustment to increase its projected expenses by 2% annually for inflation.

Concord's valuation of $627,874 reflected the use of a discount rate of 20% which was different from what its own witness Dr. Vander Weide had recommended. Specifically, Dr. Vander Weide's recommendation was based upon the following ratios and costs:

Item	Capital-ization Ratio	Cost Rates	Pre-tax Overall Returns	Net-of-tax Overall Returns
Long-term debt	25%	11%	2.75%	1.69%
Common equity	75%	17.5%	13.13%	13.13%
Total	100%	-	15.88%	14.82%

The result of the foregoing data yields a 14.82% net of tax discount rate. In recognition that this analysis reflects approximations, Dr. Vander Weide recommended the use of a discount rate between 14.5% and 15.5% in the capital budgeting process for determining the economic value of embedded CPE.

Concord witness Long had testified that the value of the Company's embedded CPE should be $627,874 because the units composing the embedded CPE base are old and non state-of-the-art. According to witness Long, the majority of Concord's single-line telephone sets are rotary and are a minimum of six years old. Witness Long testified that the Company's competitors are more sophisticated and successful and that customers are more attuned to examining options available through competition to make the best economic choice. He testified that the embedded CPE will be more difficult to maintain and less satisfactory as it ages. The Company stated that there had been an increase in the rate of discontinuance of leased CPE at the end of 1987 and in the first two months of 1988. Witness Long testified that Concord now requires (beginning with deregulation of all embedded CPE, effective January 1, 1988),

that customers bring single-line CPE needing repair into the Company offices for maintenance. Such treatment represents a substantial change from the Company's previous policy of repairing equipment without charge on the customers' premises. Based upon these factors, Concord established the value of its embedded CPE through its capital budgeting methodology at $627,874.

The Public Staff placed a value on Concord's embedded CPE of $1,964,909. It is the Public Staff's position that the embedded CPE rental business is a valuable asset as an ongoing business venture. Without the recognition in valuation of such things as the existing customer base, detailed marketing data, and goodwill, there would be a significant cross-subsidization of non-regulated operations by regulated operations. The Public Staff used a regression analysis for the company relying upon revenue generated from units in service for the period September 1985 through September 1987 (25 months) to predict the amount of investment and net revenue that would exist through 1999. The Public Staff assumed in its regression model that the existing regulated rental rates would remain in effect through the future period that the embedded CPE remained for lease. In selecting its historical data for regression analysis, the Public Staff found the use of leased telephone data for the periods prior to 1985 inappropriate for projecting units, since the pre-1985 leased telephone market differs substantially from the present and expected future telephone leasing markets. Data prior to 1985 reflect intensive sales efforts of AT&T, the Regional Bell Operating Companies, and the other local exchange carriers, as well as the introduction of low-cost alternative telephones by other telephone equipment manufacturers.

The Public Staff used the expenses provided by Concord but made no allowance for any increase due to inflation. The Public Staff argued that the Company should have also adjusted revenues, otherwise the Company's approach is the same as reflecting rental rate reductions on a regular basis in an economy with stable prices. Rather than estimating the inflation occurring after deregulation and applying that factor consistently to both revenues and expenses, the Public Staff assumed that the relationship of CPE revenues and expenses at December 31, 1987, will continue.

Witness James G. Hoard, representing the Public Staff, used the net of tax overall cost of capital of 11.06% from Concord's last general rate case Order (June 1983) as the discount rate in its calculation of the capital budgeting value. Witness Hoard based his decision on his belief that such rate appropriately recognizes intangibles such as goodwill, detailed marketing data, and revenue streams from an embedded customer base. Witness Hoard further explained that the financing cost of the CPE business is reflected in the LEC's embedded cost of capital, not current market rates, since financing of the CPE business has already been completed.

Concord objected to the procedures of the Public Staff and stated in its proposed order that "In this instance the regression analysis simply is not a useful tool in making projections where such unpredictable variables as customer preference and changing consumer wishes and desires are at a play." Concord also believed the 25 months of data used did not properly reflect historical losses or the losses that could be expected in the future. According to Concord, there was a high interest in replacing single-line CPE leased from the Company with customer owned equipment in 1983 when this equipment became available on a competitive basis. These customer purchased

telephones did not meet customer expectations, and when this was learned, after 18 to 24 months, by customers continuing to lease, the percentage of those customers ceasing to lease and purchasing their own CPE declined. The rate of decline in customer leasing leveled off in 1985 through 1987. After 1987 the increase in discontinuances picked up again. Concord in its motion for reconsideration, attached an exhibit showing the net loss in leased telephones for 1988, which in their opinion showed the Company's predictions were accurate.

Concord also argued that it was affected more than the other companies involved in the proceeding since its ratio of embedded stations to total access lines was higher than any of the other companies.

Concord offers existing sets for sale at a price of $16.95 for rotary sets and $36.95 for touchtone sets. The Company stated that the Public Staff's valuation would not pass the test of common sense; when the Public Staff's value of Concord's CPE is divided by the number of single-line telephones the value resulting is approximately $30 which is greater than prices of similar equipment on the market. Concord stated that customers can purchase new sets from many vendors ranging in price from $25.00 to $64.00. Concord believes the physical hardware is what is to be valued as testified to by witness Long who said "It is the Company's understanding that the purpose of this investigation is to place a value on the instruments themselves."

The Commission in its Order of December 20, 1988, reviewed both Concord's evidence and the Public Staff's evidence in this regard and made a conclusion that the capital budgeting value for Concord should appropriately be $1,797,161. The Commission found 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. The Commission found the Public Staff's approach to be acceptable but was concerned that the short historical period used may tend to extend the useful life beyond what may actually occur. However, the Commission found that the discount rate it would use should be reflective of this concern by being adjusted upwardly. The Commission also expressed concern that it was unsure as to what effect inflation would absolutely have on all operating costs and to what extent lease rates could be raised. The Commission found that rather than to precisely make adjustments to various revenue and expense items, it would be fair and reasonable to adjust the discount rate. The Commission concluded that witness Vander Weide's capital structure and cost of debt were reasonable to use in its evaluation and found that an equity return of 17% would be a fair return which resulted 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 the proceeding.

The Commission found that 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 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 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."

The Commission has reviewed the valuation of Concord and the other companies and has made its own approximate calculation of the price per phone (capital budgeting value divided by number of single-line phones gives a somewhat skewed result since the valuations also include varying combinations of miscellaneous and auxiliary equipment, key systems, small PBX's, and large PBX's). These approximate price per phone calculations are based on the number of phones shown in Public Staff Late Filed Exhibit No. 1 and reveal that Concord's price is lower than six of the other companies (ALLTEL Carolina, Central, Ellerbe, Heins, Randolph, and Sandhill) for which the Commission has made valuations in this proceeding and none of these six companies nor any of the other companies filed exceptions on their respective Commission determined capital budgeting valuations or economic values. The Commission believes that its valuation of Concord's CPE, which represents more than equipment only, is neither unfair nor unreasonable. The companies all have different operating environments and different customer bases, in fact, Concord's statement that it has the highest ratio of embedded stations to total access lines, possibly, indicates that Concord's customer base leasing telephones represents more value than all of the other companies.

In regard to Concord's exhibit of its 1988 data on leased telephone set losses, filed with its motion, the Commission concludes that this has not been submitted in a proper manner (no opportunity of hearing was given) to be evidence in this case, except to the extent the January and February 1988 figures had been previously presented in the evidentiary hearing. If the 1988 data were considered, the Commission would have to also consider by what effect this loss has been precipitated by management's decisions to discontinue, effective January 1, 1988, its previous policy of repairing equipment without charge on the customers' premises, i.e., customer must now bring single-line CPE to the Company offices for maintenance.

The Commission's decision on Concord's valuation was supported at the oral argument by the Public Staff stating that "There is no further room for compromise, particularly with Concord"; and the Attorney General stating that "What the Commission chose as a methodology was eminently reasonable."

Based upon our review of the records in this proceeding, the Commission affirms the Commission Hearing Panel's prior decision on capital budgeting valuations. The following discussion in the Commission's December 20, 1988 Order properly summarizes our affirmation in this regard:

"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."

IT IS, THEREFORE, ORDERED as follows:

1. That the local exchange carriers (LECs) shall transfer, to their unregulated operations, their excess deferred income tax reserves associated with the embedded CPE assets which were previously approved to be kept in the regulated operations.

2. That except as modified herein, the Commission Order heretofore entered in this docket on December 20, 1988, shall remain in full force and effect.

3. That except as granted herein, the motion for reconsideration filed in this docket by Concord be, and hereby is, otherwise denied.

4. That the motion for reconsideration filed in this docket by Carolina be, and hereby is, allowed.

5. That the Chief Clerk shall mail a copy of this Order to all the regulated LECs in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of April 1989.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Charles H. Hughes did not participate in this decision.

DOCKET NO. P-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Issuance of Special Certificates for the Provision of Telephone Service by Means of Customer-Owned Pay Telephones	))))	ORDER INITIATING RULEMAKING ON COCOT-FAX DEVICES AND PROMULGATING INTERIM RULE

BY THE COMMISSION: On April 25, 1989, the Commission received a letter from Central Carolina Communications, Inc. (CCC), concerning a credit card operated pay telephone which has a facsimile machine located within the same cabinet. (For purposes of this proceeding this device shall be referred to as COCOFAX). CCC attached a letter sent to a member of the Communications Division of the Public Staff. That letter stated that the end-user would be charged for a local or toll call based on the appropriate tariffed rates and a fee of $3.00 for each page transmitted. One could also transmit a document for $3.00 without a charge for the call. The letter further stated that CCC felt that the existing PTAS tariff should cover the operation of this device. CCC has requested a prompt resolution of questions concerning this device.

Based upon the information that the Commission has thus far received, the Commission is of the opinion that COCOFAX raises substantial legal and public policy questions. G.S. 62-3(23)a.6., for example, defines "public utility" broadly as a person who operates facilities for the "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." In this case, the FAX machine is attached to a COCOT. The COCOT is operated by a COCOT provider which holds a special certificate and hence is a public utility. The service is held out to the general public for compensation. The PTAS tariffs limit charges for local calls to 25¢ and long-distance calls to the applicable local exchange company rate or interexchange company rate plus 25¢ and applicable operator surcharges. Arguably, then, a charge exceeding the tariffed charges is inappropriate for any such transmission from a COCOT. In any event, the current PTAS tariffs do not directly address devices or services such as COCOFAX.

The Commission has also received information that some COCOFAX providers are attempting to utilize B1 lines instead of PTAS lines. This practice is not legally acceptable. Such a provider must obtain a PTAS line and be certified as a COCOT provider before he can operate a COCOFAX.

Along with legal issues under current law and tariffs, there is the broader public policy question. This question falls into two major categories: First, whether rates for COCOFAX should be regulated and, second, what end-user notice, if any, should be posted on the machine.

In order to answer the legal and public policy questions raised, the Commission concludes that it should do the following:

1. Institute a rulemaking on COCOFAX and public facsimile service and solicit comments and proposed rules from interested parties.

2. Request all parties to submit such information as they have or can with due diligence acquire regarding how many COCOFAX are in operation and where, and what the charges are for facsimiles.

3. Promulgate an interim rule regarding end-user notice.

IT IS, THEREFORE, ORDERED as follows:

1. That a rulemaking proceeding be instituted to determine whether and under what rules COCOFAX should be permitted.

2. That the following should be made parties to this proceeding: Central Carolina Communications, Inc., and all parties to Docket No. P-100, Sub 84, including parties to the proceedings on COCOTs in confinement facilities.

3. That a copy of this Order shall be served by the Chief Clerk on the North Carolina Hotel and Motel Association.

4. That all parties other than the Public Staff desiring to submit comment shall submit comments, including comments responsive to the questions set out in Appendix A, no later than July 31, 1989. The Public Staff shall submit comments no later than August 11, 1989.

5. That the following rule be promulgated as an interim rule: Rule R13-1(l) - All COCOTs to which a facsimile machine is attached for the use of the public for compensation must prominently display on the machine a number for the end-user to call for repair and the price per page to be charged to the end-user for facsimiles.

6. That parties submit such information as they have or can with due diligence acquire regarding how many COCOFAX are in operation, where they are located, and what the charges are for facsimiles no later than July 31, 1989. 1989.

7. That any person offering a COCOFAX for use by the public for compensation obtain a PTAS line and be certified as a COCOT provider.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of June 1989.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A

QUESTIONS CONCERNING PUBLIC FACSIMILE SERVICE

1. Is the provision of facsimile service to the public a public utility service? Explain.

2. Does the Commission have the authority under G.S. 62-62-110(c) to allow the provision of facsimile service to the public at public telephone locations? At copy center locations? Do other statutes pertain to this issue? Explain.

3. Is the resale to the public of messages conveyed over local exchange company (LEC) interexchange carrier (IXC) facilities for the purpose of transmitting facsimile information (public facsimile service) in the public interest? Should such service be provided at public telephone locations? At copy center locations? At other locations?

4. Does G.S. 62-3(23)(g) exclude hotels or motels from the Commission's regulatory oversight concerning provision of facsimile service in hotel/motel guest rooms? In other areas of the hotel/motel outside of the guest rooms?

5. Should resale of public facsimile service by COCOT providers at pay telephone locations be permitted under LEC tariffs for Public Telephone Access Service (PTAS) and Commission Rule R13? If so, what provisions or exceptions for facsimile service should be incorporated into the PTAS tariff provisions, Commission Rule R13, and the COCOT certificate?

6. Provide a description, prices and any other available information on facsimile machines which may be suitable for public pay telephone type locations?

7. Provide any available information on the number of parties in North Carolina which are now providing public facsimile service to others in (a) public and (b) non-public (such as copy center) locations and on the number of such units in service. Provide any available details on the services provided, the type of equipment used, the rates charged for the services, and the exchange services to which the machines are connected.

8. Should the rates and charges to the end-user for PTAS and public facsimile services be separately identified on both the facsimile machines and end-users bills?

9. Should the LECs be permitted to provide facsimile service? If so, under what statutes, rules, tariffs?

9A. Should the LECs' authority be expanded to include the provision of billing and collection services for public facsimile services? If so, what tariffs should apply? What rates and charges would be appropriate? Should the basis for the rates and charges be cost, value, market or other? Explain.

10. Should a maximum rate be determined or specified by the Commission to serve as a rate cap for facsimile service? If so, what rate(s) and rate structure(s) should be considered? Should the charges for facsimile service be tariffed? Should the charges be established separately for each provider?

11. Should the facsimile equipment be arranged to permit incoming and outgoing local and toll voice communication service as well? If not, should the collocation of a coin operated public telephone instrument be required?

12. If a telephone line is used solely for facsimile service rather than voice and facsimile service, how should the line be rated? What provisions and restrictions should apply?

13. Should the provider of public facsimile service be allowed to bill the charges for the service to third numbers, to credit cards or to the called party? If so, what rules and regulations should apply? Should additional certification be required for those services? Explain.

14. What surcharges, if any, should apply if facsimile service is billed to a third number, a credit card, or to the called party? Should the surcharges be tariffed? Should they be uniform for all providers? Explain.

DOCKET NO. P-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Issuance of Special Certificates for the Provision of Telephone Service by Means of Customer-Owned Pay Telephones	)))	ORDER PROMULGATING FINAL RULES FOR COCOTS IN CONFINEMENT FACILITIES

BY THE COMMISSION: On April 27, 1988, the Commission issued an Order initiating a rulemaking concerning customer-owned pay telephones (COCOTs) in the detention areas of state, federal, and local confinement facilities in this State. On October 11, 1988, the Commission issued an Order regulating COCOTs in confinement facilities. That Order modified Rule R13-1(e) by adding the following proviso:

> "Provided, however, subject to all other applicable provisions of this Rule, including but not limited to restriction on the charges that may be made, that instruments or stations located in the detention facilities of local, state, or federal confinement facilities
>
> (1) may be arranged for outward-only calling, if specifically requested by the administration of the confinement facility;
> (2) must be coin-operated; and
> (3) must be arranged to allow sent-paid, collect, and credit card calls, but to block third-party charge calls."

However, two significant problems with this rule became evident. First, there is a problem associated with the blocking or screening mandated by the amended rule. Second, significant questions arose as to whether the above regulations contain sufficient restrictions to be appropriate in a confinement facility environment.

The screening problem came about because, with some exceptions, interexchange carriers (IXCs) other than AT&T generally cannot provide outside screening for the interLATA or interstate calls. IntraLATA screening is the only screening that can be provided by the local exchange companies (LECs). Because of this problem, the Commission issued an Order on January 13, 1989, suspending the rules promulgated on October 11, 1988, set out above, and ordering the formation of an industry conference to examine options by which outside screening and blocking can be accomplished with respect to payphones in confinement facilities.

Blocking certain calls is an integral part of regulations concerning payphones in confinement facilities. As matters now stand, the COCOT provider in a confinement facility has two alternatives in order to comply with blocking regulations. First, he can obtain outside intraLATA blocking from his LEC but can obtain outside interLATA blocking only if he is presubscribed to AT&T or an IXC capable of providing such blocking; or, alternatively, the COCOT provider can use functions within the payphone itself to block both intraLATA and interLATA calls from inside the phone and thereby comply with blocking regulations.

The second problem related to whether the above rules were appropriate to a confinement facility environment. The Commission received information that credit card calls in confinement facilities, for example, posed an unacceptably high risk of fraud and abuse. Several entities, including the Department of Correction, requested waivers from the rules.

The Commission also received information regarding the existence of so-called "smart phones" which were capable of automated collect-only calling. The obvious implications of such devices were worthy of further investigation. Finally, on March 1, 1989, the Commission received an industry report on inmate service in response to the January 13, 1989, Order. This report described various means of blocking and inmate fraud. The report cited figures derived from the Communications Fraud Control Association that institutional toll fraud, which includes educational and military facilities as well as jails and prisons, generates an annual loss of $150 million. The industry report also recommended new rules. These proposals form the basis for the proposed and interim rules of the Commission (see below).

Therefore, in an Order issued on March 8, 1989, the Commission reopened the rulemaking proceeding, requested comments, and promulgated new proposed rules as interim rules. The Order made all previous parties to Docket No. P-100, Sub 84, parties to this proceeding and added as parties the Mecklenburg County Jail, the North Carolina Department of Correction, Coin Telephones, Inc., and the North Carolina Payphone Association. The Order was also served on the North Carolina Sheriffs' Association, the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, the U. S. Attorneys of the Eastern, Middle, and Western Districts of North Carolina, the North Carolina Department of Corrections Inmate Grievance Committee, the North Carolina Chapter of the American Civil Liberties Union, and North Carolina Legal Services.

The following were the questions propounded to parties:

1. Should the October 11, 1988, amendment to Rule R13-1(e) be repealed and replaced by a new Rule R13-1(k) as set forth below?

"(k) Notwithstanding any of the rules above to the contrary, the following provisions shall apply to all PTAS instruments or stations located in the detention areas of local, state, or federal confinement facilities:

(1) Such instruments or stations

(a) may be arranged for outward-only calling, if specifically requested by the administration of the confinement facility;

(b) may be arranged to terminate calls after ten minutes of conversation time, if specifically requested by the administration of the confinement facility;

(c) may be arranged to block 411 calls, if specifically requested by the administration of the confinement facility and if a copy of a current directory is available for inmate access.

(d) shall be arranged (except as provided in R13-1(k)(1)(e) below) to block direct local dialing calls, credit card calls, third-number charge calls, 1+ sent-paid calls, 0+ sent-paid calls, 0- sent-paid calls, 0- calls, 00- calls, 800 calls, 900 calls, 976 calls, 950 calls, and 10XXX calls;

(e) shall be arranged to allow only 0+ collect calls for local, intraLATA, and interLATA calls; provided, however, that where the local exchange company or the telephone set can block additional digit dialing after initial call set-up, 1+ long distance and 7 digit local dialing may be permitted, if specifically requested by the administration of the confinement facility.

(2) At least one unrestricted coin telephone under administrative control shall be available outside of a jail cell for supervised use by inmates."

2. Should the above rule apply in substance to Southern Bell and other local exchange company payphones in confinement facilities?

3. Should payphones programmed for automated collect-only calling be permitted in the confinement facility environment? If so, under what rules?

The following parties filed comments in this proceeding: AT&T Communications of the Southern States, Inc. (AT&T), Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), Contel of North Carolina (Contel), International Telecharge, Inc. (ITI), Intellicall, Inc. (Intellicall), North Carolina Payphone Association (NCPA), Southern Bell Telephone and Telegraph Company (Southern Bell), Triple Crown, Inc. (TCI), and the Public Staff.

After careful consideration of the filings in this docket and of the record as a whole, the Commission concludes the following: (1) That Rule R13-1(k) set out in Appendix A should be promulgated as a final rule with conforming changes to the PTAS tariff and special certificate application, (2) that the LECs should file tariffs comparable to the requirements for COCOT payphones in confinement facilities for their payphones in confinement facilities, and (3) that further hearings should be conducted on the question of automated collect-only calling.

Support for these conclusions is set out in detail below:

1. The rule set out in Appendix A as Rule R13-1(k) should be promulgated as a final rule. By and large, the parties were supportive of the proposed rules. In response to some of the concerns expressed by various parties, the Commission has made changes in them as noted below:

a. Applicability of special rule. Following the suggestion of Carolina, the Commission has opted to retain from a previous version of the rule clarifying language that all other applicable provisions of the PTAS tariff--such as restrictions on rates--will continue to apply. Strictly speaking, given the "notwithstanding any of the above rules to the contrary" language, this was not necessary. But the Commission has no wish to be overly

subtle and does not wish any COCOT provider to receive the impression that he is relieved from other responsibilities or from rate regulation.

b. Terminate calls after 20 minutes. The Commission has revised the proposed Rule R13-1(k)(1)(b) to change the time at which calls may be terminated from 10 minutes to 20 minutes and to require that the telephone provider must advise the LEC and presubscribed IXC of this feature. The Public Staff opposed the 10-minute termination provision in its comments. It noted that, since the Commission was now oriented toward collect-only calling in the proposed rule, this would necessarily mean that larger charges would be incurred and this would "make a lengthy local or long distance call expensive and inconvenient." While favoring no call-limitation provision, the Public Staff suggested that a 20-minute limit would better balance the various interests involved.

The original rationale for the 10-minute call limitation provision was to prevent one inmate from monopolizing a phone to the exclusion of other inmates and to reduce the necessity for administrative supervision. At the same time, the Commission recognizes that a 10-minute call limitation provision, coupled with a collect-only orientation, could lead to what amount to excessive charges to end-users. The Commission agrees with the Public Staff that a 20-minute call-limitation provision will more effectually balance the interests of the parties involved.

The Commission has also added a provision to this subsection that would require the telephone provider to notify the LEC and the presubscribed IXC that this call limitation feature exists. In this instance, the Commission shared AT&T's concern that the IXC (and by extension, the LEC) be so notified in order to prevent claims for the application of a billing credit due to such cutoff.

c. Compulsory blocking of 411 calls. The original proposed Rule R13-1(k)(1)(c) said that 411 calls may be blocked if specifically requested by the administration of the confinement facility and if a copy of a current directory is available for inmate access. The Commission opted for a revision to make blocking of 411 calls compulsory. This was in response to comments by some of the parties, notably Southern Bell. Southern Bell in particular noted that 411 calls could be manipulated to commit fraudulent calling. The Commission, however, has chosen to retain the requirement that a directory be available for inmate access, with the clarifying language that it is to be a "local" directory. A confinement facility would thus not be required to have many different directories, and it could make the local directory available for inmate access under appropriate administrative supervision.

d. Allowed and forbidden calls. The Commission rewrote and combined Rule R13-1(k)(1)(d) and (e) into a single Rule R13-1(k)(1)(d) to make plain that, generally speaking, only 0+ collect calls will be permitted for local, intraLATA and interLATA calls and that all other calling is to be blocked. Such blocking includes but is not limited to the enumerated types of calls. There is a provision, however, that if the telephone set or the LEC can block additional digit dialing after the initial call set-up, 1+ long distance and seven digit local dialing may be permitted if specifically requested by the administration of the confinement facility. This latter provision was in the original proposed rule.

e. Inmate access to unrestricted coin telephones. The Commission has revised the proposed Rule R13-1(k)(2) from compulsory language ("shall") to permissive language ("may"). In this context, "unrestricted coin telephones" means a pay telephone generally available to the public under the general PTAS tariffs. The Commission was concerned about the extent of its jurisdiction in this area. While it is certainly competent for the Commission to decide what sorts of exceptions should be made to the general PTAS tariffs to allow the reasonable operation of COCOTs and other payphones in the confinement facility environment, it is less clear that the Commission can instruct such a facility as to what types of phones and how many must be placed where.

Confinement facilities should nevertheless be aware that they may need to make additional provisions for inmate communications needs, especially with respect to access to legal counsel. The Commission's decision merely creates an exception to the general PTAS tariffs to allow restrictions on payphones in the actual detention areas of confinement facilities. This is not intended as an exhaustive or exclusive treatment of inmate access to communications. Confinement facilities may still need to provide other means of inmate access to communications to conform to constitutional requirements.

2. The rules set out in Appendix A should apply in substance to the LECs. Most of the parties were not opposed to this suggestion. Southern Bell already operates payphones in confinement facilities under a 0+ collect-only restriction and was required by the Commission's October 11, 1988, Order in this docket to file a conforming tariff. A 0+ collect-only restriction would therefore not represent a major change to Southern Bell. In any event, the Commission sees no rationale for distinguishing the LEC payphones and the COCOTs in this context.

3. The Commission should hold a hearing on the appropriateness of automated collect-only calling. The Commission received extensive comments on whether payphones programmed for automated collect-only calling should be permitted in the confinement facility environment.

For reasons set out in greater detail in a subsequent Order, the Commission is of the opinion that automated collect-only calling raises significant questions as to its appropriateness under the law and public policy and generally needs to be further investigated not only as applied to the confinement facility environment but to the general public as well. The Commission therefore determines that a hearing would be appropriate on this matter.

IT IS, THEREFORE, ORDERED as follows:

1. That the Rule R13-1(k) as set out in Appendix A be promulgated as a final rule to become effective no later than 60 days from the issuance of this Order.

2. That conforming changes be made to the appendices to the November 17, 1989 Order in this docket, which is provided to applicants for special certificates, as soon as practicable.

3. That the proposed rules set out in Appendix A of the March 8, 1989, Order as interim rules be repealed as soon as the final rules become effective.

4. That the LECs regulated by this Commission which provide payphones in the detention area of confinement facilities file tariffs conforming in substance to the requirements of the rules attached as Appendix A no later than 60 days from the issuance of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of June 1989.

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

Commissioner Cook dissents in part.

APPENDIX A

Rule 13-1(k) is promulgated to read as follows:

(k) Notwithstanding any of the rules above to the contrary, and subject to all other applicable provisions of the rules, including but not limited to restrictions on the charges that may be made, the following provisions shall apply to all PTAS instruments or stations located in the detention areas of local, state, or federal confinement facilities:

(1) Such instruments or stations:

(a) may be arranged for outward-only calling, if specially requested by the administration of the confinement facility;

(b) may be arranged to terminate calls after 20 minutes of conversation time, if specifically requested by the administration of the confinement facility, and the local exchange company and presubscribed interexchange carrier are so notified by the telephone provider;

(c) shall be arranged to block 411 calls, but a copy of a current local directory must be available for inmate access;

(d) shall be arranged to allow only 0+ collect calls for local, intraLATA, and interLATA calls and to block all other calling including, but not limited to, local direct calls, credit card calls, third number calls, 1+ sent-paid calls, 0+ sent-paid calls, 0- sent-paid calls, 0- calls, 800 calls, 900 calls, 976 calls, 950 calls, 911 calls, and 10XXX calls. Provided, however, that where the local exchange company or the telephone set can block additional digit dialing after initial call set-up, 1+ long distance and seven digit local dialing may be permitted if specifically requested by the administration of the confinement facility.

(2) Unrestricted coin telephones under administrative control may be available outside of a jail cell for supervised use by inmates.

COMMISSIONER COOK DISSENTING IN PART:

I dissent from the Majority's decision to change R13-1(k)(2) from a requirement that unrestricted payphones under supervision, shall be available to the option that such phones may be available.

I dissent not only because I believe it is important to ensure that the constitutional rights of prisoners to access to counsel and to the courts are protected but also because I believe that prisoners should have reasonable, open communications access to the outside world, including their families.

With respect to the constitutional rights of prisoners, just this year the California Court of Appeals in In Re Ron Grimes, 89 Daily Journal D.A.R. 3902 (1989), sustained a trial court in finding that an exclusively collect-only system in the Humboldt County jail violated the constitutional rights of inmates to counsel and to access to the courts. The Appeals Court weighed the overall ability of the inmates to communicate with counsel with the justifications offered by the jail authority for using the particular system, including prevention of fraud by inmates and administrative efficiency. The court found those justifications insufficiently persuasive and concluded that the collect-only system unreasonably restricted communications between inmates and their attorneys.

The importance of this case is that it suggests that an exclusive collect-only system in a jail may be unconstitutional. It may therefore be necessary to provide alternative systems. In Grimes the trial court mandated a direct line to the public defender's office. An adequate response in North Carolina could be a requirement that unrestricted payphones be available. Although Grimes is a California case and is not a direct precedent in North Carolina, its reasoning represents an important current in constitutional thought on prisoner's rights.

These constitutional issues are important. But there are other reasons as well to support a requirement for supervised unrestricted payphones. We have moved beyond the notion that prisoners suffer a "civil death" while they are in prison or that prison should serve solely a punitive function. I believe that it is a societal good and a factor that contributes to rehabilitation for prisoners to be able to have reasonable contact with the world outside the prison walls. Obviously, a system which inhibits and isolates a prisoner from fully communicating with his family or other support systems in the community is, quite simply, working against rehabilitation.

Furthermore, the Commission's change from a mandatory to an optional arrangement is puzzling in view of the comments of parties. While some parties recommended minor changes, there was no fierce opposition to the mandatory provision, nor did the prison administration raise any objections. The Public Staff's response was the strongest in favor of the provision. The Public Staff stated that "(d)ue to the severe limitation imposed by the proposed rule, it is . . . imperative that Rule R13-1(k)(2) be retained." (Emphasis mine). The Public Staff went on to say that its acceptance of the restrictions allowed by the Rule "assumes full availability from the unrestricted telephones of otherwise available services."

The Majority states that it doubts the extent of its jurisdiction in this areas and that it is unclear "that the Commission can instruct such a facility as to what types of phones and how many must be placed where." I would simply point out that the Commission is regulating the payphone provider and not the confinement facility. Having unrestricted phones can simply be viewed as one of the terms and conditions of operating a regulated business in this unique venue.

It is true that the Commission concedes that the regulation is not intended as "an exhaustive or exclusive treatment of inmate access to communications." The Commission warns that confinement facilities clearly bear the responsibility for meeting those needs, and at least the Commission is not standing in the way of their addressing those issues. The Commission is not mandating collect-only calling exclusively.

Nevertheless, it is my belief that a stronger message needs to be sent. Constitutional rights do not merely apply to the strong, the wealthy, and the free. Their true measure comes when we apply them to the weak, the poor, and the imprisoned.

Ruth E. Cook, Commissioner

DOCKET NO. P-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Issuance of Special Certificates for the Provision of Telephone Service by Means of Customer-Owned Pay Telephones	)))	ORDER ALLOWING AUTOMATED COLLECT CALLING

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 17, 1989

BEFORE: Commissioner Laurence A. Cobb, Presiding; and Commissioners Robert O. Wells and Julius A. Wright

APPEARANCES:

For Southern Bell Telephone and Telegraph Company:

Edward L. Rankin III and J. Lloyd Nault II, General Attorneys, Southern Bell Telephone and Telegraph Company, Legal Department Post Office Box 30188, Charlotte, North Carolina 28230

For Carolina Telephone and Telegraph Company:

Robert C. Voigt, Senior Attorney, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

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

William A. Davis II, Tharrington, Smith & Hargrove, Attorneys at Law, 209 Fayetteville Street Mall, Raleigh, North Carolina 27601

For North Carolina Payphone Associations, Inc.:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605

For Intellicall, Inc.:

James J. Freeman and Judity St. Ledger-Roty, Reed, Smith, Shaw and McClay, Attorneys at Law, 1200 18th Street, N.W., Washington, D. C. 20036

and

Theodore C. Brown, Jr., Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605

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:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 28520 Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: In the Commission's Order of March 8, 1989, requesting comments concerning payphones in confinement facilities, the Commission also asked for comments concerning a new variation of the so-called "smart phones" able to offer automated collect calling. The Commission described a particular telephone which, by means of a synthesized voice, would direct the end-user desiring to place a collect call to state his name into the telephone. The telephone would record the name of the caller and then dial the number either as local or 1+. When the called number was answered, a pre-recorded message would announce the collect call, playing back the recorded name. The message would then state that the call could be accepted by dialing "1" on a touch-tone telephone. If no response was received from the called telephone within a pre-determined time, the call would be completed and billed to the called number. This last feature of automatic-collect telephones was frequently referred to during the course of this hearing as "the negative option."

In the Order of March 8, 1989, the Commission specifically inquired of the parties: "Should payphones programmed for automated collect-only calling be permitted in the confinement facility environment? If so, under what rules?" Other comments were solicited by that Order and were received by the Commission. However, the responses to the cited question were noteworthy both for their length and for the number and complexity of the issues raised. In

the Commission's June 16, 1989, Order promulgating final rules regarding COCOTs in confinement facilities, the Commission concluded that a hearing should be held on automated collect calling. On June 20, 1989, the Commission issued its Order Setting Hearing on Automated Collect-Only Calling, scheduling a hearing for October 24, 1989. By Order of July 13, 1989, the hearing was rescheduled for October 17, 1989. The Order propounded the following questions:

1. Under current Commission rules, do holders of COCOT certificates who are not also certified interexchange carriers have authority to charge and bill anyone other than the person initiating a local, intraLATA or interLATA call from their telephones?

2. If COCOT providers do not have this authority at present, does the Commission have statutory discretion to grant the authority to them?

3. If the Commission does have this discretion, would such a grant of authority be in the public interest? Should the grant of authority provide for the handling of automated 0+ collect calls only or, in addition, collect calls handled by an alternative operator service firm on behalf of the COCOT provider?

4. What cost factors should be considered in constructing a just and reasonable automated 0+ collect surcharge? What is an appropriate level for such a surcharge? Should the surcharge be tariffed or covered by Commission rule?

5. Provide any available information on the incremental cost of the automated 0+ collect capability in a telephone otherwise suitable for use under Commission Rule R13. State what capabilities relevant to the automated 0+ collect function are included, such as recognition of variable touchtone signals, dial plus signals, or a positive voice response, time-out capability, etc.

6. Should the LECs' authority be expanded to include the provision of billing and collection services for automated 0+ collect COCOT operations? If so, what tariffs should apply? (What rates and charges would be appropriate?) Should the basis for the rates and charges be cost, value, market or other? Explain.

7. What firms currently provide billing and collection services suitable for use by automated 0+ collect COCOT providers? Describe their operation and provide any available information on the cost of these services.

8. Is the use of a time-out sequence to initiate billing appropriate? What, if any, problems would such an arrangement generate? What alternatives are there to a time-out sequence for calls completed to a dial pulse telephone?

9. Is it feasible for the automated 0+ collect to be capable of receiving and recognizing as a positive response from the called party dial pulse signals from dial pulse telephones or a

positive verbal response from the called party? Will dial pulses generated at the called party end pass through the network to the calling party's telephone? Provide any information on the availability of these features and the cost.

10. Is the ability of the automated telephone to recognize a positive response from all telephones an essential characteristic in order for automated collect calls to be in the public interest?

11. Is the potential for fraud greater with automated 0+ collect calls or operator-assisted 0+ collect calls? Explain.

12. With a default time-out feature, how will automated 0+ collect calls be kept from being completed to another paystation, a direct inward switching access (DISA) number, an answering machine, a telecommunications device for the deaf (TDD), an ASR teletypewriter, feature group A lines, dial-up WATS, etc." Will completion of such calls to these lines be burdensome to consumers, LECs or carriers? If so, how can this problem be avoided?

13. Should the blocking of access to special services such as 800 service, dial-it (900 and 976) services, and access to alternate carriers (950 and 10xxx) be required? Should this blocking be done at the station and be the responsibility of the COCOT provider or should the blocking be a mandatory service provided by the LEC in the central office?

Statements and/or testimony were filed by the Attorney General, the Public Staff, Southern Bell Telephone and Telegraph Company (Southern Bell), Carolina Telephone and Telegraph Company (Carolina), Lexington Telephone Company (Lexington), North State Telephone Company (North State), Central Telephone Company (Central), North Carolina Payphone Association (NCPA), and Intellicall, Inc. (Intellicall).

At the outset, the Commission wishes to clarify a point. Although this docket has been identified as an investigation of automated collect-only calling, it has never been the intent of the Commission to consider only those telephones totally restricted to automated collect calling. Pay telephones restricted to collect-only calling are, under the existing rules and regulations, allowed only in confinement facilities. This docket is intended to address the questions raised by the automated collect capability in all pay telephones, including those which are also capable of initiating other forms of calls, and the questions posed in the Order initiating the docket are consistent with that view. The comments and testimony filed by the parties indicate that they understood this to be the intent of the Commission.

The hearing began as scheduled on October 17, 1989. The following witnesses testified as public witnesses at the invitation of the NCPA: Captain Randall Ray, Jail Division, Buncombe County Sheriff's Department; Captain Robert Spell, Chief Jailer, New Hanover County Sheriff's Department; Chaplain Tom Meadows, Mecklenburg County Sheriff's Department; and Major Samuel Satterfield, Jr., Administration and Detention Officer, Durham County Sheriff's

Department. Mr. Myron Newman of Public Communications, Inc., Atlanta, Georgia, testified as a public witness at the invitation of the Public Staff. Thereafter the following witnesses testified and offered exhibits: J. Vincent Townsend, President, NCPA; B. Reid Presson, Vice President, Intellicall; Marcus H. Potter, Customer Service Planning Manager, Carolina; Kelly G. Comacho, Staff Manager, Rate Department, Southern Bell; and William J. Willis, Jr. Communications Engineer, Communications Division of the Public Staff.

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

FINDINGS OF FACT

1. Pay telephone instruments or systems which are capable of generating automated collect calls and storing and retrieving the billing information associated with such calls are available in North Carolina. For the purpose of this Order, "automated collect call" shall mean a call placed and billed to the called telephone number without the assistance or intervention of a human operator.

2. Holders of COCOT certificates are authorized to carry telephone calls initiated from their telephones and to accept cash and commercial credit cards in payment. Holders of COCOT certificates other than certificated interexchange carriers, have not been granted authority by this Commission to bill parties other than the persons initiating calls from their telephones.

3. The Commission has the discretion under G.S. 62-110(c) to authorize individual holders of COCOT certificates to bill calls initiated on their telephones to the called telephone number.

4. A grant of authority to COCOT providers to employ automated collect devices and to bill calls initiated on their telephones to the called telephone number would not be inconsistent with the public interest provided:

(a) A positive response must be required from the called party indicating willingness to pay for the call;

(b) If a positive response is not received, the calls must be diverted (except in a confinement facility environment) to an operator of a certified carrier or instructions must be provided on how to complete the call using an operator of a certified carrier;

(c) Recipients of such calls must not be charged more for the call than would have been charged by the local exchange company for a local intraLATA call or by AT&T Communications for an interLATA call, including any surcharge for the collect service;

(d) This billing authority must only be exercised in connection with automated collect calls;

(e) The COCOT provider must use a certified local or interexchange carrier to transmit all communications involved in the call;

(f) The COCOT provider should be required to block or arrange for blocking of automated collect calls to 900, 976, 950, 700, and 10xxx codes; and

(g) Authorization to employ automated collect call capability must not be taken to allow restriction of the end-user's ability to make other types of calls, such as customer-dialed credit card or sent-paid coin calls.

5. LECs should be authorized to provide billing and collection services to COCOT providers for automated 0+ collect calls in the same way such services are currently provided to interexchange or local carriers for operator assisted collect calls. Implementation of this authority will require revision of the Access Service Tariff.

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

The evidence supporting these findings of fact is contained in the testimony of the witnesses and in the record as a whole. The parties were largely in agreement or silent on the matters recited. The Commission concludes that it has jurisdiction over the parties and over the subject matter and authority to decide the issues presented. The Commission further concludes that, absent specific authorization from the Commission, COCOT certificate holders other than certificated local and interexchange telephone companies are not authorized to bill in their own names for calls initiated on their telephones.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

In the Order of June 20, 1989, the Commission set this hearing "to determine whether allowing [automated collect telephones] generally is in the public interest and, if so, under what regulations. Based on the evidence found in the testimony of all the parties, the Commission concludes that properly regulated, the provision of automated collect services by COCOTs is in the public interest. No party is this docket argued to the contrary. The question then becomes what the appropriate regulations for such services might be. These regulations are for COCOTs equipped for automated collect operations in general.

Special regulations for payphones located in confinement facilities were promulgated by the Commission's Order of June 16, 1989. These confinement facility regulations remain in effect, apply to payphones in confinement facilities, and are not at issue in this docket. There must necessarily be differences in the way automated collect calling is treated in a confinement facility environment and how it is treated with respect to the general public. For example, as noted below, there is to be no diversion to a live operator in the confinement facility environment. End-users among the general public must also have access to other types of calling, such as sent-paid and credit card calls, while these are to be denied to inmate end-users. Also, COCOT providers offering automated collect calling in the confinement facility environment must still provide for the blocking of calls pursuant to Rule R13-1(k)(1)(d), which exceeds the degree of blocking required for automated collect calling offered to the general public.

Evidence and conclusions for the specific regulations found appropriate are as follows:

Positive Response - Items a and b

The principal contested regulatory question is how to deal with the called party who does not or cannot respond to the calling telephone by means of touch-tone signals. The parties were in general agreement that requiring some form of positive response from the called party is the best practice. Alternatives to touch-tone signals which were mentioned by the parties were dial pulse counting for rotary telephones and voice recognition.

The parties differed on whether dial pulse counting is technically reliable. There was evidence that this technique is employed in some cases. There was also testimony that dial pulse signals may not always be distinguishable from line noise. The Commission does not have sufficient evidence to determine whether this procedure is practical. On the basis of the evidence presented, the Commission sees no reason to prohibit the use of such a procedure should a telephone provider choose to employ it.

The parties agreed that voice recognition capability, if available, would provide the best solution to this problem. There was no general agreement on whether voice recognition is currently economically feasible for stand-alone pay telephones. The Commission does not have sufficient evidence before it to make this determination.

Assuming that voice recognition is not yet universally available or economically and technically practical, the question is what the telephone's default reaction to the non-responsive called party should be. The possible answers are: (1) complete and bill the call after a pre-determined interval; (2) disconnect without completing the call; and (3) automatically transfer the call to a certificated carrier. The parties were divided on this issue. Mr. Townsend, testifying for the NCPA and Mr. Presson, testifying for Intellicall, supported allowing connection after a pre-determined interval. They supported their arguments by noting that calls from confinement areas, where access to live operators is blocked, can only be completed to rotary telephones in this manner. Mr. Willis for the Public Staff, Mr. Potter for Carolina Telephone, and Ms. Comacho for Southern Bell, favored requiring a positive response before call completion. They stated that the potential problems of unwanted calls completed, for example, to the telephones answered by answering machines or children outweighed any benefits to be gained by this procedure.

In reaching its conclusion on this question, the Commission notes that the availability of voice recognition was regarded as a question not to whether but of when. Even so, the Commission concludes that the public interest is best served by requiring a positive response from the called party prior to completion of the call.

In all situations other than confinement facilities, the calling party will be able to complete the call by means of a live operator. However, as noted above, this is not to be the case in a confinement facility environment. To allow this would defeat the purpose of the Commission's rules under Rule R13-1(k) to prevent fraud and abuse.

While the Commission notes that this docket is not directly concerned with payphones in confinement facilities, the public witnesses who testified on behalf of various jails in North Carolina all stated that inmates can continue to have supervised access to conventional pay telephones. Thus, the Commission's conclusion that a positive response should be required does not necessarily deprive anyone of the ability to place a collect call to any telephone.

Cost to Recipient - Item c

The Commission's Order Setting Hearing raised the question of an appropriate surcharge for the automated collect service. In practice, this resolves into the question of whether the cost of accepting a collect call should be different when it is placed from a telephone with automated collect capability rather than through a certified carrier. Again, the Commission notes that in all situations other than confinement facilities, the calling party has the option of choosing to place the call either as automated collect or live operator assisted over the same telephone, and in confinement facilities the option of supervised access to conventional pay telephones remains. There is no evidence that the called party can obtain information concerning the cost of the call from the automatic collect equipment. Given these considerations, the Commission finds that there has been no showing that any surcharge in excess of that approved for collect calls through certified carriers would be in the public interest. The Commission therefore concludes that the cost to the called party for a call completed via an automated collect telephone should not exceed the charge for the same call through the local exchange company or AT&T.

Limit on Billing Authority and Carriers - Items d and e

The Commission wishes to emphasize that the pay telephone providers have not requested, and the Commission by this Order does not grant, any billing authority other than that necessary for the billing of automated collect calls and specifically does not authorize any other operator services. No party advocated allowing alternative operator services to provide such services. The Commission concludes that its Order in Docket No. P-100, Sub 101, was dispositive of the question of alternative operator services in North Carolina.

Requirement for Blocking - Item f

All parties were agreed on the need for blocking certain automated collect calls, such as those to 900, 976, and 10xxx codes. The only area of dispute was whether such blocking should be at the telephone or at the central office. The Commission is of the opinion that the question of where such calls are blocked does not affect the public interest. The Commission concludes that the COCOT provider should be responsible for blocking automated collect calls to these codes in any appropriate manner. The Commission further concludes that the 700 code calls should be blocked.

The Commission further notes that this blocking requirement must be understood as relating to the automated-collect mode only. As set forth below, the general public end-user of a payphone must be able to make the full range of calls. This means, for instance, that while the general end-user could not

access his interexchange carrier through the auto-collect mode, he must still be able to do so over some other mode on the same phone.

Capability of Completing Other Types of Calls - Item g

There was limited discussion during the hearing of how an end-user who elected to make a call other than an automated collect calls could do so. The Commission finds that the public interest would not be served by restricting end-users to this type of call only. The Commission concludes that pay telephones outside of the confinement facilities equipped for automated collect calling must also allow the other types of calls, such as customer-dialed credit card and sent-paid coin calls, which are currently generally available to users of pay telephones.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

There was general agreement among the parties that billing by LECs is the most convenient, and possibly the only practical method by which COCOT providers could implement collection for calls completed on automated collect telephones. Intellicall's witness, Mr. Presson, described the procedure employed by Intellicall Billing Services (IBS). After collecting billing records from COCOT providers, IBS reformats and compiles those records and then forwards them to a billing agent who transmits them to the appropriate LEC.

The "billing agent" mentioned by Mr. Presson is clearly equivalent, if not identical, to a "clearinghouse agent" as described in the Commission's Order of October 28, 1988, and February 7, 1989, in Docket No. P-100, Sub 65. Those Orders establish the conditions under which LECs are permitted to provide billing and collection services for such agents. The Access Service Tariff currently allows provision of billing and collection services to clearinghouse agents only for calls billed for certificated IXCs and LECs. In summary, those Orders found in part that identification of the actual service provider on the consumer's bill is necessary if LEC billing for clearinghouse agents is to be allowed. The Commission finds that there is even more cause in the case of a collect call placed by an automated telephone to ensure that the person billed for that call is able to identify the call and its provider. The Commission concludes that the PTAS tariffs of the LECs should be revised to allow for provision of billing and collections services to clearinghouse agents for calls billed on behalf of properly certificated COCOT providers. The tariffs should include requirements similar to those contained in the Access Service Tariff authorizing billing and collection services for clearinghouse agents for calls billed on behalf of certificated IXCs and specifically should include a requirement that the name and telephone number of the COCOT provider appear on the customer's bill. The rates to be charged to COCOTs for billing and collection should be arrived at by the same methodology as for IXCs.

The Commission recognizes that some LECs may not have the capability to provide this service. The Commission concludes that those LECs which do not have the capability should, in lieu of tariffs, provide a statement to that effect and an estimate of the date by which that service will be available.

IT IS, THEREFORE, ORDERED as follows:

1. That holders of COCOT certificates, who apply for and receive specific authority to do so, may employ automated collect telephones.

2. That the Public Staff, and any other party desiring to do so, shall prepare proposed revisions to the rules and regulations of the Commission (including a proposed application form) permitting the employment of automated collect telephones by holders of COCOT certificates who request this additional authority and further providing that:

(a) A positive response must be required from the called party indicating willingness to pay for the call;

(b) If a positive response is not received, the call must be diverted (except in a confinement facility environment) to an operator of a certified carrier or instructions must be provided on how to complete the call using an operator of a certified carrier;

(c) Recipients of such calls must not be charged more for the call than would have been charged by the local exchange company for a local intraLATA call or by AT&T Communications for an interLATA call, including any surcharge for the collect service;

(d) This billing authority must only be exercised in connection with automated collect calls;

(e) The COCOT provider must use a certified local or interexchange carrier to transmit all communications involved in the call;

(f) The COCOT provider should be required to block or arrange for blocking of automated collect calls to 900, 976, 950, 700, and 10xxx codes: and

(g) Authorization to employ automated collect call capability must not be taken to allow restriction of the end-user's ability to make other types of calls, such as customer-dialed credit card or sent-paid coin calls.

3. That the LECs file tariffs for billing and collection services consistent with the provisions of this Order, or statements concerning inability to offer this service, no later than January 25, 1990.

4. That revisions of the PTAS tariffs of the LECs to integrate other conclusions reached herein will be addressed after promulgation of the revised Rule R13 in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of December 1989.

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

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 Concerning the Shared Use and/or Resale of Telephone Services	))))	ORDER PROMULGATING RULES REGARDING COLLEGES AND UNIVERSITIES

BY THE COMMISSION: On June 26, 1989, the General Assembly enacted Chapter 451 (HB 486) amending G.S. 62-110 to add a new subsection G.S. 62-110(e). This legislation supplemented and, with respect to colleges and universities, modified the provisions of G.S. 62-110(d) dealing with shared and resold service generally. The Commission issued an Order Adopting Procedures and Promulgating Rules concerning the provisions of G.S. 62-110(d) on February 26, 1988.

In essence, G.S. 62-110(e) authorized the Commission to promulgate rules allowing nonprofit private and state colleges and universities and their affiliated medical centers to provide shared and resold service, on both contiguous and certain noncontiguous premises, to both students in university housing and certain nonstudents (notably, persons or businesses providing education, research, professional, food or other support services directly to the institutions, their students or guests) and still retain the privilege of receiving a flat rate from the local exchange company.

On August 11, 1989, the North Carolina Higher Education Telecommunications Consortium (Consortium), comprised of public and private institutions of higher education and affiliated medical centers in North Carolina, filed a Petition for Rulemaking in this docket in which it set out proposed rules. On August 17, 1989, the Commission issued an Order Establishing Rulemaking and Requesting Comments. All parties to Docket No. P-100, Sub 97, were made parties to this proceeding and invited to file comments both generally and specifically concerning the proposed rules submitted by the Consortium, which the Commission denominated for administrative purposes as Proposed Chapter 14A of the Commission rules.

The following parties submitted comments and/or reply comments in this proceeding: The Attorney General, the Public Staff, Central Telephone Company (Central), Carolina Telephone and Telegraph Company (Carolina), GTE South (GTE), Southern Bell Telephone and Telegraph Company (Southern Bell), and the Consortium. Southern Bell filed a Notice on October 30, 1989, purporting to withdraw its reply comments of October 20, 1989. It is the Commission's position that a party may not withdraw already filed comments without leave. The Commission will, however, treat Southern Bell's notice as a motion and allow such withdrawal as to those matters in which Southern Bell argues a position or recommends a policy. However, the Commission will advert briefly to certain factual statements regarding its actual and intended practices which were presented by Southern Bell in its comments.

After careful consideration of the filings in this proceeding, the Commission reaches the following

CONCLUSIONS

1. That a Rule R14A-11 should be added to provide for certain restrictions as to charges to end-users. The Public Staff in its October 13, 1989, comments stated its belief that the college and university providers of shared and resold service (hereinafter, college STS providers) should charge only flat monthly rates to their end-users for local service and should not be allowed to charge rates for long-distance service which exceed AT&T's MTS rate. The Consortium essentially agreed, provided that the flat rate limitation on local rates would continue as long as the college STS provider was receiving a flat rate for local service from the LEC. The Consortium recommended language which, in substance, the Commission has concluded it would be in the public interest to adopt:

> R14A-11. Charges to End-users. Providers shall, for so long as they receive flat rate local service from the serving local exchange company, only charge flat monthly rates as opposed to measured or message rates for local exchange service, and shall not charge rates for long-distance service which exceed AT&T's MTS rates.

2. College STS Providers should be required to connect their non-contiguous premises utilizing access lines provided by the LEC or a certified interexchange company (IXC). The Public Staff in its comments asserted that Proposed Rule R14A-8 omits the requirement in Rule R14-8 that interconnection of end-users of a single provider, when they are located on non-contiguous premises, must be through the LEC or certified IXC. These provisions read as follows:

> Rule R14A-8. Networking. Interconnection of end-users of different providers on noncontiguous premises must be through the local exchange company or certified long-distance carrier.
>
> 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.

Because of the possibility that end-users of the same college STS provider on noncontiguous premises could be interconnected through the college STS providers' facilities, rather than through the LEC's or IXC's, the Public Staff argued that the proposed Rule R14A-8 sanctioned bypass of the LECs and IXCs and was not in the public interest. If Rule R14A-8 were identical to R14-8, any given institution would still be able to connect all of its end-users in a single system, as allowed by law, but would be required to use LEC or IXC facilities. Thus, the Public Staff did not dispute that non-contiguous premises could be interconnected but was concerned about the method by which they were interconnected.

In its Reply Comments of October 20, 1989, the Consortium forcefully disputed the Public Staff's argument. The Consortium argued that "this is a novel conception of bypass" and that the Public Staff's position was "inconsistent with statute." The Consortium pointed out that the provisions of Rule R14-7 and proposed Rule R14A-7 (provision of local access lines) were identical and argued that Rule R14A-8 "merely modifies the 'anti-networking'

provision to conform to the networking restriction adopted by the General Assembly in the case of colleges and universities." The Consortium maintained that adoption of the Public Staff's would "nullify the statutory provisions which specifically authorize campus telephone systems to serve non-contiguous premises." In a footnote, the Consortium asserted the existence of an instance in which facilities necessary to serve a non-contiguous location were not available from an LEC.

The Commission finds merit in the Public Staff's concern about bypass and believes that the Consortium's arguments are based on a misreading of the statute. In reaching this conclusion, the Commission must construe the language of G.S. 62-110(d) and (e).

It is certainly true that one of the major differences between G.S. 62-110(d) and G.S. 62-110(e) is that G.S. 62-110(d) restricts the provision of shared or resold service to the "same contiguous premises" whereas G.S. 62-110(e) specifically allows the college STS provider to serve "both contiguous campus premises owned or leased by the institution and non-contiguous premises owned or leased exclusively by the institution." Accordingly, the statutory networking provisions differ. G.S. 62-110(d) states:

> [T]here shall be no "networking" of any services authorized under this section whereby two or more premises where such services are provided are connected . . .

G.S. 62-110(e) states:

> There shall be no "networking" of any services authorized under this subsection whereby two or more different institutions where such services are provided are interconnected.

The purpose of the anti-networking provision in G.S. 62-110(d) is to prevent the violation of the "same contiguous premises" provision. The purpose of the anti-networking provision in G.S. 62-110(e) is to prevent different institutions from combining into a single network.

The Consortium appears to assume that, because college STS providers are allowed to serve certain non-contiguous premises, the statute must also empower them to do so over their own facilities as though these premises were contiguous. In point of fact, the statute does <u>not</u> specifically address the issue of <u>method</u> of interconnection of non-contiguous premises. In the absence of a specific statutory mandate on this point, this question is left by statute to the sound discretion of the Commission. G.S. 62-110(e) provides that "the Commission shall be authorized to establish the terms and conditions under which such service shall be provided."

The Commission is of the opinion that the Public Staff has raised a legitimate concern regarding "bypass." The agglomeration of large networks of non-contiguous premises without the use of the facilities of the LEC or IXC will tend to burden the general ratepayer. The status and health of the public network is a legitimate public policy concern. The statute itself evinces a similar concern when it balances the rights of the STS provider and the rights and responsibilities of the LEC to serve. The Commission must balance the

rights and responsibilities of all parties in light of the public interest. Accordingly, the Commission concludes that the non-contiguous premises of an institution should be connected to the contiguous premises through LEC access lines or a certificated IXC.

With respect to the Consortium's citation of an unidentified example of a non-contiguous location which could not (or would not) be served by a LEC, the Commission would make two points. First, the LEC has an obligation to serve its customers within its franchised territory. An unwarranted refusal would be subject to complaint before the Commission. Second, if for some reason service by the LEC is truly impossible, the Commission could be approached for a limited waiver to allow the college STS provider to connect over its own facilities. The general principle of interconnection on non-contiguous premises by the LEC or IXC would remain.

The Commission therefore concludes that proposed Rule R14A-8 should be modified to read as R14-8 currently does.

3. This docket neither addresses nor is to be construed as authorizing the resale or sharing of the State Telephone Network (STN). Several parties expressed concern over the possibility that state colleges and universities might share and resell the STN under G.S. 62-110(e). The Consortium stated that this issue is not even raised in this docket. The Commission agrees that the issue of sharing and resale of the STN is not before the Commission in this docket, nor are the promulgated Rules R14A-1 et seq. to be construed as so authorizing. The issue of STN is currently before the General Assembly in the form of SB 539, and the General Assembly is the proper forum for the disposition of this issue.

4. The categories of end-user should remain as expressed in statute and Rule R14A-2(d). The Attorney General, Central, and GTE all expressed concern about the potential expansiveness of the categories of end-users who are entitled to receive shared or resold service under G.S. 62-110(e). This provision reads in relevant part:

> [P]rovided these services are offered to students or guests housed in quarters furnished by the institution, patrons of hospitals or medical centers of the institution, or persons or businesses providing educational, research, professional, consulting, food, or other support services directly to or for the institution or its students or guests.

Proposed Rule R14A-2(d) follows this language closely.

The Consortium responded that these parties had participated in the process by which these categories were listed and that the categories must be read in light of the preceding provision that the services can be provided only on "contiguous campus premises owned or leased by the institution and non-contiguous premises owned or leased exclusively by the institution."

While the concerns of certain parties about the potential expansiveness of these categories are not unwarranted, the Commission believes that the Consortium's points have considerable merit. The Commission is bound by the plain language of the statute, and the Commission is of the opinion that it

would be premature to attempt to refine these categories by deciding exactly what types of support services are direct and which are not.

It is enough to observe at this time that there are limits as to the nature of the contiguous or non-contiguous premises, that the persons, businesses or other support services must be directly related to the institution, and that the Commission's complaint process is available to any party, such as a LEC, that is of the opinion that a college STS provider is abusing the provisions of this section.

5. Proposed Rule R14A-6 regarding LEC access should be promulgated as proposed. Central and Southern Bell (in its purportedly withdrawn comments) filed comments regarding the obligation to serve beyond the STS provider's demarcation point. Central argued that the LEC should be obligated to provide service to the reseller's demarcation only and that for special service (e.g., paystations, data loops, etc.) or service to students or individuals wanting direct LEC connections, the customer should be responsible for the physical facilities from their premises to the demarcation point of the resale area. Southern Bell recognized its obligation to serve the end-user on request and stated its intent to provide non-STS services over its own facilities behind the demarcation point.

The Commission's opinion is that this issue is adequately addressed by the language of proposed Rule R14A-6, which is identical to Rule R14-6:

> 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.

In its February 26, 1988, Order at Page 14, the Commission explained its rationale for this rule, and it is not necessary to restate it here. The end-user has a right to request direct service and the LEC has an obligation to provide it. The STS provider's obligation is not only not to obstruct such service but to see to it that "(s)uch access shall be provided to the local exchange company free of charge."

The Commission expects that the exact technical details of access will be worked out between the LEC and STS provider in negotiation, but the principles expressed above are the ones to be applied. As with any such STS related dispute, a complaint can be brought before the Utilities Commission by the aggrieved party.

6. A copy of the standard form contract with residential end-users should be filed with the Commission when the college STS provider applies for a special certificate. The Attorney General expressed concern that residential end-users of college STS providers should have some added degree of protection since "the proposed rule would deregulate their local service even though such service would continue to be provided in an environment with monopolistic characteristics." The Attorney General suggested that the residential end-user contracts should provide notice of the applicable complaint procedures and that a copy of the standard form contract applicable to residential use be filed with the application for a special certificate.

The Consortium argued that the Attorney General's recommendations were unnecessary, pointing out that proposed Rule R14A-5 contained provisions concerning end-user contracts including a statement of the name and telephone number of the provider representative to whom complaints should be addressed (R14A-5(c)) and a statement that the end-user may submit unresolved complaints about quality of service to the Commission (R14A-5(d)). The Commission would further note in this vein that proposed Rule R14A-5(b) requires a statement that the end-user may obtain service directly from the LEC.

The Commission finds no particular advantage to be gained in requiring the college STS provider to set out a detailed statement of complaint procedures in the residential end-user contract. The current requirements seem to be sufficient. However, because a residential setting is involved on a considerable scale for the first time, the Commission is interested in receiving a copy of the proposed standard form residential end-user contract. Such a requirement in the Commission's view is not unduly burdensome and would serve the public interest.

IT IS, THEREFORE, ORDERED as follows:

1. That the rules set out as Chapter 14A, Sharing and/or Resale of Telephone Service by Colleges and Universities Pursuant to G.S. 62-110(e), Rule R14A-1 et seq., attached as Appendix A, be promulgated.

2. That the LECs be, and hereby are, required to file tariffs for sharing and resale of service by qualified colleges and universities in accordance with the provisions of the Order and the rules herein promulgated not later than thirty (30) days from the date of this Order. The effective date of these tariffs should be sixty (60) days from the date of this Order.

3. That the compliance date of October 1, 1989, set out in the Commission's July 22, 1989, Order and postponed indefinitely pending further order by Order of August 17, 1989, be repealed.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of November 1989.

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

APPENDIX A

CHAPTER 14A
SHARING AND/OR RESALE OF TELEPHONE
SERVICE BY COLLEGES AND UNIVERSITIES
PURSUANT TO G.S. 62-110(e)

Rule R14A-1. Application. This Chapter governs sharing and/or resale of telephone service as authorized by G.S. 62-110(e).

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 in this Chapter.

Rule R14A-2. Definitions (for purposes of this Chapter only).

(a) 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 telecommunications arrangement where two or more unrelated parties utilize a common telephone service.

(c) Provider. Provider, for purposes of this Chapter, shall mean a nonprofit college or university, and its affiliated medical center(s), which is qualified under Sections 501 and 170 of the United States Internal Revenue Code of 1986 or which is a State-owned institution and which subscribes to the local exchange telephone company and offers shared and/or resold service to others.

(d) End-user. The party to whom resold or shared service is provided. End-users under this Chapter shall mean students or guests housed in quarters furnished by the institution, patrons of hospitals or medical centers of the institution, or persons or businesses providing educational, research, professional, consulting, food, or other support services directly to or for the institution, its students, or guests.

Rule R14A-3. Certificate. Every provider desiring to provide shared/resold service pursuant to G.S. 62-110(e) 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 provider. Upon approval of the application, the provider shall notify the local exchange company in writing of its certification and shall describe the proposed service.

Rule R14A-4. Service which can be shared or resold. The provider may share/resell any telephone service provided to it by a public utility to end-users located on contiguous campus premises owned or leased by the institution and non-contiguous premises owned or leased exclusively by the institution.

Rule R14A-5. Contract. A provider shall file with the Commission a copy of its standard contract with residential end-users when it applies for a certificate. A provider shall have a written contract with each end-user 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 (except that if a provider receives less than thirty days' notice of a rate increase to the provider, it shall give notice of any resulting rate increase to its end-users as soon as practicable);

(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 (1) the limitations of E911 emergency service regarding proper identification of the caller and the caller's location whenever a call is placed from a telephone station and (2) the limitations on portability or reuse of the assigned telephone number upon a move or transfer of service and (3) the limitations regarding intercept service provided by the local exchange company for direct inward dial (DID) numbers; and

(j) A statement that a copy of this Chapter of the Rules and Regulations is available for inspection during business hours at the telephone offices of the provider and that a copy will be provided, free of charge, upon request of the end-user.

Rule R14A-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 R14A-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 R14A-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 a certified long-distance carrier.

Rule R14A-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 R14A-10. Rating of local service. The services of the certified local exchange telephone company, when furnished to providers as defined in this Chapter and in accordance herewith, shall be rated in the same way as those provided for 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 as provided for in G.S. 62-110(d) and Chapter 14 of the NCUC Rules.

Rule R14A-11. Charges to end-users. Providers shall, for so long as they receive flat rate local service from the serving local exchange company, only charge flat monthly rates as opposed to measured or message rates for local exchange service, and shall not charge rates for long-distance service which exceed AT&T's MTS rates.

APPENDIX
APPLICATION FOR SPECIAL CERTIFICATE
TO OFFER SHARED AND/OR RESOLD
TELEPHONE SERVICE PURSUANT TO G.S. 62-110(e)
CHAPTER 14A 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 29510
Raleigh, North Carolina 27626-0510

DATE OF APPLICATION _____

APPLICANT

_____
(NAME)

_____
(STREET)

_____
(CITY, STATE, ZIP)

TELEPHONE ( ) _____

I certify that I have read and agree to abide by the Rules in Chapter 14A of the North Carolina Utilities Commission attached as Appendix A to this application.

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)

_____ _____
Date Signature of Applicant

_____ _____
Telephone 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 _____ 1989.

_____
Notary Public
My Commission expires:_____

DOCKET NO. SP-73
DOCKET NO. SP-73, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Panda Energy Corporation, 4100 Spring Valley, Dallas, Texas 75244 for a Certificate of Public Convenience and Necessity Pursuant to G.S. 62-110.1(a) for Construction of a Cogeneration Facility to be Located Near the North West Corner of 13th Street and Roanoke Avenue, Roanoke Rapids, North Carolina	)	ORDER NOT TO RECONSIDER BUT TO IMPOSE NEW CONDITIONS

BY THE COMMISSION: In Docket No. SP-73, on February 10, 1989, Panda Energy Corporation filed an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) and Commission Rule R1-37 for construction of a cogeneration facility to be located in Roanoke Rapids, North Carolina. The application indicated that all electricity generated at the facility will be sold to North Carolina Power (Vepco) and that thermal energy (steam and chilled water) produced at the facility will be sold to the Bibb Company, which owns the site at which the facility will be located. The application included Exhibit K setting forth the fueling plan for the facility. Exhibit K indicated that Panda had selected natural gas as its primary fuel (with fuel oil backup) because of cost, convenience and environmental considerations. Panda indicated that it was negotiating with several large gas producers and marketing firms and expected to execute gas purchase contracts by February 1989. The Exhibit went on to discuss transportation of this gas by the local gas distribution company, North Carolina Natural Gas Company (NCNG). For example, the Exhibit included the following:

> Deliveries of gas from NCNG are highly reliable, except during the coldest days of the year, when all non-essential industry is curtailed or interrupted. . . .
>
> NCNG has indicated that they would be willing to install a high pressure pipeline from their main transmission line to the Facility at no cost to Panda, thus saving Panda the expense of installing a pipeline. In addition, because the supply of gas will come from NCNG's high pressure system, Panda will not have to install compression equipment at the Facility. Panda is confident that it can negotiate a transportation charge with NCNG in the range of 20¢ per MMBtu.
>
> . . . .
>
> . . . Panda is fortunate that NCNG can receive gas from either or both TRANSCO or Columbia, both of which are open-access interstate pipelines. By having access to both lines, Panda is assured of an absolute minimum of interruptions each year . . .

. . . .

> . . . In addition, NCNG has agreed to consider allowing Panda to "swing" on their system. . . . Because NCNG will allow us to "swing" on their system, Panda will have a high degree of flexibility in scheduling gas transportation.

Exhibit K also included the following:

> In the unlikely event that service from NCNG becomes uneconomic, then Panda will have the option of by-passing NCNG by making a direct connection with TRANSCO.

The Commission issued its Order Requiring Publication of Notice on February 16, 1989, requiring notice of the application to be published for four successive weeks in a daily newspaper of general circulation in the local area. Panda subsequently filed an Affidavit of Publication with the Commission indicating that the notice had been published in the Roanoke Rapids Daily and Sunday Herald on March 6, 13, 21, and 27, 1989.

No complaints were received with respect to the application; and the Commission, following the procedure of G.S. 62-82, issued a certificate of public convenience and necessity to Panda without a hearing on May 2, 1989. The Order Issuing Certificate indicated that the certificate was being issued "on the basis of and in reliance upon the declarations contained in the application and other documents filed in this proceeding by the Applicant." The certificate was issued "subject to all orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission."

In a related proceeding, Docket No. SP-73, Sub 1, the Commission issued an Order on June 30, 1989, transferring the certificate from Panda to a wholly-owned subsidiary, Panda-Rosemary Corporation.

Commission Rule R1-37 deals with certificates of public convenience and necessity for qualifying cogenerators and small power producers. Rule R1-37(d)(3) provides, "Until the time construction is completed, all certificate holders must advise the Commission. . . of any changes in the information set forth in subsection (b)(1) of this Rule, and the Commission will order such proceedings as it deems appropriate to deal with such . . . changes."

On September 11, 1989, Panda-Rosemary Corporation (sometimes hereinafter cited as Panda) submitted a revised Exhibit K dated September 8, 1989, updating the fueling plan for its cogeneration facility. The revised Exhibit K indicates

> [Panda] is hopeful that a mutually beneficial transportation agreement can be negotiated with NCNG.
>
> In the event that NCNG cannot provide reliable gas transportation service at economical rates then Panda will make a direct connection with TRANSCO and/or Columbia Gas Transmission near Pleasant Hill, North Carolina.

Preliminary design parameters for Panda's private pipeline were provided, and it was stated that such a private pipeline "would be constructed in accordance with all applicable safety regulations of the U.S. Department of Transportation and the State of North Carolina."

In light of the revised Exhibit K and pursuant to Commission Rule R1-37(d)(3), the Commission issued an Order Requesting Comments on September 12, 1989, serving the revised Exhibit K on the Public Staff and NCNG, inviting comments relating to the issue of bypass, and scheduling an oral argument.

The Commission has received comments from Public Service Company of North Carolina, Inc., from NCNG, from Panda, from the Public Staff, and from the City of Roanoke Rapids. Interventions by Public Service and Piedmont Natural Gas Company, Inc., have been allowed by Commission Order of September 19, 1989.

Public Service's written comments express concern that the Commission might in some way imply that Panda is authorized to transport and/or sell natural gas to some other person, which Public Service would oppose. Public Service also expresses concern that Panda will take TRANSCO pipeline capacity that might be needed in the future to serve the North Carolina public.

NCNG's written comments express the opinion that Panda is subject to the Commission's regulation as a public utility and that, as such, Panda's pipeline violates the requirements of Commission Rules R6-60 and R6-61. NCNG also expresses concerns over the loss of interstate pipeline capacity and over the effect of bypass on the rates to the remaining customers of the LDC.

Panda's comments stress that its original application included reference to the possibility of building its own pipeline to TRANSCO. With respect to the bypass issue, Panda states that the special status given cogeneration facilities must be considered, that it will not use its pipeline to sell gas to any other user and will therefore not be a public utility and will not violate Commission Rule R6-60, that Panda's pipeline will not serve as a precedent for allowing bypass by large industrial customers of the LDCs, and that NCNG will not lose any current customer since neither Panda nor the Bibb Company are now customers of NCNG. Panda asserts that it continues to negotiate with NCNG but that it needs to retain the option of building its own pipeline to ensure its investors that its project is financially reliable. Panda asks the Commission to reaffirm its certificate of public convenience and necessity.

The Public Staff comments that under previous Commission interpretations of G.S. 62-3(23), Panda will not be a public utility "if Panda (or an affiliate) owned the pipeline and only natural gas owned by Panda were transported over it to Panda exclusively for use in generating steam for the Bibb Company and electricity for sale under the contract to Vepco." The Public Staff goes on to note that it regards the present situation as different in important ways from the type of bypass typically seen as a threat to the LDCs. The Public Staff notes that Panda is a qualifying facility under PURPA, that Panda successfully participated in Vepco's 1988 competitive bidding Request for Proposals, and that Panda is not a current customer of any LDC. The Public Staff encourages Panda and NCNG to continue negotiations, but the Public Staff concludes that Panda does not need a separate certificate or franchise for a private pipeline as proposed, that ownership and use of the private pipeline

will not make Panda a public utility, and that Panda should be allowed to construct a private pipeline if negotiations with NCNG are unsuccessful.

The letter from the City of Roanoke Rapids notes support for Panda's cogeneration facility and asserts that the project will have a significant beneficial effect on the community.

Oral argument was heard as scheduled on Monday, September 18, 1989. NCNG asked the Commission to schedule an evidentiary hearing on the various issues raised by Panda's plans for a private pipeline. Both Panda and the Public Staff urged the Commission to reaffirm Panda's certificate without a hearing. Panda stated that considerable amounts of money have been expended and that permanent financing for the cogeneration facility is scheduled for closing in the near future. Among other statements and commitments made by Panda at the oral argument, counsel stated that Panda will not transport gas for or sell gas to any other person, that Panda's interruptible interstate transportation service will not threaten firm transportation service to any North Carolina LDC, and that Panda will submit to conditions regarding the safety of its private pipeline.

There have also been filed with the Commission copies of letters from NCNG to Panda dated September 11, 1989, and Panda's response dated September 15, 1989. These letters indicate that negotiations continue with respect to NCNG's providing transportation service to Panda.

We must first consider NCNG's argument that Panda is subject to regulation as a public utility. A public utility is defined by G.S. 62-3(23)a as any person who owns or operates in North Carolina equipment or facilities for "producing, generating, transmitting, delivering, or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat, or power to or for the public for compensation." The representations made to us in this docket, which have not been put in issue, are to the effect that both the cogeneration facility and the proposed private pipeline are new facilities; that they both will be owned by the same entity, Panda-Rosemary; that Panda-Rosemary will not transport gas for or sell or deliver gas to any other entity; that all electricity generated at the cogeneration facility will be sold to North Carolina Power and thermal energy produced at the facility will be sold only to the Bibb Company; and that neither Panda nor Bibb are now customers of NCNG. We believe that the representations are determinative. Accepting them as true, we hold that Panda-Rosemary would not be a public utility. In Docket No. SP-100, the Commission ruled that neither the sale of electricity to a local electric utility nor the sale of steam to a host industrial plant constituted a sale "to or for the public" so as to make the Cogentrix cogeneration facility in that case a public utility. NCNG has not convinced us to reconsider our reasoning or to reach a different conclusion herein. NCNG points out that Cogentrix uses coal as fuel while Panda uses natural gas. However, the type of fuel was not relevant to our reasoning, which turned on whether the electricity and steam were being produced or furnished "to or for the public. . ." The addition of a private natural gas pipeline factually distinguished Panda's facility from that of Cogentrix. However, assuming that the pipeline and the cogeneration facilities are both new, that the same entity will own both and will own the natural gas transported in the pipeline and burned in the cogeneration facility, that no natural gas will be sold, transported or delivered to any other entity, and

that no present customer of NCNG will be lost, the Commission finds no basis for concluding that the pipeline will transmit, deliver or furnish piped gas to or for the public for compensation.[1] Our decision on this matter is based upon our assumptions. It is in the nature of a declaratory ruling and it is subject to change if the assumptions are not correct. However, based upon the comments and arguments before us and the conditions imposed herein, we find it appropriate to act on these assumptions at this time.

We now turn to the other major issue addressed in the comments and at the oral argument, the issue of bypass. The present situation before the Commission is unique both as to its procedural posture and as to its facts. We have considered both in reaching our decision.

Procedurally, the Commission has before it for consideration the revised Exhibit K relating to the construction by Panda of a private natural gas pipeline to serve the congeneration facility for which the Commission recently issued a certificate of public convenience and necessity. Our Rule R1-37(d)(3) reserves to the Commission authority to "order such proceedings as it deems appropriate" to deal with such a revised exhibit. The possibility (stated as "unlikely" at that time) of a private pipeline by Panda was stated in Panda's original application of February 10, 1989. Public notice of that application was given according to statute. No one filed any complaints or comments with the Commission. No one raised any issue with the possible bypass noted in the application. NCNG made no comments to the Commission. The Public Staff made no comments to the Commission. Despite the absence of comments, the Commission could have ordered a public hearing on its own initiative. Had the Commission considered the possibility of bypass to be anything other than "unlikely," the Commission might well have done so. We did not. The Commission issued its certificate of public convenience and necessity without a public hearing in May 1989. There has now been a revision in the information provided in the application, and the possibility of bypass is apparently no longer an "unlikely" one. The Commission retains discretion to reconsider issuance of the certificate by the standard of the public convenience and necessity as set forth in G.S. 62-110.1. Nonetheless, in deciding whether to do so, the Commission must in all equity consider the procedural posture in which we find ourselves. Panda did note the possibility of bypass in its original application, no one raised an issue at that time, the Commission issued a certificate of public convenience and necessity to Panda, and Panda has acted pursuant to that certificate.

The present fact situation is also unique. In the first place, it is undisputed that Panda is not an existing customer of NCNG. Similarly, Panda's host, the Bibb Company, does not now use natural gas to produce the thermal energy that Panda will provide to it in the future. Thus, we are not dealing with a situation in which existing LDC customers are being lost. There will be

---

1 This decision is in no way inconsistent with our grant to Panda-Rosemary of a certificate of public convenience and necessity pursuant to G.S. 62-110.1 since that statute applies not only to public utilities but also to any "other person" falling within its scope. The certificate issued to Panda-Rosemary does not indicate that Panda-Rosemary is a public utility and does not constitute a public utility franchise.

no LDC investment in facilities built to serve lost customers that must be borne by other customers remaining on the LDC system. Secondly, it is significant that Panda is a cogeneration facility, not an industrial plant, and a qualifying facility under PURPA. In our experience, it is unusual for a cogeneration facility to use natural gas as fuel. Our electric utilities recently filed comprehensive status reports on their cogeneration and small power production activities. The reports cover those who have simply contacted the utilities as well as those who have gone on to sign contracts and produce power. Neither CP&L, Duke, nor Nantahala list a single cogeneration or small power production facility with natural gas as fuel. Vepco lists no such facility in North Carolina other than Panda. Finally, Panda is a successful participant in Vepco's 1988 Request for Proposals. As such, Panda's facility will serve the public interest by providing specifically identified and contracted electric generating capacity. Vepco undertook its 1988 Request for Proposals with the objective of satisfying future capacity needs "through a competitive process. . . providing for reliable service at the lowest long-term overall cost from all qualified responsible potential sources." Specifically, Vepco announced in March 1988 that it was seeking 1750 megawatts of new capacity from outside sources in order to meet projected growth in demand from its customers, including those in North Carolina, in the 1989-1994 time period. In October 1988 Vepco selected 23 projects, including Panda, for final contract negotiations. At that time, Vepco announced, "We zeroed in on the key economic factors of low-cost power and tried to balance those with important concerns such as jobs, locations, and fuels. We believe this is the best plan." Vepco News Release, October 6, 1988. Vepco subsequently signed 19 contracts, including a Power Purchase Agreement with Panda executed on January 24, 1989. If Panda is unable to fulfill its contract, Vepco must either arrange for capacity from other, probably more expensive, sources or face a shortfall in its projected capacity requirements. All of these facts make the present situation unique and all have been found significant in reaching our decision.

The decision we reach--upon receipt of Exhibit K and after considering the equities to all parties, the absence of any LDC investment in plant to serve Panda or Bibb, the special legal status of qualifying facilities, the rarity of natural gas cogeneration facilities, the needs of Vepco's electric customers, the absence of a typical bypass threat to an LDC, the lack of broad precedential value herein, and the unique procedural posture and fact situation presented--is that we should not undertake reconsideration of the issuance of the certificate of public convenience and necessity issued to Panda in May 1989 but that we should impose certain conditions as hereinafter set forth. These conditions are based upon Panda's own representations and commitments to us. First, Panda's commitment to use its private pipeline to serve only its own cogeneration facility and to neither transport, sell, nor deliver natural gas to any other entity is significant to our determination that Panda will not operate as a public utility. We hereby condition our certificate of public convenience and necessity upon Panda owning both the cogeneration and the private pipeline facilities, upon Panda serving only its own cogeneration facility with natural gas and neither transporting, selling, nor delivering natural gas to any other entity, and upon all electricity generated at the cogeneration facility being sold to an electric utility and thermal energy produced at the facility being sold only to the host plant for use by it alone. Second, concerns were raised at the oral argument with respect to the safety of Panda's pipeline. It appears that the pipeline will not be subject to the safety standards and inspections of this Commission by statute since our

jurisdiction applies "to the pipeline facilities of gas utilities and pipeline carriers under franchise from the Utilities Commission and to pipeline facilities of other gas operators as defined in subsection (g) . . . ," none of which applies to Panda. G.S. 62-50(a). There may be other federal, state or local jurisdiction with respect to the safety of this pipeline, but none has been cited to us at this time. Panda has stated in its revised Exhibit K that it will construct its pipeline in accordance with the safety regulations of the U. S. Department of Transportation and the State of North Carolina. Further, Panda has agreed at oral argument that it will submit to conditions imposed by the Commission with respect to pipeline safety. When asked if Panda would enter an agreement to assure safety if we grant the relief requested, Panda's counsel answered, "Absolutely. We have no problem with, no problem with that at all. We would do that." Therefore, although we do not have jurisdiction pursuant to G.S. 62-50, the Commission concludes that some provision with respect to pipeline safety should be made as a condition of this certificate. We hereby condition our certificate of public convenience and necessity upon Panda's constructing and operating its entire pipeline (both up to the meter and beyond) in accordance with all the safety regulations of the U. S. Department of Transportation and the State of North Carolina (including this Commission's Rule R6-39), retaining at its own expense an independent engineering firm to conduct a safety inspection and report of this entire pipeline during each year of operation, filing a copy of such independent safety inspection report with the Commission's Gas Pipeline Safety Division and the local county or city fire marshal each year of operation, and submitting to such additional inspections of design, construction and operation (both before the cogeneration facility commences generation of electric or thermal energy and at any time thereafter) as the Gas Pipeline Safety Division of this Commission desires to make.

This is a decision not to undertake reconsideration. It goes without saying that this decision is limited to this docket. Those who, for whatever reason, seek in this decision a broad policy statement or precedent relating to bypass will not find it. We proclaim no policy on the issue of bypass; we set no precedent beyond the facts of this case. Let no present customer of an LDC cite this Order; we are not dealing with such a customer. Let no future industrial project cite this Order; we are not dealing with such a project. Let no other cogenerator cite this Order unless he comes within the unique situation detailed above. As we have already made clear in our discussion of the procedural posture and facts of this case, we are dealing with a unique, narrow situation, and it is the totality of this situation--no one factor alone--that leads us to our decision. We retain our authority to decide each case on the basis of the facts presented and to reach different conclusions when the facts are reasonably different. See Utilities Commission v. Teer Co., 266 NC 366, 146 S.E.2d 511 (1966). That is the very essence of reasoned decision-making.

Finally, we note that although the Commission will not undertake reconsideration of the issuance of Panda's certificate of public convenience and necessity in light of revised Exhibit K, the Commission would prefer to see a mutually beneficial transportation agreement between Panda and NCNG in lieu of a private pipeline. It is apparent from the letters filed with us that proposals and counter proposals are under discussion, and we urge the participants to continue their negotiations beyond the issuance of this Order. The Commission is of course not privy to the details of these negotiations. We

do, however, feel it appropriate to make certain comments. First, Panda assumes the full economic risks of its project. The Commission, by our certificate and by this Order, assumes no obligation for the success of this project and commits itself in no way to any favorable treatment of Panda in any proceedings that might arise in the future. On the other hand, we give NCNG no guarantee of recovery from other customers of any negotiated losses resulting from an agreement with Panda. The Commission is committed to setting just and reasonable rates in each rate case before us. While we urge negotiations, the Commission will not commit itself at this point to passing on any and all negotiated losses that NCNG might agree to. As the Public Staff stated at oral argument, "From a ratemaking perspective, if NCNG had to offer such low rates to Panda that it hurt the other ratepayers, the Public Staff could come in and say we would rather Panda built its own pipeline." Recovery of negotiated losses would have to be considered in a rate case based upon the facts presented and the legal standard of just and reasonable rates.

IT IS, THEREFORE, ORDERED that having received the revised Exhibit K filed with the Commission by Panda-Rosemary on September 11, 1989, the Commission will not undertake reconsideration of the issuance of the certificate of public convenience and necessity issued to Panda on May 2, 1989 (and subsequently transferred to Panda-Rosemary on June 30, 1989), but will, based upon Panda-Rosemary's own representations and commitments to us, impose as conditions (1) that Panda-Rosemary own both the cogeneration and the private pipeline facilities, (2) that Panda-Rosemary serve only its own cogeneration facility with natural gas and neither transport, sell, nor deliver natural gas to any other entity, (3) that all electricity generated at the cogeneration facility be sold to an electric utility and thermal energy produced at the facility be sold to the host plant for use by it alone, (4) that Panda construct and operate its entire pipeline (both up to the meter and beyond) in accordance with all safety regulations of the U. S. Department of Transportation and the State of North Carolina (including this Commission's Rule R6-39), (5) that Panda retain at its own expense an independent engineering firm to conduct a safety inspection of this entire pipeline and write a report during each year of operation, (6) that Panda-Rosemary file a copy of such independent safety inspection report with the Commission's Gas Pipeline Safety Division and the local county or city fire marshal each year of operation, and (7) that Panda-Rosemary submit to such additional inspections of design, construction and operation (both before the cogeneration facility commences generation of electric or thermal energy and at any time thereafter) as the Gas Pipeline Division of this Commission desires to make.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of October 1989.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioners Tate and Hughes dissent.

COMMISSIONER TATE, DISSENTING: I dissent from the Majority Opinion because I believe it sets very bad public policy. The Order seems to rest on the premise that the Commission has previously determined that two qualifying facilities (QFs) were not public utilities in North Carolina and therefore, no QF should be subject to the statutes governing public utilities. The

decision also emphasizes that Panda mentioned the construction of a pipeline in its initial application and that the Commission is, therefore, constrained from reconsidering the implications of construction of a pipeline after Panda amended its application. The Majority concludes that bypass of the local distributing company (LDC) is acceptable because Panda is not a present customer of NCNG and will use the gas transported in its own pipeline only for itself and will not sell any gas to other persons. I will discuss each of the decision's findings, but my concern is that the Majority has simply looked at this case in fragments and has failed to consider the broad policy implications of this decision.

I do not contest that in previous cases, this Commission has decided that a cogenerator generally is not a public utility and is, therefore, exempt from most of the requirements set out in G.S. Chapter 62. However, the cases cited as precedent, Cogentrix SP-100 and Natural Power SP-100, Sub 1 can easily be distinguished from the facts in Panda. For me, the over-riding distinction is that Panda is a QF which is proposing to construct its own pipeline directly to Transco (and possible Columbia) and bypassing NCNG. These facts present a case of first impression in North Carolina since we have not certificated any QF which owns and operates a natural gas pipeline. The issue presented by Panda's Amendment presents problems which require a full evidentiary hearing. Such a hearing would fully explore whether an entity that generates electricity and steam, that owns and operates its own natural gas pipeline and that sells electricity to a public utility is so involved with utility-type activities that it should be fully regulated. Panda urged the Commission to act immediately because it has a deadline from its lenders. But the Commission's public obligation to reach a well-considered judgment should take precedence over the demands of Panda's financing. Lex citius tolerare vult privatum damnum quam publicum malum. Without a hearing, the Majority has concluded that Panda is not a utility. I cannot agree with that finding.

The Order goes to great pains to explain why the construction of the pipeline is permissible bypass. However, Panda's proposed pipeline is in the territory of NCNG, which has an exclusive franchise to provide natural gas under a certificate from this Commission. Since the Majority rules that Panda is not a public utility, it finds that NCNG's territory will not be violated. But, in my view, Panda is a public utility and once its' pipeline is built, there will be two utilities that are receiving gas from the wholesale pipeline and Panda will have invaded NCNG's exclusive service area with the permission of this Commission. The Majority makes much of the fact that Panda will use the gas and its pipeline only for itself and not sell to others. But since the Commission has stated it has no authority to regulate, Panda may wish to provide gas to its host, the Bibb Company, at a later time. In any future action by Panda, the Commission will be faced with the fact that there are already existing duplicative facilities and, therefore, the economies which are the justification for regulation will be totally undercut. The fact that Panda has agreed to keep the Commission informed and to limit its activities is commendable. However, a company which is operating like a utility ought to be regulated as a utility and the Commission's authority over it should not rest on the consent of Panda.

The Commission Order urges Panda and NCNG to continue to negotiate. However, the Order permits Panda to construct its own pipeline (without either Federal or State supervision or regulation) and in fact seems to encourage

bypass. On the regulated side, the Majority warns NCNG that it should not negotiate its rates too low because NCNG may not be allowed to pass through any losses arising from its contract with Panda in the next general rate case. Pragmatically, it seems to me that NCNG is warned to be very careful in negotiating low rates, and Panda is being encouraged to build its own pipeline.

How did we find ourselves in such a situation that we are departing from the previous policy of this Commission to discourage bypass of the local distributing companies? The reason is that Exhibit K of the original application of Panda stated "in the unlikely event that service from NCNG becomes uneconomical, then Panda will have the option of bypassing NCNG by making a direct connection with TRANSCO." Our Order did not state that Panda had the election of building its own pipeline or being served by NCNG. The Order simply granted the application. The Majority opinion states "...the Commission could have ordered a public hearing on its own initiative. Had the Commission considered the possibility of bypass to be anything other than 'unlikely,' the Commission might well have done so." It was perhaps a reasonable interpretation that Panda was using the pipeline as a threat to get NCNG to lower its transportation rates. However, in the amendment offered to its application, Exhibit K has been altered and what was initally an "unlikely event" now seems to have become the most likely alternative, a definite change of circumstances which requires reconsideration of Panda's status. The Majority decides not to reconsider and by implication finds that there has been no significant change to Exhibit K.

Panda argues that there has been no change in its application, but for me it is a very momentous change to move from the "unlikely event" of constructing a pipeline to the actuality of the construction of a pipeline to bypass NCNG. In order for another public utility to violate the exclusive territory of a franchised utility, it is necessary for this Commission to find that the utility in question is unwilling or unable to provide service. However, in this case the determination as to whether or not NCNG can or will provide utility service has been delegated to the customer who wishes to receive natural gas from NCNG. In effect, this Commission has been bypassed because the North Carolina Utilities Commission's right and obligation to determine whether or not NCNG is meeting its obligation is denied. I do not believe that through negotiation NCNG and Panda can agree to substitute their judgment for that of the Commission. Jus publicum privatorum pactis mutari non potest. Not only has the Commission been bypassed from deciding whether or not Panda can receive adequate service from NCNG, but the Commission is prevented from exercising its authority over the construction, operation and maintenance of a pipeline carrying very highly pressurized natural gas.

Commissioner Hughes is discussing our deep concern for safety in his dissent but I must also point out the hazards to North Carolina citizens if the pipeline is built. Since Panda's pipeline will not be recognized as an interstate pipeline nor as an intrastate pipeline, it will be regulated by no one, and inspected by no governmental agency. This fact alone is sufficient reason to require a full public hearing. The Majority's private inspection scheme is not a satisfactory substitute. Roanoke Rapids' citizens are probably not aware of the danger inherent in this pipeline which will be constructed, operated and maintained without benefit of governmental supervision.

The Majority Order has attempted to enumerate in great detail why this case is unique and does not provide a precedent for the future. It "doth protest too much methinks." At the very least, the Commission has decided that a cogenerator is entitled to construct its own pipeline to TRANSCO and bypass the regulated local distribution Company. Throughout the United States, most, if not all, State Regulatory Commissions are denying the right to bypass LDCs of natural gas. NARUC has passed resolutions and appeared before Congress to urge that State Commissions should regulate bypass situations. Heretofore, the North Carolina Commission has been adamant in its opposition to such bypass in order to protect captive customers. Yet, in approving Panda's right to construct its own pipeline without any regulation, the Majority itself "bypassed" our own statutory obligations. In short, we have here a case of triple bypass: Panda may bypass NCNG; NCNG and Panda in negotiation are bypassing the Commission; and the Majority has bypassed its regulatory obligations. Worst of all, these decisions are being made on various technicalities, and the broad public policy of whether or not bypass is good for the State of North Carolina and its citizens is never considered. An issue of this importance demands an evidentiary hearing.

I would have held that Panda's amendment to Exhibit K was such a substantial change that it required a reconsideration of Panda's application. I would have required that either Panda must be served by NCNG or if it elected to construct a pipeline, that a hearing must be held on this substantial departure from previous Commission practices and policies. The Attorney for Panda stated at the oral argument that a number of problems had arisen that were not anticipated by Panda at the time of its application and did not fully come to light until Panda's lenders got involved. It is equally true that a number of problems have arisen for the Commission that were not anticipated at the time of the initial application. While the Public Staff has recommended that Panda be allowed to proceed and that there be no reconsideration of the application based on Exhibit K, the Attorney for the Public Staff suggested that a hearing could be held at such time as the decision to build a pipeline became a reality. While I believe it would be an improvement to have a hearing so that the construction of the pipeline could be examined and safety standards could be imposed, it would be at that time far too late, for the Majority has already determined that Panda is not a public utility. The Commission should, in my view, have found that a qualifying facility which sets out to construct, own and operate a pipeline is a utility and should be regulated as such. I predict that as a result of this decision, industrial gas customers in North Carolina will find the cogeneration business exceedingly attractive. If cogenerators build pipelines to TRANSCO, then facilities will be in place to serve the industrials without a duplication of facilities. If a cogenerator can bypass the local distribution company and tap in to TRANSCO, the industrials will argue they should have that same right. Panda is only step one in opening North Carolina to bypass.

In short, to accommodate Panda's need for a quick decision, the Majority has determined without a hearing that Panda-Rosemary is not a utility. The Majority does not even discuss the wisdom of allowing bypass and the consequences flowing therefrom. Like Cassandra, I foresee dire consequences to North Carolina's natural gas companies and their customers as a result of this hasty decision.

Sarah Lindsay Tate, Commissioner

COMMISSIONER CHARLES H. HUGHES DISSENTING. I respectfully dissent from the majority opinion. The majority fails to find a "distinguishing feature" in this Order, the material and probable consequence of which is to produce substantial injury to public health, safety, and welfare. I do find such a distinguishing feature.

While the authority to issue a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) and Commission Rule R1-37 for the construction of a cogeneration facility is clear, I can find no legal jurisdiction granted this Commission to issue a certificate of public convenience and necessity predicated on a quasi contractual agreement between Panda and the N.C. Utilities Commission for the power to regulate Panda with respect to pipeline safety. The majority Order freely admits that the Commission will have no safety jurisdiction over Panda's pipeline pursuant to G.S. 62-50, or any other state or federal statute for that matter. The majority's so-called "remedy" for this very serious problem is merely to attach certain conditions concerning pipeline safety to Panda's certificate. Conditions such as those specified by the majority might be sufficient if the Commission possessed the authority to enforce compliance: however, this is not the case. The Commission clearly has no statutory enforcement authority over Panda, and to make matters even worse, the majority Order is conspicuously silent on the issue of enforcement authority. What good are safety conditions no matter how well-meaning if they cannot be enforced?

To quote the Order, "Therefore, although we do not have jurisdiction pursuant to G.S. 62-50, the Commission concludes that some provision with respect to pipeline safety should be made as a condition of this certificate. We hereby condition our certificate of public convenience and necessity upon Panda's constructing and operating its entire pipeline (both up to the meter and beyond) in accordance with all the safety regulations of the U.S. Department of Transportation and the State of North Carolina (including this Commission's Rule R6-39), retaining at its own expense an independent engineering firm to conduct a safety inspection and report of this entire pipeline during each year of operation, filing a copy of such independent safety inspection report with the Commission's Gas Pipeline Safety Division and the local county or city fire marshal each year of operation, and submitting to such additional inspections of design, construction, and operation (both before the cogeneration facility commences generation of electric or thermal energy and at any time thereafter) as the Gas Pipeline Safety Division of this Commission desires to make".

I also find the quasi contractual agreement between Panda and the Commission to have been persuasive and relied upon heavily by the majority. It is this Commission's duty to put the health and safety of the citizens of North Carolina first. I question if this has been done in this Order. The fact that a pipeline of this nature, with 760 psig, can be a danger to the citizens of this state is evidenced by the August 5, 1987 NCNG natural gas fire in Wilmington, N.C. This incident resulted in 18 injuries and one death. Still further evidence is found in numerous reports filed with the National Transportation Safety Board. One report concerns the Texas Eastern Gas Pipeline Company ruptures and fires at Beaumont, Kentucky on April 27, 1985.

"About 9:10 p.m. e.s.t. on April 27, 1985, natural gas under 990 psig ruptured the No.10, 30-inch-diameter pipeline of the Texas Eastern Gas Pipeline

Company. The pipeline was located 2 miles east of Beaumont, Kentucky, under Kentucky State Highway 90. The force of the escaping high-pressure gas ripped open 30 feet of pipe, blasted an opening across Kentucky State Highway 90, and dug out a crater 90 feet long, 38 feet wide, and 12 feet deep. The escaping gas ignited and incinerated an area about 700 feet long and about 500 feet wide. Five persons in a house 318 feet north of the rupture were killed and three persons 320 feet south of the rupture were burned as they ran from their house trailer. Two houses, three house trailers, a sawmill, two barns, numerous parked cars and abandoned vehicles, and nine pieces of road construction equipment were destroyed."

As a result of its investigations of these accidents, the Safety Board issued the following recommendations - to upgrade the qualifications and training of gas company employees, to require complete inspections for corrosion-caused damage to buried pipelines that have been excavated, to require periodic affirmation through inspections and tests of the maximum allowable operating pressure of pipelines, to require periodic inspections for corrosion damage of pipelines installed in vented casings, to require changes in pipelines to facilitate use of in-line inspection equipment, and to provide additional and more specific guidance on corrosion control practices and corrosion monitoring procedures.

The quasi contractual agreement, if it were binding, is lacking; and it is evident, in my opinion, that Panda, not being deemed a public utility, but rather just the owner of a 10 mile pipeline, will not be able to live up to the recommendation as stated by the National Transportation Safety Board or standards as set for safety by other governmental agencies. The overriding reason for this conclusion is that it is evident that Panda will only build and use this pipeline if NCNG will not negotiate the price of gas down to a given point. Pipeline safety is expensive and should never be shortchanged for a competitive edge or for profit.

As to the worst scenario, if failure occurred within the city limits of Roanoke Rapids, you could have a catastrophe such as occurred in Beaumont, Kentucky. If ignition occurred, you could expect the fire to reach 200-300 feet in the air, and radiant heat would ignite combustible material in a 500 yard diameter. Potential for loss of life is tremendous.

Furthermore, the majority's decision to allow Panda to bypass the facilities of NCNG represents a radical departure, not only from the traditional regulatory policies and practices of this Commission, but from the traditional regulatory policies and practices of most, if not all, state public utility regulatory agencies.

The real purpose of bypass is to evade state regulatory authority. The net result is unfair, unrestrained and often predatory competition. There are many short and long-term economic and financial considerations in bypassing the LDC. Each bypass has its own peculiar effect.

From a global perspective, it is a fundamental principle of economics that public utility services can be provided by a monopoly at a cost lower than would otherwise be attainable, because the wasteful duplication of facilities by competitive firms is avoided. Typically, the customers who stand to benefit the most from bypass are large industrial or commercial customers who have

alternative fuel capabilities. The customers who are the most disadvantaged by bypass are the LDC's captive customers - the residential and small commercial and industrial customers.

The problem confronting the LDC is that, if it is to remain a financially viable business entity, it must recover its reasonable fixed and variable costs, including a reasonable return on its investment. To the extent appropriate fixed costs are not recovered from a large industrial customer, those costs must be shifted to and recovered from the LDC's other customers, who are predominantly the captive customers of the LDC. It should be made clear that the fixed costs shifted to the captive customers are in addition to the fixed costs that the LDC's regulator has previously determined to be reasonable for the captive customers to bear in the absence of the bypass option.

NCNG's rate structure includes provisions which allow it to negotiate price with its large industrial customers in order to keep the industrial customer on its system. By allowing Panda the bypass option, the majority has placed even greater pressure on NCNG to lower the price of its services to Panda. As explained above, lower prices to Panda mean disproportionately higher prices to NCNG's captive customers.

The majority has placed undue pressure on NCNG to lower the price of its services to Panda; notwithstanding the avowed statement of Panda that it will "aggressively" pursue discounted transportation charges from pipe-line companies. Panda's objective, of course, is to maximize corporate profits with or without bypass. It is the Commission's responsibility to protect the public interest. The majority's decision to allow Panda the bypass option does far more to protect the corporate profits of Panda than it does to protect the public interest.

The public interest is also disadvantaged, should Panda ultimately build its pipeline, since Panda would be using interstate pipeline capacity which might later be needed to serve a higher priority market. Under Panda's proposal, the Commission would have no control over such capacity with the result that the capacity would be permanently assigned to the lower priority market.

Furthermore, I dissent from the decision of the majority as a result of the majority having delegated to Panda the Commission's responsibility and authority to determine whether NCNG is acting in a manner consistent with the public interest. The majority has delegated the Commission's authority to Panda in this regard by its approval of the language contained in Panda's fueling plan for its cogeneration facility which states, "In the event that NCNG cannot provide reliable gas transporta-tion services at economical rates, then Panda will make a direct con-nection with TRANSCO and/or Columbia Gas Transmission...". Thus, under the majority's Order, the decision as to whether NCNG's service is priced at economical rates is left to the sole discretion of Panda, an action I consider to be highly questionable at best, and one to which I must dissent.

Charles H. Hughes, Commissioner

DOCKET NO. E-2, SUB 545

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Captain M. P. Soehnlein, 11005 Eaglerock Drive, Raleigh, North Carolina 27612, Complainant	)	
v.	)	FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER
Carolina Power & Light Company, Respondent	)	

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday August 7, 1989, at 2:00 p.m.

BEFORE: Chairman William W. Redman, Jr., Presiding, and Commissioners Sarah Lindsay Tate, Julius A. Wright, Robert O. Wells, and Charles H. Hughes

APPEARANCES:

For the Complainant:

Captain M. P. Soehnlein, appearing pro se, 11005 Eaglerock Drive, Raleigh, North Carolina 27612

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 March 21, 1989, Commission Hearing Examiner Sammy R. Kirby entered a Recommended Order in this docket denying the complaint which Captain M. P. Soehnlein filed against Carolina Power & Light Company (CP&L). In his complaint, which was filed on May 31, 1988, Captain Soehnlein charged that CP&L had failed to provide and maintain service to reasonable standards, that this failure had resulted in "kwh penalty overcharges" which were above the Complainant's normal consumption and which were due solely to the actions of CP&L, and that the Commission should amend CP&L's service regulations to prevent charging time-of-use customers on-peak rates following a service interruption until the end of the on-peak cycle in which the interruption occurred or 12 hours, whichever is later.

Captain Soehnlein filed certain exceptions to the Recommended Order denying his complaint and requested the Commission to schedule an oral argument to consider those exceptions.

By Order entered in this docket on May 5, 1989, the Commission scheduled an oral argument on exceptions for August 7, 1989, at 2:00 p.m.

The matter subsequently came on for oral argument on exceptions before the full Commission at the appointed time and place. Captain Soehnlein offered oral argument in support of his exceptions. Counsel for CP&L offered oral argument in opposition to the exceptions and in support of the Recommended Order.

Based upon a careful consideration of the entire record in this proceeding, the Commission concludes that all of the findings of fact, conclusions, and decretal paragraphs contained in the Recommended Order of March 21, 1989, 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 filed by Captain Soehnlein should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions filed by Captain Soehnlein with respect to the Recommended Order entered in this docket on March 21, 1989, be, and the same are hereby, denied.

2. That the Recommended Order entered in this docket by Hearing Examiner Sammy R. Kirby on March 21, 1989, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of August 1989.

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

DOCKET NO. E-2, SUB 546
DOCKET NO. E-7, SUB 443

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Marty Malcolm, 104 North Cherry Street, Wilkesboro, North Carolina 28697, Complainant	)	
	)	ORDER
	)	DENYING
v.	)	COMPLAINTS
	)	
Carolina Power & Light Company and Duke Power Company, Respondents	)	

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, May 25, 1989, at 10 a.m.

BEFORE: Commissioner Robert O. Wells, presiding, Chairman William W. Redman, Jr., and Commissioners Sarah Lindsay Tate, Edward B. Hipp, Ruth E. Cook, J. A. Wright, and Charles H. Hughes

APPEARANCES:

For the Complainant:

Theodore C. Brown, Jr., Attorney at Law, 1042 Washington Street, Raleigh, North Carolina 27605

For Carolina Power & Light Company:

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

For Duke Power Company:

William Larry Porter, Attorney at Law, Duke Power Company, Post Office Box 33189, Charlotte, North Carolina 28242

BY THE COMMISSION: Complainant Marty Malcolm initiated this action by the filing of a Complaint on June 23, 1988. The Complaint was served on Carolina Power & Light Company (CP&L) by Order of July 19, 1988, in Docket No. E-2, Sub 546.

On July 28, 1988, CP&L filed its Answer to the Complaint, alleging that the Complainant had no standing to present this matter since he was not a customer of CP&L; that the Complaint failed to state a claim upon which relief could be granted; that CP&L had met with Mr. Malcolm and examined his product, but that CP&L could find no evidence of Underwriters Laboratory approval of the device; and that CP&L neither markets nor endorses specific equipment. On August 18, 1988, the Complainant filed his response to CP&L's Answer, taking issue with the defenses asserted therein.

By Order issued September 19, 1988, the Commission scheduled the Complaint for hearing in the spring of 1989 in conjunction with the proposed load forecast proceeding in Docket No. E-100, Sub 58.

By letter filed November 7, 1988, Complainant filed a formal Complaint against Duke Power Company (Duke). By Order dated November 15, 1988, in Docket No. E-7, Sub 443, the Commission served the Complaint upon Duke for a response. By letter dated December 5, 1988, Duke filed its Answer and Motion to Dismiss serving copies on the Complainant by depositing same in the United States mail postage prepaid and properly addressed. The Commission also served Duke's Answer and Motion to Dismiss on the Complainant by Order of December 12, 1988. The Commission received a response from Complainant stating that the answer filed by Duke was not satisfactory and requesting a public hearing.

By Order issued December 9, 1988, in Docket No. E-100, Sub 58, hearing in the load forecast proceeding was scheduled to begin on September 19, 1989. By Order dated March 28, 1989, in Docket Nos. E-2, Sub 546, and E-7, Sub 443, the Commission stated that it was of the opinion that the Complaints should be scheduled for hearing at an earlier date; and by Order dated March 31, 1989, the Commission set these dockets to be heard on May 25, 1989. Complainant was required to file written testimony on or before April 21, 1989, and Duke and CP&L were required to file testimony on or before May 12, 1989.

Upon call of the consolidated cases for hearing at the appointed time and place, the Complainant and the Respondents were present and represented by counsel. Respondents made a motion for dismissal based on the fact that Complainant had failed to state a claim upon which relief could be granted in this proceeding. The Chairman determined that the hearing should proceed.

Following the argument on the Motion to Dismiss, Michael L. Manning and Carl F. Shaw testified as a panel in support of the Complaints and on Complainant's behalf.

Duke presented the testimony of Robert W. Taylor, Manager of the Residential Energy Department at Duke Power Company and David L. Weisner, Manager of the Energy Analysis Department at Duke Power Company.

CP&L presented the testimony of G. Wayne King, Supervisor of Rate Studies for Carolina Power & Light Company.

Based upon careful consideration of the testimony and exhibits presented at the hearing and the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT

1. Complainant Marty Malcolm is a citizen and resident of Wilkesboro, North Carolina, and resides within the service territory of Respondent Duke Power Company.

2. Both Respondents, CP&L and Duke, are public utility corporations organized and operating under the laws of the State of North Carolina for the purpose of generating, transmitting, and distributing electric power and energy and are subject to the jurisdiction of the North Carolina Utilities Commission.

3. The North Carolina Utilities Commission has properly addressed the issue of federal standards regarding load management techniques.

4. The North Carolina Utilities Commission is not required to review the Manning Tronics peak load distributor to determine whether it meets the standards established by the Public Utility Regulatory Policies Act (PURPA) because it is a specific product and not a load management technique. The North Carolina Utilities Commission promotes load management techniques; and the residential, commercial, and industrial markets determine the specific hardware to be purchased by consumers.

5. Appliance interlocks and timers do not necessarily meet the PURPA standard for load management techniques. Appliance interlocks and timers have not been shown to reduce the maximum kilowatt demand of a utility; nor has it been shown that long-run savings from the use of such devices exceed long-run costs.

EVIDENCE AND CONCLUSIONS IN SUPPORT OF FINDINGS OF FACT NOS. 1 and 2

These findings of fact are jurisdictional and are not contested.

EVIDENCE AND CONCLUSION FOR FINDINGS OF FACT NOS. 3, 4, AND 5

The evidence for these findings of fact is found in the testimony of Michael L. Manning and Carl F. Shaw, on behalf of Complainant, Duke witness Weisner, and CP&L witness King.

Complainant's witness Manning testified that the Commission was being requested to review Manning Tronic's peak load distributor (PLD) to determine whether or not it met the standards established by PURPA. Witness Manning testified that if the Commission were to determine that the PLD met the standards of PURPA, it would then be incumbent upon the utilities to "do something, not the Commission."

The relevant PURPA documentation is found in Title 1, Subtitle B, Section 111, ¶ (d)(6):

> (d) ESTABLISHMENT. The following Federal standards are hereby established:
>
> (6) LOAD MANAGEMENT TECHNIQUES. Each electric utility shall offer to its electric consumers such load management techniques as the State regulatory authority (or the nonregulated electric utility) has determined will --
>
> (A) be practicable and cost-effective, as determined under section 115(c),
>
> (B) be reliable, and
>
> (C) provide useful energy or capacity management advantages to the electric utility.

Section 115(c) describes the cost-effective standard as follows:

> (c) LOAD MANAGEMENT TECHNIQUES. In undertaking the considerations and making the determination required under section 111 with respect to the standard for load management techniques established by section 111(d)(6), a load management technique shall be determined, by the State regulatory authority or nonregulated electric utility, to be cost-effective if --
>
> (1) such technique is likely to reduce maximum kilowatt demand on the electric utility, and
>
> (2) the long-run cost savings to the utility of such reduction are likely to exceed the long-run costs to the utility associated with implementation of such technique.

The North Carolina Utilities Commission adopted the PURPA standard on load management techniques in 1981, in Docket No. E-100, Sub 36, and has promoted a number of conservation and load management techniques as described in these statutes. The techniques include time of use rates, low interest loans for energy efficiency improvements, appliance control, and energy audits. These

programs and techniques have been implemented by the utilities as incentives, methods and encouragement for conservation. The Commission has also approved other techniques proposed as experimental programs in an effort to explore ways to encourage conservation of energy and demand. Beginning as early as 1975 and continuing to the present, the Commission has addressed the issues of load management in rate cases, load forecast hearings, avoided cost hearings, and least-cost plans. This subject will again be addressed in the up-coming least cost hearings to be held in October of this year in Docket No. E-100, Sub 58.

The Complainant has requested the Commission to approve the PLD as a load management technique under PURPA. PURPA requires the electric utility to offer approved load management techniques to its customers. In the approval process, the Commission must find the technique to be both practicable and cost-effective.

As interpreted by the Commission in this application, the term "practicable" means that the device must be put into operation and maintained in operation in a feasible and satisfactory manner. Concerns associated with equipment operation, reliability, and safety would also have to be reasonably satisfied. Testimony and other data supplied by witness Manning imply that the device is safe, reliable, and, in general, should mechanically and electrically operate as expected. Reliability is not only a function of design, but is also affected by the human element. The Commission has unanswered concerns associated with the PLD being installed in the customer's wiring, usually inside of the residence at the breaker panel. If the utilities were to offer a program which uses the PLD in the customer's wiring and a discounted kilowatt-hour rate were offered, as suggested by Complainant's witness Shaw, no assurance can be given that a device installed inside the customer's residence would not fail or would not be disconnected at a later date, thereby negating any potential demand reduction benefit while the customer continued to receive the discount. Based on this concern, the Commission questions whether the PLD is practicable.

The Commission has explored the cost-effectiveness question and finds that the cost-effectiveness of Complainants' device is questionable, especially when compared to competing devices which are available in the marketplace. The only cost analysis in this record is one performed by Complainant's witness Shaw. Witness Shaw adopted a figure of $1,200 per kilowatt to represent the generation capacity cost savings associated with the PLD and assumed a 1.2 kilowatt savings at the time of the utility's system peak.

CP&L witness King testified that the Commission, in the Commission's most recent cogeneration proceeding, had approved an avoided cost for CP&L of $338 per kilowatt based on combustion turbines. On cross-examination, witness Shaw agreed that a reduction of his $1,200 figure to less than $400 to account for combustion turbines instead of base load plant avoidance would significantly reduce the potential savings.

There was also a question concerning the actual demand reduction potential of the PLD at the time of the utility's system peak. Witness King stated that the device could destroy the natural diversity of the controlled appliance with the result being a higher customer demand at the time of the system peak. While the Commission is aware that the device could reduce customer peak demands at the meter, it is clear that the intent of the PURPA load management

standard is aimed at reducing the utility's system peak. The "Joint Explanatory Statement of the Committee of Conference" for the PURPA statutes states under Section 115 (seventh paragraph):

> . . . Although individual consumers may wish to install load management techniques to reduce their peak demand and thereby reduce overall costs of electricity supplied to them, the conferees intend the main focus of this examination to relate to the reduction in the utility's peak demand, when it is most likely that generation is most expensive.

In addition to the above uncertainties, the Commission is concerned about the seemingly high cost of the PLD. Complainant's witness Manning stated that the devices could be supplied for $250 each. CP&L witness King stated that simple interlock devices are available for a price of $35 and that programmable models are available for $128. The Commission recognizes there may be technical differences between various interlock devices but at $250, the PLD price seems out of line with competing devices. If the Commission were to approve a load management technique based on interlock devices, it would necessarily expect the utilities to choose an economical method.

Duke's witness David L. Weisner testified that based on his examination of the literature the peak load distributor was designed to reduce the maximum demand of a residential customer by alternating the operation of one or more secondary loads with one primary load. The primary load is selected and wired to the peak load distributor when installed. When the primary load is activated, the secondary loads are then curtailed. If the secondary loads are in operation at the time of control, a demand reduction is possible. If the secondary loads are not in operation at the time of control, there is no demand reduction.

Mr. Weisner testified that appliances in a customer's home operate at different times and at different levels of demand on any given day and hour. Duke's system peak typically occurs at 5 p.m. on a summer afternoon. Residential air conditioners are usually running at this time and contribute to this peak, but residential water heaters, in comparison, contribute very little to this summer peak. If the peak load distributor has the air conditioner as the primary load and the water heater as the secondary load, then the utility system peak demand is reduced very little, if at all. If the secondary loads are not in operation at the time of control, there is no demand reduction.

One important fact recognized from this perspective is that the peak load distributor could increase the customer's contribution to utility system peak demand. The peak load distributor curtails the use of one or more appliances to control the customer's maximum demand. The customer's maximum demand, however, may not occur at the time of the utility system peak demand. It is possible that the peak load distributor could curtail the use of an appliance such as a water heater at a time not coincident with the utility's peak. When the water hearter is restored to service at a later time it could contribute to a higher demand on the utility system than it would have at the time it was interrupted. This situation is known as payback since the water heater is trying to pay back the energy it did not use while interrupted. In this situation, the customer's maximum demand could be reduced but his coincident

demand at the time of the utility's peak demand could be increased due to the action of the peak load distributor.

The peak load distributor is designed to limit a customer's maximum demand. The amount of any demand reduction will be determined by the primary and secondary loads which it controls and the normal operating characteristics of these loads. The impact on the customer's bill due to demand changes will be determined by the applicable rate schedule. The impacts on energy use are also related to the specific loads being controlled. A residential water heater, for instance, will not likely see a reduction in energy use unless it is controlled for an extended period of time and "stand-by" losses are saved or the amount of water heated and used is reduced by the control of the water heater. In most cases the energy use would most likely be shifted from one time of day to another. The impact on the customer's bill due to energy changes will be determined by the applicable rate schedule.

Witness Weisner testified that the installation of a peak load distributor is not cost effective for the average residential customer. The residential customer contributes on average 2.68 kilowatts to Duke's summer peak and 2.47 kilowatts to the winter peak. This average reflects a variety of customers including those who do not have electric air conditioning, water heating, etc. An electric water heater contributes, on average, approximately 0.35 kilowatt to Duke's summer peak and 0.98 kilowatt to Duke's winter peak. The average residential air conditioner contributes approximately 3.35 kilowatts to Duke's summer peak.

If the peak load distributor is used with a residential air conditioner as the primary load and the water heater as the secondary load, the peak load distributor could potentially remove approximately 0.35 kilowatt per customer from Duke's summer peak and 0.98 kilowatt per customer from Duke's winter peak. The annual bill savings from this demand reduction on Duke's time-of-day rate schedule RT would be $32.88 assuming no energy reduction and the stated demand reduction values occur in each of the four summer months and eight winter months. This represents a 7.6 year simple payback for this example customer with a peak load distributor cost of $250. The cost effectiveness would depend upon the customer's payback criteria for energy-related investments.

The Commission concludes that it has properly addressed the standards established by PURPA with respect to load management techniques, and will continue to do so in an appropriate and responsible manner. The Commission further concludes that its review of load management techniques should not include a determination of whether specific brand names or product models meet the standards established by PURPA for load management techniques, and that such product determination and selection is best left to the free marketplace. In this regard, the Commission notes that the National Energy Conservation Policy Act of 1978 required the implementation in this State of a Residential Conservation Service (RCS) Program. The program adopted in North Carolina includes electric load management techniques and also provides guidance on listing specific load management items. There are a number of different types and brands of equipment available which are intended to help the customer control his contribution to peak demand. These devices can be as simple as a timer or as sophisticated as a computer which would predict future demands and control loads to hold the demand within predetermined target ranges. The program provides that no brand names of individual products may be included on

the list. The RCS program also provides that a utility shall refrain from recommending, selecting or providing information regarding any supplier if such recommendation would unfairly discriminate among suppliers of program measures. The Commission is of the opinion that this same policy should be followed with respect to specific load management products.

The Commission is also of the opinion that appliance interlocks and timers such as the peak load distributor do not necessarily meet the PURPA standards for load management techniques although they may do so in some instances. Section 115 of PURPA states that a load management technique is cost effective if it is likely to reduce maximum kW demand on the electric utility. The most credible evidence in this case is that the peak load distributor may not reduce the system peak and could instead increase the customer's contribution to the utility system peak. Nevertheless, such techniques as the peak load distributor are among those available to individual utility customers, and the vendors of products utilizing such techniques are free to promote their products in the open market in competition with all other products.

IT IS, THEREFORE, ORDERED that the formal complaints filed in this matter by Marty Malcolm against Carolina Power & Light Company and Duke Power Company be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of September 1989.

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

DOCKET NO. E-2, SUB 552

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Richard J. Harkrader and Public Service Company of North Carolina, Inc., Complainants	)	
v.	)	ORDER DENYING TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
Carolina Power & Light Company, Respondent	)	

ORAL ARGUMENT
HEARD ON: Monday, January 9, 1989, at 11:00 a.m., in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27626

BEFORE: Chairman Robert O. Wells, presiding; Commissioners Edward B. Hipp, Ruth E. Cook, J. A. Wright, and Williams W. Redman, Jr.

APPEARANCES:

For the Complainants:

F. Kent Burns, Burns, Day & Presnell, P.A., Attorneys at Law, Box 2479, Raleigh, North Carolina 27602

For the Respondent:

Robert W. Kaylor, Associate General Counsel and Richard E. Jones, Vice President and General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

For the Attorney General:

Lemuel W. Hinton, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On December 21, 1988, Richard J. Harkrader and Public Service Company of North Carolina, Inc. (Complainants) filed a complaint with the Utilities Commission against Carolina Power & Light Company (CP&L). Among other relief, the Complainants asked that a temporary restraining order and a preliminary injunction be issued enjoining CP&L from applying the "revenue credit" provision of its Line Extension Plan tariff and that CP&L be directed to turn on power to the Miles Branch Subdivision being developed by Complainant Harkrader.

The Commission served the complaint on CP&L and scheduled an oral argument to consider the Complainants' request for preliminary injunctive relief by Commission Order of December 19, 1988.

The Attorney General intervened on January 4, 1989.

Oral argument on the request for preliminary injunctive relief was held as scheduled on January 9, 1989. At that time, the Complainants filed a Memorandum and three affidavits in support of their request. CP&L filed a Brief opposing the Motion for Temporary Restraining Order with two affidavits attached. Oral argument was heard by the Commission.

Subsequent to the oral argument, on January 17, 1989, CP&L filed its Answer and Request for Commission Investigation by which it responded to the complaint and asked the Commission to initiate an inquiry with respect to certain marketing practices of Public Service. CP&L also filed a further affidavit on January 17, 1989, responding to the affidavits filed by the Complainants in support of their request for preliminary injunctive relief.

The parties agree upon the standard to be applied. A preliminary injunction should issue only when "(1) there is probable cause that plaintiff will be able to establish the rights which he asserts and (2) there is a reasonable apprehension of irreparable loss unless interlocutory injunction relief is granted or interlocutory injunctive relief appears reasonably

necessary to protect plaintiff's rights during the litigation." Pruitt v. Williams, 288 N.C. 368, 372 (1975). To issue or to refuse a preliminary injunction is usually a matter of discretion to be exercised by the trial court, in this case the Commission. The Commission, after weighing the equities and the advantages and disadvantages to the parties, must determine in its sound discretion whether a preliminary injunction should be granted or refused. The burden is upon the Complainants. Id.

On the basis of the affidavits and the arguments herein, the Commission concludes that the Complainants have not carried the burden of showing their right to preliminary injunctive relief. CP&L's Line Extension Plan was proposed by CP&L and approved by the Commission in the context of CP&L's 1987 general rate case, Docket No. E-2, Sub 526. The proposed tariff was unopposed by the parties to that proceeding. The affidavits offered by the Complainants and by CP&L reveal numerous factual disputes. In many cases, the opposing affidavits deal with the same subdivisions and give contradictory versions of the same events. Public Service contends that CP&L has used the tariff to apply economic pressure on developers to keep gas service out of new residential subdivisions. CP&L contends that it has administered the tariff as approved, that the tariff simply assigns the costs of new service to those responsible for those costs, and that the tariff has not been used to dictate the type of utilities that will be installed in a new subdivision. One CP&L affidavit cites examples of all-electric subdivisions that required contributions from the developers and cites other subdivisions with gas service that required either no contribution or a small contribution pursuant to the "revenue credit" calculations. With respect to Complainant Harkrader, the Commission notes that the Line Extension Plan provides for the developer's deposit, which in his case is $12,319.71, to be made under protest subject to adjustment should the actual experience exceed the original "revenue credit" calculation. It appears that Complainant Harkrader is aware of this option, but has refused to make the deposit under protest. CP&L stated during oral argument that Complainant Harkrader's deposit could be made now subject to adjustment depending upon the outcome of this proceeding. For the reasons stated above, the Commission cannot conclude that the Complainants have shown either the likelihood that they will prevail on the merits or a threat of irreparable harm pending hearing on this complaint. It was stipulated during argument, although it was not addressed in the affidavits, that at least one builder has purchased a lot in Complainant Harkrader's subdivision development, has requested service from CP&L, and has been refused service pending the deposit required by the Line Extension Plan, which Complainant Harkrader refuses to make. This builder is not a party to this proceeding, nothing further is known about this situation, and the Commission cannot find a threat of irreparable harm either to the Complainants or to the builder on the basis of the showing made herein.

Although the Commission finds that the preliminary injunctive relief requested by the Complainants should be denied, the Commission finds that CP&L should be ordered to explain fully the provisions of its Line Extension Plan to prospective developers and to share and explain its calculations pursuant to the "revenue credit" provision of the tariff. Further, the Commission notes the statement in CP&L's Brief to the effect that "CP&L is not employing its Line Extension Plan to keep Public Service from providing natural gas service to the public." Without deciding or suggesting at this point that CP&L has done so, the Commission would order pending the hearing herein, that CP&L

administer its Line Extension Plan as written and not employ the tariff specifically to discourage the installation of natural gas service in any new subdivision. With respect to the Miles Branch Subdivision, the Commission would order that any deposit made by Complainant Harkrader for this subdivision pending the decision of his complaint shall be subject to adjustment in his favor according to the provisions of CP&L's Line Extension Plan and according to the Commission's ultimate decision on the merits of his complaint. The Commission will endeavor to expedite the proceedings in this case as much as the Commission's calendar and the parties' preparation will permit.

IT IS, THEREFORE, ORDERED that the request of the Complainants for a temporary restraining order and a preliminary injunction as set forth in their complaint of December 21, 1988, should be, and the same hereby is, denied as hereinabove provided.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of January 1989.

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

Commissioner Hipp dissents.

HIPP, COMMISSIONER, DISSENTING. I dissent from the majority's conclusion that the conditions for a Temporary Restraining Order (TRO) have not been met by the complainants and from the denial of the plea for a Temporary Restraining Order and Preliminary Injunction pending determination of the Complaint.

The North Carolina Courts have established two requirements for the issuance of a Preliminary Injunction; (1) the plaintiff is able to show the likelihood of success on the merits of his case; and (2) the plaintiff is likely to sustain irreparable loss unless the injunction is issued or if in the opinion of the court issuance is necessary for the protection of the plaintiff's rights during the course of litigation.

(1) Likelihood of success. It is clear from the facts, and it is undisputed that the revenue credit provisions of CP&L's Line Extension Plan have the effect of charging a greater contribution-in-aid of construction for service to a subdivision where the developer has allowed natural gas to be installed than it does for a subdivision which has excluded natural gas. This is true whether the subdivision elects underground electric service or overhead electric service.

The resulting economic inducement to the developer to exclude gas occurs as a direct operation of the Plan regardless of whether CP&L intended for the Plan to exclude natural gas. The only exception to the reduced charge for excluding natural gas is where the density of the subdivision is so great that the revenue credit is sufficient to connect the electric service without any contribution-in-aid of construction whether gas is available or not.

The revenue credit plan has the effect of discriminating against a subdivision that allows the installation of natural gas by charging a greater contribution-in-aid of construction because the electric revenue credit will be

less if gas heat is used than if electric heat is used. The discriminatory result is inescapable and is integral and inherent to the revenue credit plan.

The plaintiffs thus have shown a likelihood of success on the merits of their case, i.e., that the Plan is unlawful and is likely to be found in violation of the following State statutes:

> "G.S. 75-1.1. Methods of competition, acts and practices regulated; legislative policy. (a) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful."

> "G.S. 62-2. Declaration of policy. ... Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and govenment of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina: ... (4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;"

CP&L's response that it does not intend for the revenue credit to discriminate against the installation of natural gas is not available as a defense. Intent and good faith of the defendant is irrelevant to a charge of unfair methods of competition under G.S. 75-1.1.

> "...to succeed under G.S. 75-1.1, it is not necessary for the plaintiffs to show fraud, bad faith, deliberate or knowing acts of deception. ... Intent of the defendant and good faith are irrelevant." Chastain v. Wall, 78 N.C.App. 350, 356, (1985).

G.S. 62-2 (above) declares it to be the policy of North Carolina that the "availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy ... without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices ..."

The complainants have shown a strong likelihood of success in showing that CP&L's revenue credit plan is in violation of this public policy.

> "...A practice is unfair when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. ..." Johnson v. Insurance Co., 300 N.C. 247, 263 (1980); Marshall v. Miller, 302 N.C. 539, 548 (1981); Overstreet v. Brookland, Inc., 52 N.C.App. 444, 453 (1981).

> "... it follows that the intent of the actor is irrelevant. Good faith is equally irrelevant. What is relevant is the effect of the

> actor's conduct on the consuming public. Consequently, good faith is not an defense to an alleged violation of G.S. 75-1.1." Marshall v. Miller, Supra, at p. 548.
>
> "... A party is guilty of an unfair act or practice when it engages in conduct which amounts to an inequitable assertion of its power or position." Johnson v. Insurance Co., Supra, at p. 264.

Thus, the defendant's revenue credit plan can be an unfair trade practice no matter if CP&L had no intent of discriminating against natural gas when it designed and administered the Plan.

When the Utilities Commission approved this Plan in 1987, it was not disclosed or indicated that the revenue credit would vary directly to the decision of the developer to exclude natural gas from the subdivision. Maybe the Commission should have seen the discrimination that would result, but it did not and apparently CP&L itself did not intend for the result which has followed, but under the cases that is irrelevant as a defense.

The plaintiffs have shown an apparent flaw in the Plan at this stage in the economic inducement offered to a developer in a reduced charge for electrical connections if he will exclude up front any natural gas from the subdivision before the lot owners have a choice of fuel for heating, cooking, and hot water.

All of the legal authorities cited and quoted above support a conclusion that the plaintiff has shown a likelihood of success on the merits of its case.

This is not to say that this dissent concludes that the plaintiffs will prevail. The defendant may, of course, find new additional defenses to counter the Complaint at the full hearing, but for the test of a Temporary Restraining Order the complainants have met the test under all of the legal authorities in this case.

(2) Irreparable Harm or Protection of Plaintiff's Rights. The majority concludes that the plaintiffs have not shown irreparable harm because they can pay the $12,319 and have electric service connected and "the Commission would order that any deposit made by Complainant Harkrader for this subdivision pending the decision of his complaint shall be subject to adjustment in his favor according to the provisions of CP&L's Line Extension Plan and according to the Commission's ultimate decision on the merits of his complaint."

For other subdivisions, the Order states "... the Commission would order pending the hearing herein, that CP&L administer its Line Extension Plan as written and not employ the tariff specifically to discourage the installation of natural gas service in any new subdivision."

It is uncertain what the majority means when it says "the Commission would order" as this appears to mean some future action of the Commission. Regardless, to say that CP&L shall administer the Plan as written but not employ it to discourage natural gas is to fail to understand the clear evidence in the record that the Plan as written is what produces the discouragement of natural gas. The Plan is what will deny natural gas to lot owners in new

subdivisions throughout the CP&L territory. by offering an inducement to exclude gas from the subdivision.

The plaintiffs and the public buying lots in Miles Branch Subdivision are denied electric service until they pay $12,319 contribution-in-aid of construction to connect the electric system already installed at each lot. The majority recognizes that denial of electricity is an irreparable harm to a subdivision or lot owner seeking to build a house, but they say the harm is removed if the plaintiff will pay the $12,319. (It is stipulated that the subdivision could also get the electricity turned on without any contribution-in-aid of construction if the plaintiff Harkrader had excluded natural gas from the subdivision.)

The majority considers that the payment of $12,319 is not irreparable harm in this case because the Commission would order an adjustment under the Plan or under the Commission's ultimate decision on the merits of the Complaint.

The refund under the Line Extension Plan does not remove the harm because there could be no refund under the Plan if a sufficient number of the lot owners elected the use of natural gas in their homes.

The Commission's attempt to remove the harm by ordering an adjustment according to the Commission's ultimate decision on the merits of the Complaint does not recognize the jurisdictional problems of such a declaration. The Commission does not have general civil jurisdiction over the collection and refunds of amounts due. Law suits can be very expensive and can take many years before all appeals are exhausted. The $12,319, plus much greater cost of litigation, are not inconsequential harms. The plaintiff Harkrader is denied the use of his money and will incur large litigation expenses while the unfair trade practice of the defendant continues on unabated during the litigation.

The Line Extension Plan itself, which should be the test of the harm, doesn't give plaintiff the deposit back until two years pass and wouldn't give it back at all unless the revenue equals the cost.

The gravamen of the Complaint is the Line Extnsion Plan and its conditions attached to the $12,319 payment, not that if the plaintiff prevails and the Plan is declared illegal the Commission will order that the payment "shall be subject to adjustment in his favor," whatever that means. The majority is saying if you win you will get your harm (money) restored, so there is no TRO because the harm will be remedied if you win. The harm here is that the unfair trade practice offers an inducement to exclude natural gas (a reduced contribution-in-aid of construction), and if the plaintiff had succumbed to that inducement its lot owners would have been denied the use of natural gas, contrary to the legislative declaration of public policy in North Carolina. The denial of natural gas would occur at the very time that lot owners make the irreversible selection of the method of heating, cooking, and water heating. That is the irreparable harm. The majority have failed to discuss the vital public issue in this case.

The narrow limitation of the majority's decision to the rights of Richard Harkrader and Public Service Company of North Carolina overlooks the public interest in the case. The majority even excluded from consideration the interest of a member of the public who has purchased a lot from the plaintiff

Harkrader and has applied for electric service and has been denied electric service, on the grounds that this lot owner is not a party to the proceeding.

"This lot owner is not a party to the proceeding." This ignores the intervention in this case by the Honorable Lacy Thornburg, the Attorney General of North Carolina, pursuant to G.S. 62-20 on behalf of the using and consuming public for the reason that the matter is of significant interest to the using and consuming public, and the appearance at the hearing on January 9, 1989, by the Assistant Attorney General for the using and consuming public.

The defendant's own Affidavit recognizes that many home owners prefer natural gas by their calculations that electric revenue will be greatly reduced if natural gas is admitted to the subdivision. The Affidavits of the plaintiffs show that three out of four home owners will choose natural gas if it is available.

The defendant's Line Extension Plan gives an incentive to developers to exclude natural gas. The intent of CP&L is irrelevant. The harm is irreparable.

A contribution-in-aid of construction can be calculated by some method other than an inducement to exclude natural gas or by a measurement based upon the home owners choice of a competitive fuel.

This case involves more than Mr. Harkrader's dilemma of whether to test the legality of the Plan at the cost of considerable litigation expense. Subdivisions all over the CP&L territory are being put to the test of the inducement offered under the Plan, i.e., whether to take the reduced connection charge and exclude natural gas. That is a material inducement in many cases, considering the thin cash flow problems existent in the early stages of subdivision development. The inducement is to the developer, but the harm is to the public who purchase lots in the subdivision. The Utilities Commission has a duty to the public generally and to the public specifically in this case pursuant to intervention of the Attorney General for the public as a party to the case.

The effect on CP&L of issuing a Temporary Restraining Order as applied for in this case would be de minimis, unless it is hoping to discourage gas in new subdivisions. The electric system is fully installed. Without any additional expense, the builder who has an application pending for service can be connected. Revenue will start flowing and construction jobs will be available. The economy can get back in gear. Whatever the ultimate outcome, the Utilities Commission can provide that plaintiff Harkrader must pay what is found to be fair. If the Commission should deem it necessary, it could provide for more stringent remedies, such as a bond or the usual remedy of the defendant to disconnect service for nonpayment due.

Edward B. Hipp

DOCKET NO. E-2, SUB 552
DOCKET NO. E-2, SUB 553

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Richard J. Harkrader and Public Service Company of North Carolina, Inc., Complainants v. Carolina Power & Light Company, Respondent and Triangle Development Company, Complainant v. Carolina Power & Light Company, Respondent	)	ORDER DENYING COMPLAINTS

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 9-10, 1989

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

APPEARANCES:

For Complainants Harkrader and Public Service

F. Kent Burns and James M. Day, Burns, Day & Presnell, P.A., Box 10867, Raleigh, North Carolina 27605

For Complainant Triangle Development:

No appearance

For Carolina Power & Light Company:

Robert W. Kaylor, Associate General Counsel, and Adrian N. Wilson, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Antoinette Wike, Chief Counsel, and Robert B. Cauthen, Jr., Staff Attorney, Public Staff-North Carolina Utilities Commission, 430 North Salisbury Street, Raleigh, North Carolina 27602

Lemuel W. Hinton, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: Richard J. Harkrader and Public Service Company of North Carolina, Inc. (Public Service) initiated Docket No. E-2, Sub 552, by the filing of a Complaint on December 21, 1988. On December 19, 1988, the Commission issued an Order Serving the Complaint on Carolina Power & Light Company (CP&L) and scheduled an oral argument for January 9, 1989, on the Complainants' request for injunctive relief.

The hearing on the request for injunctive relief was held as scheduled on January 9, 1989. CP&L presented the affidavits of David R. Nevil and R. Oliver Crawley, Jr. Public Service presented the affidavits of Barry F. Mitsch, Nina Laughrey, and Jerry Atkins. On January 17, 1989, CP&L filed the affidavit of G. Reece Dillard. Thereafter, on January 26, 1989, the Commission issued an Order denying the Complainants' request for temporary restraining order and a preliminary injunction.

On January 17, 1989, CP&L filed its Answer and a request for a Commission investigation of Public Service. On February 3, 1989, the Commission issued an Order serving the Answer of CP&L on the Complainants, fixing a time for discovery and the filing of testimony and also scheduling a hearing on the Complaint for May 9, 1989.

The Complaint of Triangle Development Company in Docket No. E-2, Sub 553, was filed by letter on January 5, 1989, and was served on CP&L by Commission Order. On February 10, 1989, the Commission served the Answer of CP&L on the Complainant Triangle Development, and on March 23, 1989, the Commission issued an Order scheduling a hearing on the Triangle Development Complaint at the same time and date as the Complaint of Mr. Harkrader and Public Service.

On May 2, 1989, the Commission held a prehearing conference among the parties in these dockets. On May 4, 1989, the Commission issued a Prehearing Order setting forth the agreements and stipulations of the parties with respect to the procedures to be followed at the hearing.

The hearing in these consolidated dockets was convened as scheduled. Complainant Richard J. Harkrader testified with respect to his Complaint, and Public Service presented the testimony of Charles E. Zeigler, Jr. CP&L presented the testimony of David R. Nevil, Frank N. Muir and R. Oliver Crawley, Jr. Triangle Development did not prefile any testimony. Triangle Development employee Nina Laughrey appeared at the hearing and was allowed to testify as a public witness. In addition, Richard Staunch of the North Carolina Propane Gas Association appeared and testified as a public witness.

Based upon the testimony and exhibits of the witnesses and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Both Complainants Public Service and CP&L are public utilities subject to the jurisdiction of this Commission.

2. Complainants Harkrader and Triangle Development are engaged in the development of residential subdivisions in areas served by CP&L and Public Service.

3. The Complaints herein involve CP&L's Line Extension Plan E-4 (hereinafter LEP). Complainants Harkrader and Public Service allege that CP&L uses the LEP "as a device or sales gimmick by which it attempts to coerce builders and developers into making subdivisions all electric . . . by demanding exorbitant charges from builders and developers if natural gas supplied by Public Service is permitted in the subdivision . . . and agreeing to provide the electrical system at little or no cost if the builders and developers keep natural gas out of the subdivision."

4. CP&L's LEP is not unjust, unreasonable, unlawful, oppressive, or anticompetitive as alleged by Complainants Harkrader and Public Service. The manner in which CP&L calculates the revenue credit under the LEP is appropriate and is not anticompetitive.

5. CP&L's calculation of the contribution in aid of construction for Complainant Harkrader's Miles Branch Subdivision was proper.

6. The Complaint of Triangle Development should be denied.

7. The marketing plans of Complainant Public Service, specifically "Lion's Share VI," "Clean Sweep 1989," and "The Affordable Gas Home," and the costs associated with these plans may be reviewed by the Commission in more detail in Docket No. G-5, Sub 246, which is now pending before the Commission.

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

These findings of fact are jurisdictional in nature and essential uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Evidence for this finding is contained in the testimony of Complainant Harkrader, Public Service witness Charles E. Ziegler, Jr., and CP&L witness David R. Nevil.

The Complaint filed by Complainants Harkrader and Public Service alleges that the manner in which CP&L calculates the revenue credit under the LEP attempts to coerce builders and developers into denying Public Service access to new subdivisions, thus ensuring that those subdivisions will be virtually all-electric. They allege that the LEP is "unjust, unreasonable, unlawful, oppressive and anticompetitive and that [the LEP] is detrimental to the public in subdivisions in areas where such policy is enforced by denying, or

attempting to deny them, the right to have a choice of fuels for home heating and for use in heating water. . . " The LEP requires a contribution from developers of new residential subdivisions if CP&L's construction cost for installing its facilities exceeds the "revenue credit" for the development. The construction cost figure excludes secondary lines and excludes the cost of capacity that, in CP&L's opinion, would normally have been made in the foreseeable future, even if the person requesting the service had not requested it, to (1) improve reliability and availability of service in the area or (2) enhance CP&L's ability to serve existing or future load expectations in the area. The revenue credit is an estimate of the expected revenues to be generated by the new distribution system over a two-year period, assuming full occupancy, using CP&L's base rates less fuel and variable O&M expenses. The same process is used whether the developer requests an overhead or underground distribution system from CP&L.

Public Service witness Ziegler, who is Executive Vice President, Chief Operating Officer and Chief Financial Officer of Public Service, testified that builders and developers are being penalized by CP&L if they let natural gas into their areas and that CP&L is using the revenue credit as a device to keep Public Service from providing natural gas service in those areas where it has been authorized to serve by the Commission. Ziegler gave eight reasons as to why the LEP is unjust, unreasonable, and anticompetitive; these reasons are considered one-by-one below. Ziegler suggested that CP&L's LEP should be amended to make it more like Public Service's tariff for extending distribution lines. Public Service allows each new customer a basic allowance without charge. Beyond the free basic allowance, Public Service determines the additional cost of a proposed extension using company-wide figures and compares it with an estimate of revenues to be gained from the extension over a three-year period. The customer is only charged a contribution if the excess cost exceeds the revenue estimate. Ziegler testified that Public Service has a philosophical difference with CP&L, that Public Service tries to minimize contributions, and that Public Service tries to place the cost of extensions on the general body of ratepayers rather than the developer or the new customer. Ziegler admitted that Public Service had been looking for a test case to file along with a developer to test CP&L's LEP.

CP&L witness Nevil, who is Manager of Rate Development and Administration for CP&L, testified that CP&L's LEP is not designed to keep natural gas out of new residential subdivisions, but rather is designed to ensure that existing ratepayers are not forced to subsidize excessive investment in facilities installed to serve new customers. He testified that the LEP encourages customers to opt for the least-cost mode of service, be it overhead or underground. If Complainant Harkrader had opted for overhead distribution lines in his Miles Branch Subdivision (which would have been the least-cost mode of service), his revenue credit in that case would have exceeded the construction cost and there would have been no contribution. The LEP allows CP&L to scrutinize the investments developers are asking CP&L to make and to determine how much of that cost other ratepayers should absorb and how much should be absorbed by the developer requesting the service. If the investment that a particular developer is requesting CP&L to make outweighs the revenues that CP&L can expect to receive over a reasonable period of time, CP&L feels that it is appropriate and equitable for the excess to be paid by the party imposing that cost and receiving the benefits, rather than the general body of ratepayers.

CP&L witness Nevil testified that of the 139 subdivisions with natural gas that have been installed since the LEP was approved, only six or about 4.3% were required to pay contributions. In the 394 subdivisions without natural gas in which CP&L installed facilities after the implementation of the LEP, fourteen or about 3.6% were required to make contributions.

CP&L witness Nevil testified that the calculation of the revenue credit under the LEP is appropriate. Projected revenues are estimated over a two-year period assuming that all residences are occupied and any other customers in the development are in operation. Kilowatt-hour usage estimates for each residence within the subdivision are derived from data and calculations from throughout CP&L's system for various sized houses, for combinations of electric and non-electric appliances and for weather corresponding to the various geographical areas served. Nevil testified that the figures used are conservative and are not intended to favor one type of heat over any other. He testified that CP&L's field personnel use the best available information to project fuel mix. Nevil further testified that if a developer does not agree with CP&L's estimate of revenue credit, any contribution will be held as a deposit for two years, the revenue credit will be recalculated based on the actual results of two years' construction in the development, and the difference will be refunded to the developer with interest if the original revenue credit was too low. Nevil testified that most of the contributions result not from a low revenue credit tied to the presence of natural gas, but from circumstances such as unusually large lots, rock removal, unstable soil, overhead line relocations, bulk feeders, or nonresidential customers within the subdivision that raise the construction cost side of the equation.

We now turn to Public Service witness Ziegler's eight reasons why he feels the LEP is unjust, unreasonable, and anticompetitive.

The first reason is that even though the revenue credit used by CP&L speaks of other fuels, CP&L treats the subdivision as all-electric if natural gas is not present. CP&L witness Nevil testified that the worksheet used by CP&L personnel to calculate revenue credit and contributions includes spaces for not only "all-electric" and "non-all-electric," but also "mixed" subdivisions and provides for various ratios of fuel types in that mix. He stated that there is not a lot of fuel oil, propane, wood or solar being put into homes, but he testified that CP&L field personnel use the best available information in projecting fuel mix, including heating fuel saturation in the local area, input from the developer, recent trends, local customer preferences, and observed fuel mix in comparable developments.

The second criticism cited by Public Service witness Ziegler is that, unlike Public Service, CP&L has no basic allowance that is given to everyone. CP&L witness Nevil testified that the LEP is not based on the concept of a basic allowance for extending distribution lines. Instead, CP&L provides secondary service to any permanently occupied residence at no charge as long as the length of service does not require an additional pole (in the case of overhead) or service beyond the normal point of delivery (in the case of underground). In any event, only a small percentage of subdivisions end up owing a contribution under the LEP.

Third, Public Service witness Zeigler complained that the LEP compares specific construction costs with revenues produced by average rates and that

such a comparison is inconsistent. CP&L does not dispute that specific costs and Commission-approved rates are used in applying the LEP, but it denies that the use of such costs and rates renders the LEP unjust, unreasonable, or anticompetitive. Specific construction costs to serve a subdivision are used by CP&L in determining whether a contribution is required pursuant to the LEP. Similarly, specific revenues to be generated by that subdivision during the subsequent two years are estimated, based on Commission-approved rates, to determine if such revenues are expected to exceed the cost to CP&L. CP&L witness Nevil testified that the LEP is designed to ensure that existing ratepayers are not forced to subsidize CP&L's investment in new facilities installed to meet the requirements of a developer in his design of a subdivision.

Fourth, Public Service witness Ziegler alleged that the revenue credit is arbitrary because CP&L is left free to make any assumptions it wants regarding the percentages of homes that will use another fuel if both electricity and natural gas are available. CP&L witness Nevil testified that allowing CP&L field personnel to make decisions based on local market conditions does not necessarily lead to abuse or discrimination. He conceded that field personnel take a "conservative" approach since developers have the right to dispute any contribution, but he testified that if CP&L were manipulating the projected fuel mix to justify charging developers who want natural gas, there would be many more instances of developers with natural gas paying contributions.

The fifth reason listed by Public Service witness Ziegler was that the LEP uses customer specific construction cost, that it doesn't include generation and transmission costs of serving new customers and that generation and transmission are never figured on a customer specific basis. CP&L witness Nevil testified that construction costs vary widely and that use of average construction costs would lead to smaller subdivisions subsidizing larger ones. He testified that generation and transmission are addressed through other rates, riders and programs and that the LEP "addresses solely those specific costs which are attributable to the requirements of the developer. . . " He also pointed out that CP&L does not include excess capacity in the construction cost for a project if the extension would normally have been made in the foreseeable future to improve reliability or enhance CP&L's ability to serve in the area.

Sixth, Public Service witness Zeigler alleged that the LEP encourages the use of more electricity, which is contrary to CP&L's conservation advertising and to its reduced rates for energy efficient homes. CP&L witness Nevil testified that there is no conflict. On the one hand, the LEP encourages cost-effective investment, which helps hold down future rates; on the other hand, CP&L's advertisements encourage its ratepayers to use the most energy efficient equipment to help avoid the need to build future generation, which also helps to minimize the costs and future rates.

Seventh, Public Service witness Ziegler alleges that CP&L's LEP is unjust and unreasonable because only 3.2% of new subdivisions have been required to make any payment to CP&L. CP&L witness Nevil testified in many cases CP&L is no longer collecting contributions from developers who would have had to contribute before the adoption of the LEP. In a small number of subdivisions, however, larger contributions are being collected on the basis that the expected revenues do not offset the investment. CP&L witness Nevil testified

that the LEP is based on the premise that it is fairer to ratepayers and developers as a whole to consider developments on a case-by-case basis and to collect contributions in situations where the investment a particular developer asks CP&L to make outweighs the revenue CP&L can expect to receive over a reasonable period of time. CP&L witness Nevil further testified that it is justifiable and appropriate that the excess be paid by the party imposing the cost and receiving the benefits, rather than the general body of ratepayers. The plan used by Public Service works to place more cost of new facilities in rate base.

Finally, Public Service witness Zeigler questioned the use of two years in the computation of the revenue credit, rather than the three-year period used by Public Service. CP&L witness Nevil testified that CP&L's two-year factor is multiplied times the annual energy usage assuming the development is fully occupied, rather than projected occupancy as used by Public Service. In a slow-growth area, Public Service's three-year projected occupancy test may result in considerably less projected revenues than the method used by CP&L.

The Commission concludes from the evidence that the Complainants have failed to show that the LEP is unjust, unreasonable, unlawful, oppressive, or anticompetitive and that they have failed to show that the revenue credit provision of the LEP is being used to coerce developers into making subdivisions all-electric. We cannot find that the revenue credit unreasonably restricts competition from natural gas or that CP&L has been manipulating the LEP. Only 4.3% of new subdivisions with natural gas have been required to pay contributions under the LEP. It appears from the evidence that the presence or absence of natural gas in a new subdivision is not the most important factor in determining whether a contribution is due. The density of the neighborhood and construction factors tend to drive contributions, rather than the revenue projections. In Mr. Harkrader's case, an overhead distribution system would have cost less to construct and would have eliminated any contribution from him. In any event, we note that developers have the right to dispute any contribution required under the LEP and to receive refunds if CP&L's revenue projection is too low. Many of witness Ziegler's specific criticisms of the LEP arise from his desire to make CP&L's LEP more like Public Service's tariff for extending distribution lines. However, the evidence shows that CP&L and Public Service have a philosophical difference as to whether it is more appropriate for new customers or the general body of ratepayers to bear the cost of new extensions. The Commission cannot say that one approach or the other is unreasonable; we cannot say that both companies must follow the same philosophy or the same tariff provisions. In general, we find that CP&L made reasonable responses to witness Ziegler's criticisms of the LEP, and we cannot find that the LEP is unjust, unreasonable, unlawful, oppressive or anticompetitive as alleged by the Complainants Harkrader and Public Service.

It does appear, however, that the LEP has been widely misunderstood by developers, and CP&L must undertake to do a better job of explaining it. The Commission therefore repeats the instructions in our January 26, 1989 Order in this docket directing CP&L to explain fully the provisions of the LEP to prospective developers and to share and explain all calculations made pursuant to the LEP.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for Finding of Fact No. 5 is contained in the testimony of Complainant Harkrader and CP&L witness Oliver Crawley, Senior Marketing Representative in CP&L's Sanford office.

Complainant Harkrader stated that CP&L cited several different contributions, each lower than the last, beginning with $25,000. CP&L witness Crawley testified that $25,000 was an initial estimate based on a preliminary plot plan, that CP&L was unable to provide an exact contribution figure until Harkrader had provided a final plot plan subject to no further changes, and that Harkrader made several revisions to the subdivision which necessitated several adjustments to the contribution figures.

Complainant Harkrader testified that CP&L refused to serve his subdivision without a contribution if natural gas service was available. CP&L witness Crawley testified that he informed Harkrader that any contribution would result from comparing a revenue projection to construction cost, regardless of fuel. Upon the request of Harkrader, calculations were performed on the assumption that the subdivision would be all-electric and no contribution was required on this basis because the revenue projection exceeded construction cost. Crawley also told Harkrader that no contribution would be required, regardless of fuel mix, if he used overhead service, but Harkrader was not interested. Harkrader was told that he could pay the contribution under protest; Harkrader refused.

Complainant Harkrader alleges that CP&L was responsible for unreasonable delays in the construction of electric distribution lines in the Miles Branch Subdivision. CP&L witness Crawley testified that such delays were caused by Harkrader's frequent changes to the plot plan. Changes occurred after July 18, 1988, when Harkrader first notified CP&L that he was ready for CP&L to install its system. Crawley testified that the construction delay was in no way related to Harkrader's decision to permit natural gas in the subdivision.

Complainant Harkrader also alleges that CP&L's construction cost of $46,357 was extremely high. CP&L witness Crawley testified that this figure includes a 32.5% gross-up for taxes as a result of the Tax Reform Act of 1986 and that the Miles Branch lots averaged 1.7 acres each, requiring much more primary and secondary facilities than a typical suburban subdivision.

Finally, Complainant Harkrader alleges that the contribution is too high because CP&L included in its calculation of the revenue projection only 16 of the 17 lots in the Miles Branch Subdivision. CP&L witness Crawley testified that only 16 lots are served from the underground distribution system in Miles Branch. The seventeenth lot is located adjacent to overhead lines, none of the costs of relocating the overhead lines to serve the seventeenth lot was included in the construction cost for Miles Branch, and it was appropriate to exclude the revenue projection for that lot.

The Commission concludes that CP&L's calculation of the contribution for the Miles Branch Subdivision was proper based on the testimony of CP&L witness Crawley.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding is in the testimony of public witness Nina Laughrey, Assistant Development Coordinator for Triangle Development and CP&L witness Frank N. Muir.

The gist of witness Laughrey's testimony was that after the final plot plan for the Saddleridge Subdivision had been submitted to CP&L and Triangle Development had made arrangements to commence work, Triangle Development was informed that CP&L would require a contribution for the subdivision. It was her understanding that the contribution was later dropped, but that Triangle Development had not received official notification. Witness Laughrey also complained that CP&L's LEP is arbitrary and that it is difficult for developers to budget for contributions under the LEP. CP&L presented the testimony of Frank N. Muir, Marketing Manager for its Leesville area office. Muir testified that he met with a principal in Triangle Development on August 5, 1988, to discuss the Saddleridge Subdivision. He testified that on August 17, after CP&L had received a rate increase and the revenues from that rate increase were factored in, CP&L determined that there would be no contribution for the Saddleridge Subdivision. Witness Muir testified that he had personally contacted Triangle Development and advised that there would be no contribution.

The Commission finds that CP&L has not required any contribution of Triangle Development, that the issues with respect to the reasonableness of CP&L's LEP have already been considered, and that the complaint should be denied for the reasons given in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Evidence for this finding is contained in the testimony of CP&L witness Nevil and Public Service witness Zeigler.

Public Service sponsors several marketing plans designed to promote the use of gas in its service territory, including "Lion's Share VI Multi-Family Acquisition Program," "Clean Sweep 1989", and "The Affordable Gas Home." None of these programs are filed with the Commission. CP&L raised the issue of whether these marketing programs involve compensation, consideration, or the furnishing of equipment prohibited by G.S. 62-140(c). Public Service witness Ziegler testified that the cost of these marketing activities are kept separate and are not borne by ratepayers. In Public Service's judgment, these marketing activities are properly unregulated, but Zeigler testified that Public Service would file, amend, or cease any plan as ordered by the Commission.

The object of the "Lion's Share VI Multi-Family Acquisition Program" is to obtain multi-family customers. Developers are offered, free of charge, one natural gas water heater for each four new individually gas-metered housing units having both gas heating and water heating. In lieu of the gas water heater, Public Service will pay $51.50 per unit to assist in promoting the sale or rental of the multi-family project. Further, after reaching their quotas, Public Service representatives are paid bonuses under this program.

Public Service's "Clean Sweep 1989" program is designed to increase on-main gas saturation by the conversion of all-electric apartment complexes, duplex units, condominiums and garden cluster homes to natural gas. When

representatives have reached their quotas, bonuses will be paid on additional units converted.

Public Service also sponsors "The 1989 Affordable Gas Home" program, which promotes gas service for new homes. Pursuant to this program, Public Service will provide home builders, free of charge, one 40-gallon natural gas water heater for each four new single-family gas-metered homes constructed with a gas furnace and a gas water heater. Public Service will also provide an "Affordable Plus" builder certificate (valued to $50 per house) for the gas piping of the third gas appliance in a new single-family home served by Public Service.

At the hearing, CP&L recommended that the Commission examine Public Service's marketing activities in the context of the pending Public Service general rate case, Docket No. G-5, Sub 246. The Commission notes that the deadline for filing testimony in the pending Public Service general rate case has not expired, and the Commission finds it appropriate to order that any person who wishes to pursue an investigation of Public Service's marketing practices may do so in the context of the general rate case. The Commission will consider issues relating to Public Service's marketing activities in the context of that general rate case, not in the context of the present complaint proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the complaints of Richard J. Harkrader, Public Service, and Triangle Development should be, and the same hereby are, denied as hereinabove provided; and

2. That any person wishing to raise issues with respect to the marketing activities of Public Service will have an opportunity to do so in the context of Public Service's pending general rate case, Docket No. G-5, Sub 246.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of July 1989.

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

Commissioner Hipp's term expired on June 30, 1989, and he did not participate in this decision.

DOCKET NO. E-7, SUB 432

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of The Jocassee Watershed Coalition, et al., Complainants	)	
v.	)	PREHEARING ORDER
Duke Power Company, Respondent	)	

HEARD: Wednesday, January 11, 1989, at 2:00 p.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina,

BEFORE: Commissioner Sarah Lindsay Tate, Presiding

APPEARANCES:

For Duke Power Company:

Ronald L. Gibson, Attorney, Duke Power Company, Post Office Box 33189, Charlotte, North Carolina 28242

For Sapphire Lakes, Inc., Toxaway Views Condominiums, et al.:

Theodore C. Brown, Jr., Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27602

For Fairfield Communities, Inc. et al.:

W. Daniel Martin, III, Ward & Smith, P.A., Post Office Box 8409, Greenville, North Carolina 27835-8409

For the Jocassee Watershed Coalition, et al. ("the Coalition"):

John Runkle, Attorney at Law, Post Office Box 4135, Chapel Hill, North Carolina 27515

For the Public Staff:

Antoinette R. Wike, Chief Counsel and 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 North Carolina Department of Justice:

Jo Anne Sanford, Special Deputy Attorney General, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

TATE, PRESIDING COMMISSIONER: On January 4, 1989, the Commission issued an Order scheduling an additional prehearing conference in this docket. In so ordering, the Commission cited the many changes that have taken place in this docket since the first prehearing conference on November 18, 1988.

The Conference was held as scheduled on January 11, 1989, and all of the above parties were present and represented by counsel.

On the basis of the statements, stipulations, and agreements, which were offered and made by the parties during the prehearing conference, the presiding Commissioner finds good cause to enter this Prehearing Order for the purpose of establishing certain basic procedures for the hearing scheduled in this docket:

1. The hearing for the receipt of the testimony will be held before the full Commission, Commissioner Sarah Lindsay Tate presiding. The hearing will commence at 2:00 p.m. on Tuesday, January 17, 1989.

2. All prefiled testimony shall be stipulated directly into the record without any questions being asked by counsel except questions relating to corrections or additions to the prefiled testimony. The witnesses who filed prefiled testimony shall be prepared to summarize their prefiled testimony. The parties shall have available for distribution the written text of the summaries. The parties shall have 25 copies of the summaries available for the Commission, the parties, the reporter, and Commission staff personnel.

3. The Commission will hear testimony from any public witnesses during the course of the hearing at times convenient to the Commission, the parties, and the public witnesses. Public witnesses may be heard on Tuesday, January 17, 1989, prior to the testimony of the parties, or at such time as the public witnesses can be accommodated.

4. The parties shall have available 25 copies of cross examination exhibits to be made available to the Commission, the other parties, the reporter, and Commission staff personnel, and a reasonable number of photographic exhibits. The parties shall make a good faith effort to make exhibits prepared by them for cross examination available to the parties on or before 5:00 p.m. on the day prior to the day the witnesses will be cross-examined. The Commission recognizes that there may be occasions during the hearing when the parties may not be able to comply with this requirement, and the presiding Commissioner will rule on these occasions at the time they arise.

5. The order of cross-examination of witnesses was not discussed at the prehearing conference. The Commission advises the parties that it will leave the order of cross-examination to the discretion of the parties, provided that the Commission will preclude the use of "sweetheart" cross-examination.

6. The presiding Commissioner allowed the intervention of Toxaway Views Condominiums, the Toxaway Views Homeowners Association, and John Anthony Fisher, III and Jeanette K. Fisher. These Intervenors will file their written testimony on Friday, January 13, 1989, and serve copies thereof upon the parties. These parties are represented by Mr. Brown.

7. The parties provided the following estimates of cross examination:

WITNESSES	Duke	Coalition	A.G.	Public Staff	Intervenors (Brown	Martin
Coalition						
Thomas		-	15 min.	10 min.	10 min.	10 min.
Pittillo	1½ hrs.	-	15 min.	10 min.	10 min.	10 min.
Sweatt		-	10 min.	10 min.	20 min.	30 min.
Fisher	30 min.	10 min.	10 min.	10 min.	-	-
Duke						
Blackley	-	2 hrs.	45 min.	15 min.	10 min.	
Huestis		30 min.	15 min.	-	-	
Hollifield		30 min.	15 min.	15 min.	15 min.	
Keith & Taggart		30 min.	20 min.	-	5 min.	30 min. for all Duke witnesses
Early		30 min.	15 min.	-	5 min.	
Reinke		60 min.	15 min.	-	5 min.	
Dysart		30 min.	15 min.	15 min.	5 min.	
Stimart		30 min.	30 min.	60 min.	5 min.	
Brockington						
Gaddy		1½ hours	20 mins.	-	-	
Ham						
Olmstead						

The Subpoena Duces Tecum Issued By The Coalition

On January 6, 1989, Mr. Runkle, counsel for the Coalition, caused to issue a subpoena duces tecum requiring Thomas Sweatt of Lake Toxaway to appear before the Commission on January 17, 1989, and give evidence in this case on behalf of the Coalition and to have with him at that time the summary of his prefiled testimony which was prepared for the hearing previously scheduled in this docket for December 6, 1988. At this prehearing conference, Duke opposed the subpoena, stating that it would be unfair to Duke and to the intervenors to have Mr. Sweatt testify, since Mr. Sweatt had been the witness of certain parties who have since withdrawn from this case. The withdrawal of these parties resulted from an agreement reached between the parties and Duke, and Duke contended that allowing Mr. Sweatt to testify would undercut the value to Duke of the agreement.

Mr. Runkle testified that the testimony of Mr. Sweatt is crucial to the case of his clients and is relevant to the issues in this proceeding. Mr. Runkle advised the Commission that Mr. Sweatt was agreeable to appear and testify at the hearing and that he would be here. The Attorney General supported the appearance of Mr. Sweatt. Mr. Brown and Mr. Martin, counsel for the intervenors, stated that their clients will be adversely affected by certain parts of Mr. Sweatt's testimony.

Late in the afternoon of January 11, 1989, the Commission received via telefax a letter from Gwen G. Radeker, counsel for previous parties in this

docket, stating that they had provided the prefiled testimony of Mr. Sweatt on behalf of those parties. The letter pointed out that her clients had reached an agreement with Duke Power Company which resulted in their withdrawal from this proceeding. "Mr. Sweatt has indicated to us that he does not wish to testify in Raleigh at the hearing. We do hereby request that the Commission relieve Mr. Sweatt of the responsibility of journeying to Raleigh on the 17th."

Upon consideration of the above, the presiding Commissioner is of the opinion, and so concludes and determines, that no sufficient grounds have been shown to quash the subpoena of the Coalition directing Mr. Sweatt to appear at the hearing in this docket. "It is the duty of all persons to appear and testify in the courts when their testimony is required and they are able to attend." Brandis on North Carolina Evidence, 3rd ed. § 16. The Commission notes that Mr. Sweatt's testimony was filed in this docket on November 3, 1988, and that all parties have had an opportunity to become familiar with it. Upon the agreement of the parties, the Commission will set aside Tuesday afternoon, January 17, 1989, to take the testimony of Mr. Sweatt.

The Intervention Of John W. Williams

On January 10, 1989, counsel for John W. Williams, an intervenor in this docket, advised the Commission by letter that on the strength of certain representations made to him by Duke Power Company, Mr. Williams would be willing to withdraw his petition as an intervenor. "Your record will indicate that Mr. Williams petitioned to intervene only after learning that an alternate route was being considered which would have brought the line extremely close to his property. If the information supplied by Mr. Parker were to change, however, Mr. Williams would like to renew his position as an intervenor and be heard in this matter."

The Commission advises Mr. Williams that as a party of record in this docket he has the continuing responsibility of keeping himself informed as the events in this proceeding. This Order will be served on Mr. Williams and his counsel by the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That this Prehearing Order issue setting forth the agreement of the parties and the rulings of the presiding Commissioner with respect to this docket.

2. That objections to the subpoena of Thomas Sweatt are hereby denied and overruled. The testimony of Mr. Sweatt will be heard by the Commission on Tuesday, January 17, 1989, at 2:00 p.m., or at such time on that afternoon as the Commission is able to hear him.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of January 1989.

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

DOCKET NO. E-7, SUB 432

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of The Jocassee Watershed Coalition, the Western North Carolina Alliance, Inc., and the Conservation Council of North Carolina, Inc., et al., Complainants v. Duke Power Company, Respondent	)	ORDER DENYING COMPLAINTS AND DISSOLVING RESTRAINING ORDER

HEARD: Thursday, November 17, 1988, at 7:00 p.m., Courtroom A, 4th Floor, Macon County Courthouse, 5 W. Main Street, Franklin, North Carolina

Friday, November 18, 1988, at 10:00 a.m., Superior Courtroom No. 1, Transylvania County Courthouse, Brevard, North Carolina

Tuesday-Friday, January 17-20, 1989, at 2:00 p.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

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

APPEARANCES:

For the Complainants:

John D. Runkle, Post Office Box 4135, Chapel Hill, North Carolina 27515

For the Respondent:

Steve C. Griffith, Jr., E. W. Poe, Jr., and Ronald L. Gibson, Duke Power Company, Post Office Box 33189, Charlotte, North Carolina 28242

FOR THE INTERVENORS:

W. Daniel Martin, III, Ward and Smith, P.A., Post Office Box 8409, Greenville, North Carolina 27855-8409
For: Fairfield Communities, Inc., et al.

Theodore C. Brown, 1042 Washington Street, Raleigh, North Carolina 27605 and White and Dalton, Post Office Box 1589, Brevard, North Carolina 28712
For: John Anthony Fisher and Sapphire Lakes, et al.

Jo Anne Sanford, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27620-0520
For: The North Carolina Department of Justice

Antoinette R. Wike and A. W. Turner, Jr., 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 October 7, 1987, Duke Power Company ("Duke") and Aluminum Company of America ("Alcoa") entered into an Agreement under which Duke agreed to purchase the stock of Nantahala Power and Light Company ("Nantahala"). On November 3, 1987, Duke filed an Application for Written Approval of Stock Transfer requesting approval of transfer of the common stock of Nantahala from Alcoa to Duke. The Commission entered an Order approving the stock transfer on August 29, 1988 (Docket No. E-7, Sub 427). The stock transfer was made on November 17, 1988, and Nantahala is now a subsidiary of Duke. As a part of the sale of Nantahala to Duke, the two utilities entered into an Interconnection Agreement under which Duke will supply supplemental power to Nantahala. The Interconnection Agreement, which was approved by the Federal Energy Regulatory Commission[1] ("FERC"), provides that Duke will construct a 230-kv transmission line which will interconnect Duke's generation and transmission system with Nantahala's system. Therefore, Duke plans to construct a 230-kv transmission line from its Jocassee Hydro Station located in South Carolina to Tuckasegee, North Carolina, to interconnect with Nantahala.

On January 25, 1988, Mr. and Mrs. George R. Corbett (the "Corbetts") initiated this complaint proceeding by writing a letter to the Commission expressing concern over the route of the proposed transmission line near their property. On February 5, 1988, the Commission issued an Order serving the complaint on Duke. Duke filed its Answer and Motion to Dismiss on February 29, 1988. On February 2, 1988, the Corbetts filed a Petition to Intervene in the proceeding for approval of the stock transfer. The Commission entered an Order on April 4, 1988, transferring and consolidating the Corbetts' Petition with this complaint proceeding because of the common questions of law and fact.

By separate Order issued on April 4, 1988, the Commission deferred hearing in this docket pending the hearing and decision in the proceeding for approval of stock transfer, Docket No. E-7, Sub 427.

On May 13, 1988, the Attorney General filed Notice of Intervention pursuant to G.S. 62-20. The Public Staff participated as a party to this proceeding from the beginning, but filed a similar Notice of Intervention pursuant to G.S. 62-15(d) on December 13, 1988.

On May 24, 1988, Lake Toxaway Partners ("Partners") filed a Complaint and Motion to Consolidate their Complaint for hearing with the Corbetts' Complaint. The Complaint was served on Duke by Order of May 26, 1988.

---

1 The FERC accepted the Interconnection Agreement for filing on April 1, 1988, and established a hearing schedule to resolve certain questions concerning the rates under the Interconnection Agreement. These questions

On May 27, 1988, the Lake Toxaway Property Owners Association, Inc. ("Property Owners") filed a Complaint, Motion for Preliminary Injunction, and Motion to Consolidate. The Property Owners sought an Order from the Commission enjoining Duke from beginning construction of the transmission line and requiring Duke to select an alternate route.

On June 15, 1988, Duke filed Motion for Deferral of Proceedings Pending Decision on the sale of Nantahala. Duke sought to defer proceedings involving the new complaints as the Commission had ordered in the Corbett case. The new Complainants, the Attorney General, and the Public Staff opposed deferral of the proceedings and joined in the request that Duke be enjoined from beginning construction of the transmission line.

On June 22, 1988, the Jocassee Watershed Coalition, the Western North Carolina Alliance, Inc., and the Conservation Council of North Carolina, Inc., jointly filed a Complaint, Motion to Consolidate and Response to Duke's Motion for Deferral.[2] On July 22, 1988, the Commission entered an Order which consolidated all of the Complaints into one proceeding, denied Duke's request that the proceeding be deferred pending a decision on approval of the sale of Nantahala, and enjoined Duke from beginning construction of the planned transmission line. Preliminary survey and soil analysis were permitted, however.

On August 29, 1988, Duke filed Answer to each Complaint, together with Motion to Dismiss and Motion to Expedite the proceeding.

On September 2, 1988, the Commission entered an Order establishing a schedule for completion of discovery, filing testimony, and hearings. On September 23, 1988, the Commission issued an Order scheduling public hearings in Franklin and Brevard because of the many letters written to the Commission expressing concerns about the planned transmission line.

On October 14, 1988, Mr. and Mrs. Bass requested that their Complaint be withdrawn with prejudice. The Corbetts made a similar request on November 2, 1988, that their Complaint be withdrawn. These requests to withdraw from the proceeding were allowed, with prejudice, by Order issued November 4, 1988.

On October 26, 1988, the Gloucester Valley Landowners Association filed a Petition for Leave to Intervene. The Petition was granted by Commission Order entered on November 4, 1988. Another Complainant, John W. Williams, and additional Intervenors, Sapphire Lakes, Inc., et al. and Fairfield and Associates, et al., were allowed to participate as parties in the proceeding by Commission Orders issued December 7 and 9, 1988.[3]

---

were resolved by the parties, and the FERC approved the Settlement Agreement on November 4, 1988 (Docket No. ER88-77-000).

2 A similar Complaint and Motion was served on the parties by Mr. and Mrs. E. Evan Bass on July 14, 1988. The Complaint was filed with the Commission on September 1, 1988.

3 Mr. Williams has not participated in the proceedings despite being notified of the hearing. The Commission must therefore assume that

On December 5, 1988, the Commission issued an Order postponing the hearing at the request of the Property Owners. The hearing was rescheduled for January 17, 1989. The Order also permitted limited, additional discovery.

On December 12, 1988, Toxaway Partners and the Property Owners requested, pursuant to a settlement agreement entered into with Duke, that their complaints be withdrawn with prejudice. The Commission's December 15, 1988 Order allowed the requested dismissals, with prejudice.

On January 10, 1989, John Anthony and Jeanette K. Fisher wrote a letter to the Commission requesting that they be allowed to intervene in this proceeding. The request for intervention was allowed by the presiding Commissioner at the January 11, 1989, prehearing conference.

The Commission conducted evidentiary hearings in this matter beginning on January 17, 1989. The Coalition presented the testimony of William R. Thomas, Co-Chair of the Jocassee Watershed Coalition; Dr. J. D. Pittillo, Professor of Biology at Western Carolina University; and Thomas O. Sweatt, a retired professional engineer. Intervenor John Anthony Fisher testified in his own behalf.

Duke presented testimony and exhibits of the following witnesses:

Shem K. Blackley, Vice President, Transmission and Distribution, addressed the need for the transmission line, the proposed route, and consideration of alternative routes.

Charles B. Huestis, a member of the Board of Trustees of the North Carolina Nature Conservancy, discussed the Nature Conservancy's interest in purchasing property owned by Duke which will not be needed for the transmission line and the environmental compatibility of the transmission line with land the Nature Conservancy is interested in purchasing.

Dwight Hollifield, Duke's Manager of Landscape Architecture, addressed the visual aspects of the transmission line, including vegetation control and clearing techniques.

Tom Keith and Craig Taggert of EDAW, Inc., discussed their role in assisting Duke to minimize the visual impact of the transmission line and to prepare the Environmental Impact Statement.

Edward Earley, a real estate evaluation consultant from Golden, Colorado, presented a study of the impact of transmission lines on property values in the Lake Toxaway area.

William F. Reinke, Duke's Manager of System Planning, discussed analysis of interconnection alternatives and the need for a double circuit transmission line.

Mr. Williams has elected not to pursue his Complaint. In any event, Mr. William's Complaint is dismissed by this Order.

Dr. Larry Olmstead, Dr. Paul Brockington, Dr. L. L. Gaddy, and Dr. Don Ham testified as a panel and addressed the environmental studies they conducted individually which were utilized in preparation of the Environmental Impact Statement.

Dr. Benjamin Dysart, Professor of Environmental Engineering at Clemson University, discussed his review of the overall environmental impact of the project.

William R. Stimart, Duke's Vice President, Regulatory Affairs, discussed the economic impact of the planned transmission line and the proposal from the Tennessee Valley Authority (TVA) to revise the Interconnection Agreement between TVA and Nantahala.

The Coalition presented as rebuttal to Duke's evidence the testimony of Jimmy L. Cross, Vice President of Power Business Operations, Tennessee Valley Authority. This testimony was a proposal for revising the TVA Interconnection Agreement with Nantahala. At the hearing, Mr. Cross, Richard C. Crawford, and Steven G. Whitley, all of whom are officers and employees of TVA, testified as a panel concerning the TVA proposal.

On February 20, 1989, Mr. and Mrs. Fisher advised the Commission that they wished to withdraw their Petition with prejudice.

The parties filed proposed orders and briefs on February 21, 1989.

Based upon the testimony and exhibits presented at the hearing and the entire record in this proceeding, and the judicial notice of Docket No. E-7, Sub 427, the Commission makes the following

FINDINGS OF FACT

1. Complainant Jocassee Watershed Coalition is an unincorporated association with approximately 300 members whose stated interest is protecting the natural environment and the streams in the Jocassee watershed. Complainant Western North Carolina Alliance is a corporation organized and existing under the laws of the State of North Carolina and is involved in environmental and natural resource issues affecting the North Carolina mountains. Complainant Conservation Council is a corporation organized and existing under the laws of the State of North Carolina with the purpose of protecting unique natural areas and conservation of energy and natural resources. These Complainants, referred to herein as the Coalition, filed a Complaint seeking an Order requiring Duke to investigate alternative routes for the proposed transmission line and requiring Duke to select a route which minimizes the environmental impacts along the route.

2. Intervenors John Anthony Fisher and Jeanette Fisher are property owners in the Lake Toxaway area and are the principal stockholders in the Toxaway Views condominium development. The Fishers challenged the need for the planned transmission line and its planned location. The Fishers have withdrawn their Petition with prejudice.

3. Intervenor Gloucester Valley Landowners Association is an unincorporated association of landowners and residents in the Gloucester Township section of Transylvania County, North Carolina. The Gloucester Valley Landowners intervened in this proceeding to oppose alternative routes initially proposed by the Property Owners and Partners, and subsequently adopted by the Coalition, which would have relocated the transmission line through their area.

4. Intervenors Sapphire Lakes, Inc., et al., Fairfield Communities, and various property owners associations intervened in the proceeding to oppose an alternative route proposed by the Lake Toxaway Property Owners and Lake Toxaway Partners, and subsequently adopted by the Coalition, which would have relocated the transmission line to the western slope of Toxaway Mountain and within the view of their developments.

5. Respondent Duke Power Company is a public utility with a public service obligation to provide electric service within its service area and is subject to the jurisdiction of this Commission pursuant to the Public Utilities Act, G.S. 62-1, et seq.

6. Duke plans to construct a 230-kv transmission line from its Jocassee Hydro Station in South Carolina to a planned substation site near Tuckasegee, North Carolina. The planned transmission line would physically interconnect the Duke and Nantahala systems and will allow Duke to provide supplemental power to Nantahala pursuant to the Interconnection Agreement between Duke and Nantahala.

7. This Commission has approved the sale of Nantahala to Duke and has determined that the Nantahala customers will benefit substantially from the interconnection with Duke because of the lower rates from Duke as compared with the rates of the Tennessee Valley Authority and because of increased reliability. Docket No. E-7, Sub 427, Order of August 29, 1988. These benefits cannot be realized without the physical interconnection between Duke and Nantahala.

8. The Interconnection Agreement has been approved by the Federal Energy Regulatory Commission. The transmission line Duke plans to construct is required to fulfill Duke's obligation to provide supplemental power to Nantahala under the Interconnection Agreement. The Interconnection Agreement requires a physical interconnection with the eastern end of Nantahala's system not only to provide the required supplemental power, but also to improve reliability on Nantahala's system. The Interconnection Agreement cannot be implemented without construction of a transmission line from Duke to Nantahala.

9. The abuse of discretion standard is applicable to this complaint proceeding. Under this standard, the Commission must take a "hard look" and determine whether or not Duke acted arbitrarily and unreasonably in locating and siting the planned transmission line, taking into account the impact on the environment, the availability of reasonable alternative routes, the cost associated with alternate routes, and Duke's ability to efficiently satisfy its service requirements. The burden of proof rests upon the Complainants.

10. The Commission, applying the abuse of discretion standard, finds that the Complainants have failed to present evidence which would satisfy their burden of proof. The Coalition has not shown through its evidence that Duke

was arbitrary and unreasonable in locating and siting the planned transmission line, nor have they shown that they will be harmed by the planned transmission line. The Coalition's evidence consisted essentially of opinion testimony that some areas traversed by the transmission line should be avoided because of their ecological importance, and that Duke was arbitrary because it did not reveal alternate routes to the public for comments. No evidence of adverse environmental impact or of improper actions or improper motives by Duke was presented.

11. Duke used reasonable and objective criteria in selecting the tie points for the interconnection and in locating and siting the proposed transmission line. Alternatives to the selected tie points were considered by Duke, and a large area was carefully studied for possible alternative routes for the transmission line. The tie points and the route selected by Duke are reasonable, considering the impact on the environment, the cost, and Duke's ability to provide reliable service. Duke has taken reasonable and diligent steps to minimize the visual impact of the line and its impact upon the environment.

12. Duke owns all the property on which it plans to construct the new transmission line. Duke purchased all of the property from willing sellers without resorting to condemnation.

13. The rebuttal evidence offered by the TVA witnesses does not establish any arbitrary or unreasonable action by Duke in locating the planned transmission facilities. The revisions to the TVA-Nantahala rates offered by TVA do not result in a benefit to Nantahala customers when compared to the Interconnection Agreement between Duke and Nantahala. The testimony of the TVA witnesses does not support a finding requiring Duke to further study alternate routes or provide a basis for permanently enjoining Duke from construction of the line.

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 a certificate.

Based on the evidence presented, the findings of fact, and the applicable law, the Commission makes the following

CONCLUSIONS OF LAW

I.

The Commission has jurisdiction pursuant to the Public Utilities Act to hear and determine these complaints.

II.

The applicable standard in this case is whether Duke abused its discretion by acting arbitrarily or unreasonably in locating or siting the transmission facilities which are the subject of this Complaint. Pursuant to G.S. 62-75, the burden of proof in this complaint proceeding rests with the Complainants.

III.

The Commission concludes that Duke did not act arbitrarily, capriciously, and unreasonably in locating the planned transmission facilities. The evidence presented by Duke shows that reasonable alternatives were considered for interconnecting the Duke system with Nantahala and that available alternatives for routing the transmission line were studied. The selected tie points and transmission line route are reasonable. Therefore, the Commission must dismiss this proceeding and dissolve the Temporary Restraining Order entered on July 22, 1988.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

I and II. Jurisdiction, Applicable Standard, and Burden of Proof

The Commission concludes that it has jurisdiction to hear and determine these Complaints. In the case of Camp Gwynn Valley v. Duke Power Company, the Commission ruled that it 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 Decisions 89 (1974) (Docket No. E-7, Sub 152) (hereinafter the "Kirkman case"). In the Kirkman case, which also involved the construction of a transmission line across a Complainant's property, the Commission concluded that it had jurisdiction to hear the Complaint. The Commission described its reasoning 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 it 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.

* * * * * *

"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."

In Kirkman, the Commission found that Duke had not acted arbitrarily in locating the transmission line across the Complainant's property and dismissed the Complaint.

The Commission also asserted jurisdiction in Crohn v. Duke Power Company where one group of Complainants challenged the location of a transmission line routed near, but not across, their property. (Docket No. E-7, Sub 430, Order of October 28, 1988.) The Commission found that Duke had not acted arbitrarily or unreasonably and dismissed the Complaints.

The scope of the Commission's 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, which 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, which provides that the Commission may hear complaints against public utilities; and G.S. 113(A)-3 and G.S. 113A-4(1) of the North Carolina Environmental Policy Act of 1971. Construed together, these statutes give this Commission jurisdiction to hear and determine complaints such as this one, as was previously recognized by the Commission in the Kirkman, Camp Gwynn Valley, and Crohn cases.

The Complainants in this proceeding have raised numerous issues, including the environmental impact of the proposed transmission line on important ecological areas, the adequacy of Duke's consideration of alternative means of serving Nantahala, and the visual impact of the transmission line. 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 these Complaints and adjudicate the issues raised by the Complainants.

In the Camp Gwynn Valley and Crohn cases, 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 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. 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 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 Valley and Crohn cases, after reviewing the applicable authorities, including the Kirkman case and the North Carolina 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 the "arbitrary and capricious" standard of review enunciated in the Kirkman, Camp Gwynn Valley, and Crohn cases is applicable in this case. The Commission notes that the "arbitrary and capricious" standard is also applicable to issues of transmission line locations in eminent domain proceedings. See, e.g., Duke Power Co, v. Ribet, 25 N.C. App. 87 (1975).

The terms "arbitrary" and "capricious" were defined by the North Carolina Supreme Court in In re Housing Authority of the City of Salisbury, 235 N.C. 463, 468 (1952):

> "'Arbitrary' means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequate determining principle; not done according to reason or judgment, but depending

upon the will alone, -- absolute in power, tyrannical, despotic, nonrational, -- implying either a lack of understanding of or a disregard for the fundamental nature of things."

* * *

"'Capricious' means freakish, fickle, or arbitrary. An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles."

"'Arbitrary' and 'capricious' in many respects are synonymous terms. When applied to discretionary acts, they ordinarily denote abuse of discretion, though they do not signify nor necessarily imply bad faith."

Later decisions have similarly defined these terms. "Decisions are arbitrary and capricious when, among other things, they indicate a lack of fair and careful consideration or fail to display a reasoned judgment." State ex rel. Utilities Commission v. Thornburg, 314 N.C. 509 (1985). See also State ex rel. Commission of Insurance v. North Carolina Rate Bureau, 300 N.C. 381 (1980) (Decisions are arbitrary and capricious "when they fail to indicate any course of reasoning and the exercise of judgment."); and Godfrey v. Union County Zoning Board of Adjustments, 317 N.C. 51 (1986) (A decision is arbitrary "when there is no substantial relationship between the facts disclosed by the record and the conclusion reached.").

The Complainants contend that Duke acted arbitrarily and unreasonably in siting the proposed transmission line through this portion of western North Carolina and that Duke did not adequately consider alternative routes or alternatives to the proposed line. Duke, on the other hand, contends that the burden of proof rests on the Complainants, that the Complainants have not shown that any action by Duke in locating the line was arbitrary or unreasonable, and that the Complainants have not 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.

The Commission concludes that Duke did not act arbitrarily, capriciously, or unreasonably in selecting the tie points and locating the transmission line complained of in this proceeding. To the contrary, the evidence clearly shows that Duke carefully and diligently planned this project by examining a wide area of western North Carolina, narrowing the possible route alternatives, and selecting a route which minimized the impact on the environment and existing development. In finalizing the route, Duke took great care to study the potential environmental impacts and took steps to minimize such impacts. The evidence on which the Commission bases its conclusion is discussed below.

III. The Standard Applied to the Evidence in this Proceeding

The Complainants contended that the proposed transmission line as presently sited by Duke will have significant adverse environmental impacts in that it will, among other things, traverse the Panthertown Valley and other fragile natural areas; be clearly visible along a substantial portion of its length; cause the sedimentation of streams from its construction and from the

roads which will need to be constructed or upgraded; and disturb a large area in an excessively wide corridor. They presented four alternative routes for the Commission's consideration. The Complainants also contended that Duke did not adequately consider alternatives to the proposed transmission line such as the continued purchase of power from TVA.

The Coalition presented three witnesses to establish its case. Dr. J. Dan Pittillo, a professor of biology at Western Carolina University; William R. Thomas, Co-Chair and Co-Founder of the Jocassee Watershed Coalition; and Thomas R. Sweatt, an engineer and retired consultant. Dr. Pittillo testified that in his opinion, "from a naturalist's point of view," the Panthertown Valley and the entire Jocassee watershed are so "ecologically important" that the transmission line should avoid these areas. (Tr. Vol. 4, p. 110.) More specifically, he expressed a concern about the effects construction of the line may have on rare plant species, unique plant communities, and scenic streams. (Tr. Vol. 4, pp. 90-91.) He also presented concerns about the possibility of adverse impact from road construction and maintenance procedures which could cause siltation into certain streams. (Tr. Vol. 4, pp. 90, 112.) He recommended that Duke should investigate and evaluate different routes for the transmission line.

The Commission concludes that Dr. Pittilo's testimony does not establish that Duke acted arbitrarily and unreasonably. At best, his testimony suggests that special care should be taken to protect the environment. Dr. Pittilo's concerns are to a great extent addressed in the May 1988 botanical inventory and study of the Panthertown Valley prepared by an 11-person scientific team for the N.C. Natural Heritage Program. (Tr. Vol. 4, p. 96.) This study, a copy of which was appended to Dr. Pittillo's testimony as Attachment 3, concluded that Duke Power's large transmission line "should have limited impact on the ecological integrity of the site". (Tr. Vol. 4, p. 98.) The same report was offered as an exhibit by Duke witness Huestis, who testified that the study team included members from the Nature Conservancy. Witness Huestis described the Nature Conservancy's interest in purchasing the Panthertown Valley from Duke and its conclusion that in view of the construction and maintenance techniques Duke has committed to, "the transmission line can be constructed without sacrificing the biological diversity of the Panthertown Valley tract." (Tr. Vol 6, p. 22.) It is significant to the Commission that an independent study team reviewed the effects of Duke Power's proposed transmission line and concluded that construction of the transmission line will have only minimal environmental impact on the Panthertown Valley area. This conclusion was further supported by the testimony of Dr. Benjamin Dysart, Professor of Environmental Engineering at Clemson University. Dr. Dysart studied the entire transmission line corridor to assess the environmental impact and concluded that construction of the line will have no substantial negative impacts. (Tr. Vol. 6, p. 82.)

Testimony offered by Duke addressed the remainder of Dr. Pittillo's concerns. Mr. Hollified testified that no threatened or endangered animals, fish or plants will be affected by the Jocassee-Tuckasegee transmission line.[4]

---

4 Mr. Hollifield's testimony was amply supported by that of other expert witnesses offered by Duke. Dr. Dysart (environmental engineer), Dr. Gaddy

He testified that "leave" (undisturbed) and "special" (hand clearing only of trees within 30 feet of the transmission line) areas underneath the line will constitute 75 per cent of the 19.6 mile segment of the line in North Carolina. Since no construction activity or equipment will be permitted in the leave and special areas, there will be no introduction of color contrast or disturbance to the understory along most of the transmission line corridor in North Carolina. All river gorges crossed by the line will be spanned at right angles and left undisturbed, as was illustrated in the scale model of the Tuckasegee Gorge crossing displayed at the hearing and described during Mr. Hollifield's testimony.

Mr. Hollifield further testified that runoff, erosion, and siltation will be controlled and limited due to Duke's implementation of the erosion control requirements of the North Carolina Sedimentation Control Act of 1973, which mandates that siltation control measures be in effect before construction starts. Mr. Hollifield testified that only minor short-term effects on water quality such as increased turbidity are expected to occur during construction. Mr. Hollifield also testified that Duke planned to use, to the maximum extent possible, existing roads in its line construction activities. As a result, Duke plans to construct only four miles of roads in North Carolina in order to build the 19.6 mile segment of line. Mr. Hollifield testified that at the conclusion of construction these roads will be disced and seeded.

Mr. Thomas testified that the route for the proposed transmission line "would traverse some of the most unique and beautiful wild county in Western North Carolina, country that should, if possible, be preserved in its current wild state." Mr. Thomas urged Duke Power to consider running the transmission line elsewhere than through the Jocassee Watershed in the Panthertown Valley tract. (Tr. Vol. 4, p. 43.) Specifically, he urged that Duke Power study the routes proposed by Mr. Sweatt. (Tr. Vol. 4, p. 44.) Mr. Thomas concluded by stating that Duke Power should be required to investigate thoroughly alternate routes with less of an adverse environmental impact than the one proposed by the Company. (Tr. Vol. 4, pp. 43, 49.)

Mr. Sweatt testified that Duke has acted arbitrarily and capriciously in selecting and siting the transmission line and described the basis for his conclusion. (Tr. Vol. 4, pp. 117-118.) On cross-examination, Mr. Sweatt testified that his intent in using the words arbitrary and capricious was that Duke in its initial decision-making process did not discuss its proposed route with various public and private organizations to get "some feedback." (Tr. Vol. 5, pp. 6-7.) Mr. Sweatt explained that the process Duke followed in selecting the route was arbitrary because it was not discussed with the public. Mr. Sweatt also presented alternate routes which he believes should be considered.

(biologist/botanist whose work was commended as "highly professional" by Dr. Pittillo), Dr. Brockington (archaeologist), Dr. Ham (forester), and Dr. Olmstead (biologist). Each of these experts concludes that the planned transmission line would not have an adverse impact on the environment.

Mr. Sweatt had two basic criticisms of Duke: (1) The proposed route should have been discussed with the public, and (2) there are other routes which should have been studied. The testimony of Mr. Blackley, Duke's Vice President, Transmission and Distribution, disclosed that Duke's methods for selecting and siting transmission lines were reasonable and that Duke studied alternate routes and made a reasonable decision in selecting the proposed route. Mr. Blackley testified that after Duke's System Planning Department had determined that the most reasonable locations for electrical connections, or tie points, would be at Duke's Jocassee Station and at Nantahala's Thorpe Station near Tuckasegee, the Transmission Department made an overall assessment of the area and concluded that there were two general corridors a transmission line might follow. One corridor considered by Duke was west of the selected route and would have incorporated a survey Duke made in the mid-1960's. This westerly corridor runs from Jocassee to near Highlands, North Carolina. Because extensive development has occurred in this corridor since the mid-1960's, including residential subdivisions, resorts, youth camps and golf courses, Duke determined that it was not feasible to develop the westerly corridor. This determination was made using aerial photography, map study, and field investigation. Duke's examination of the area from Cashiers to the region east of Lake Toxaway revealed that the only reasonably achievable crossing of U.S. Highway 64 would be in a mixed commercial and residential area near Sapphire. Duke purchased property in this area to cross Highway 64 and established the southerly leg of a corridor east of Lake Jocassee. Several of the tracts of land for the crossing site selected on Highway 64 at Sapphire were for sale and lay near large undeveloped tracts to the north, and near land to the south already owned by Duke's subsidiary, Crescent Land & Timber Corporation.

Duke determined that selecting a route in this easterly corridor utilizing undeveloped land north of Highway 64 best avoided or minimized impact upon residential and commercial developments. Duke then set its attention to selecting a route within this general corridor which minimized the impact on known areas of natural, recreational, historical, scenic and cultural significance.

The Commission cannot accept Mr. Sweatt's view that failure to discuss proposed routes with the public for "feedback" is arbitrary and capricious conduct. Duke contacted state agencies which might be involved with the transmission line project, but Duke is not required by law or regulation to conduct public hearings, or provide other public notice. While Mr. Sweatt and others might disagree with Duke's practice of acquiring property for large projects through agents, this is an acceptable practice under the circumstance. A public announcement of the need for certain land would likely increase the price and require condemnation and delays in completing a project. Duke's conduct in acquiring property was lawful and consistent with acceptable business practices.

Mr. Sweatt's proposed alternate routes were also addressed in the evidence presented by Duke. Mr. Sweatt's Rosman route was not initially evaluated by Duke because it is longer and more circuitous than Duke's route. Mr. Blackley testified that Duke sought the most direct route practical. After Duke became aware of this proposed alternative, Duke asked EDAW, Inc., a firm specializing in landscape architecture, environmental planning and urban design, to evaluate this Sweatt alternative. Mr. Keith, EDAW's Vice President responsible for the

firm's work on this project, testified that "our analysis concludes that the Sweatt proposal would have a higher level of impact in each of the three categories of environmental factors that were considered." (Tr. Vol. 8, p. 92; See Exhibit 13, "Comparison of Duke Power Company's Selected Route with the Sweatt Proposal".) The fact that Duke did not seriously study a longer, more costly route does not support a finding of arbitrary or unreasonable conduct. Further, Duke would have to acquire the property such a route would traverse.

Mr. Sweatt's Alternate 2 was identified by Mr. Blackley as being through the same area Duke studied and determined was not feasible for a transmission line route because of the intense development. Mr. Blackley concluded that a route through such a developed area would impose greater and unjustified impacts on existing development and the environment. (Tr. Vol. 7, p. 14.) Duke considered and rejected this route during the early stages of its route selection process.

Mr. Sweatt's proposed Alternate 3 was also addressed by Mr. Blackley. This proposed alternative is almost twice as long as Duke's planned route. Mr. Sweatt's proposed route extends westward through Georgia and joins the Nantahala system about 35 miles west of Tuckasegee. Mr. Blackley indicated that such a route would cost a great deal more than Duke's route and would not meet Nantahala's system needs satisfactorily. Further, the tie point would be different from the most reliable interconnection determined by Duke's System Planning Department. Contrary to Mr. Sweatt's opinion, it would not be reasonable for Duke to have selected this route.

Mr. Sweatt's Alternate 4 is the same as Duke's route, except for a deviation which locates the line around the western slope of Toxaway Mountain. This proposal caused the intervention and opposition of homeowners' associations and developers from the western side of the mountain. Mr. Blackley testified that in the initial routing process Duke determined that a route along the eastern slope of the mountain would have less visual impact than a western route. Therefore, Duke selected the eastern route because it has less visual impact. Mr. Hollifield made an analysis of the visual impact of both routes and concluded that Mr. Sweatt's proposal would have a greater adverse visual impact than Duke's selected route. The Sweatt proposal would require more towers, clearcutting of trees, and would be highly visible from the Sapphire Lakes development. Mr. Hollifield explained that such a route would require a clearcut corridor because the conductor would run parallel to the slope of the mountain with no opportunity for high spans with undisturbed areas underneath. Duke's route over the eastern slope of the mountain utilizes the steep slope to maintain undisturbed areas which will minimize the visual impact of the line. (Tr. Vol. 8, pp. 21-22.) Mr. Hollifield's photographic simulations of the proposed alternative, Exhibits 8 and 9, illustrate the visual impact of clearcutting.

In summary, Mr. Blackley testified that, in his opinion, the proposed transmission line was compatible with the environment and with existing development. He concluded:

> "Duke has carefully and diligently examined alternatives and selected a route for the transmission line which will minimize the impact on the environment and existing development. Once the preferred corridor was selected, we carefully surveyed the area to identify the

specific environmental features. We inventoried protected species, examined archeological information, and conducted studies of water quality and the impact of construction and maintenance of a transmission line on fish and wildlife in the area. Based on the results of the study of the environmental features of the transmission line corridor, I am confident that construction and maintenance of the proposed transmission line will have minimum adverse environmental impact.

"Also, with respect to the visual impact of the transmission line, we reviewed alternatives and selected a final route to ensure minimum impact. Our staff of landscape architects, working in conjunction with the consulting firm EDAW and the engineers responsible for designing the transmission line, have taken great care to locate structures to minimize the visibility of the line. As mentioned previously, we have developed and adopted vegetation control and clearing plans for the entire route which will further minimize the environmental impact of this line.

"Based on the attention given to the environment and our continuing commitment to maintain the transmission line with sensitivity to local development, I am confident that the completed project will be compatible with local conditions and beneficial to all of Duke's customers." (Tr. Vol. 7, pp. 20-21.)

Mr. Blackley's testimony was amply supported by the other Duke witnesses. For example, Mr. Huestis, a Director of the North Carolina Nature Conservancy, reviewed the Environmental Impact Statement and Duke's line construction techniques. He gave as his opinion: "By routing the line along the selected corridor and by using the construction techniques explained to me, I believe Duke Power can and will construct the transmission line without sacrificing the biological diversity of the Panthertown Valley tracts."

Mr. Hollifield, Duke's Manager of Landscape Architecture, described the visual mitigation techniques to be employed by Duke, including the use of transmission towers constructed of darkened galvanized steel which will blend into the landscape. The towers will also utilize a lattice framework to minimize structural mass; conductor wire will be non-specular, having greatly reduced sheen and visibility. In his opinion, Duke's efforts "will minimize the visual impact" of the proposed line.

Mr. Keith, a Principal and Vice President of EDAW, Inc., summarized the environmental impact of the project: Construction will require the short-term disturbance of approximately 123 acres in North Carolina; mitigation measures will render negligible any long-term effects to soils and watershed values; vegetation loss and effects on land use will be minor; no adverse effects on wildlife are anticipated. Although he acknowledged that the project's primary effects are visual, it was his opinion that Duke's state-of-the-art efforts will substantially reduce the project's visibility and disturbance of vegetation within the transmission line corridor.

Dr. Olmstead, a systems environmentalist with Duke, testified that a maximum protection of aquatic resources can be achieved by routing the line across ridges and perpendicular to streams. Dr. Brockington, a consulting

archaeologist, determined that no significant archaeological or historical sites were located as a result of his firm's study. Consequently, "[t]he proposed transmission line will thus have no significant impact to cultural resources." Dr. Gaddy, a biologist who recently assisted the N.C. Department of Agriculture in mapping the endangered and threatened flora of the gorges of the southern Blue Ridge escarpment region (including Transylvania County), concluded that most of the line corridor does not contain endangered, threatened, or rare plant species; that although the corridor will pass through botanically rich areas such as Panthertown Valley, the transmission line will span most, but not all, significant plant communities and species in these areas; and that Duke plans to go to "considerable effort" to avoid any impact to significant plants and plant communities within the corridor. Dr. Ham, a professor of forestry at Clemson University, testified that Duke's proposal to utilize undisturbed "leave" areas, where tree height beneath the conductors will allow, is very desirable.

The testimony and exhibits offered by Duke in response to the Complainants' testimony clearly demonstrate that Duke's efforts to locate the transmission line were reasonable and not arbitrary. The Commission is of the opinion that Duke reasonably and fairly considered and balanced the important factors in siting the transmission line in this case, including the overall environmental and visual impact of the line. This conclusion is fully supported by, and is consistent with, the uncontradicted testimony of the environmental experts and the conclusion of the Environmental Impact Statement that the project will have minimum impact on the environment. Accordingly, this Order will issue dismissing the Complaints and closing the docket. This Order will also dissolve the restraining order previously entered by the Commission.

The TVA Proposal

The Complainants offered the testimony of several TVA witnesses as rebuttal to Duke's case. As previously described, the TVA testimony was a revised proposal to Nantahala which according to the TVA witnesses would lower the rates paid by Nantahala to TVA. The Coalition assumed that the rates would be lower than the rates under the Duke-Nantahala Interconnection Agreement; therefore, they contend that the planned transmission line is not needed.

The issue before this Commission is whether Duke acted arbitrarily and unreasonably in locating and siting the planned transmission line. The direct evidence from the Complainants did not establish any arbitrary and unreasonable conduct. The rebuttal testimony likewise does not establish any arbitrary and unreasonable conduct. Further, the TVA witnesses were not persuasive in their conclusion that the new TVA proposed rates would be lower to Nantahala than service from Duke.

From a pure rate-comparison standpoint, the effect of TVA's proposal is uncertain. For example, TVA witness Jimmy L. Cross testified that at an average 140 megawatt load, TVA's demand cost would be $1.2 million cheaper than Duke's. (Tr. Vol. 11, p. 33.) Duke's cross-examination, however, raised questions about whether those figures were accurate if diversity of load were factored into the demand charge, as it is in Duke's proposal. (Tr. Vol. 11, pp. 78ff.)

Other considerations, however, clearly tilt the scales in favor of Duke's proposal. For example, while Duke cannot change its rates without FERC approval, TVA can do so by merely making a presentation to its Board. (Tr. Vol. 11, p. 40.) Nantahala's customers would have no public advocate at such a presentation. (Tr. Volume 11, pp. 40-41, 96-98.) While TVA was very critical of Duke's energy bank, Mr. Cross acknowledged that it would result in more stable rates than those presently charged by Nantahala. He conceded that TVA's proposal could result in continuation of the roller coaster effect on rates than currently plagues Nantahala's customers. (Tr. Vol. 11, pp. 61-64.)

Construction of the transmission line will also have other positive effects. Nantahala expects its near-term growth to be in the eastern part of its service territory. A supply source in that region would thus be beneficial. Nantahala will continue to be connected at its western end after Duke's transmission line is built, and these two connections will thus give Nantahala greater reliability. Further, by using both the eastern and western connections rather than solely relying on the western link, Nantahala should be able to delay upgrading or rebuilding its western connection, its 161 Kv "backbone" transmission line.

With so many benefits dependent on the interconnection between Duke and Nantahala, the Commission concludes that TVA's proposal is not an adequate alternative to the transmission line. The line should be constructed.

The transmission line is clearly needed to interconnect the Duke and Nantahala systems to implement the FERC-approved Interconnection Agreement and to enable Nantahala to realize the benefit of being a Duke subsidiary. Nantahala will not only benefit from lower cost power from Duke, but will also achieve improved reliability from the interconnection on the eastern end of its service territory. Nantahala will also benefit from a long-term source of reliable power to meet future growth and gain in other intangible ways from being owned by Duke. These benefits are detailed in the Commission Order approving the sale of Nantahala to Duke. (Docket No. E-7, Sub 427, Order of August 29, 1988.)

Upon consideration of the entire record, including all of the evidence and the contentions of the parties, the Commission issues this Order denying and dismissing the Complaints.

IT IS, THEREFORE, ORDERED:

1. That the Complaints in this docket be denied and dismissed;

2. That the restraining order issued on July 22, 1988, in this docket be dissolved; and

3. That this docket be closed.

ISSUED BY ORDER OF THE COMMISSION.
This 3rd day of April 1989.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Deputy Clerk

DOCKET NO. E-13, SUB 142

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Nantahala Power and Light Company for Authority to Alter Method of Recovery of Purchased Power Expense	)	ORDER ALLOWING ANNUAL METHOD OF RECOVERY OF PURCHASED POWER EXPENSE TO BECOME EFFECTIVE PENDING INVESTIGATION AND HEARING

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, October 12, 1989, at 9:30 a.m.

BEFORE: Chairman William W. Redman, Jr., Presiding, and Commissioners Sarah Lindsay Tate, Ruth E. Cook, Julius A. Wright, Robert O. Wells, Charles H. Hughes, and Laurence A. Cobb

APPEARANCES:

For Nantahala Power and Light Company:

Edward S. Finley, Jr., Hunton and Williams, Attorneys at Law, Post Office Box 104, Raleigh, North Carolina 27602

For Jackson Paper Manufacturing Company:

David H. Permar, Hatch, Little & Bunn, Attorneys at Law, Post Office Box 527, Raleigh, North Carolina 27602

For the Public Staff:

Antoinette Wike, Chief Counsel, and A. W. Turner, Jr., Staff Attorney, Public Staff, 430 North Salisbury Street, 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

BY THE COMMISSION: This matter came before the Commission upon application of Nantahala Power and Light Company (Nantahala or Company), filed September 12, 1989, seeking approval under G.S. 62-130(d) and G.S. 62-134 to alter the method by which the Company recovers its purchased power expense.

On September 21, 1989, the Attorney General filed a notice of intervention in this docket on behalf of the using and consuming public. The Attorney General filed certain comments on September 22, 1989, in response to

Nantahala's application. The Attorney General raised legal issues in his comments and questioned whether there is statutory authority to structure the fuel rider as proposed by Nantahala.

On October 10, 1989, the Commission entered an Order in this docket scheduling an oral argument for Thursday, October 12, 1989, to consider the merits of the legal issues raised by Nantahala's application and the Attorney General's comments.

The matter was called for oral argument at the appointed time and place. Counsel for Jackson Paper Manufacturing Company made an oral motion requesting that his client be allowed to intervene in this docket. That motion was allowed. Counsel for Nantahala, the Public Staff, the Attorney General, and Jackson Paper then offered oral argument on the legal issues raised by Nantahala's application.

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

FINDINGS OF FACT

1. Nantahala's sources of power are self-generation from hydroelectric generating plants and purchases of supplemental power. Nantahala recovers from retail ratepayers a portion of the expense of the supplemental power it purchases on a current basis through base rates. The difference between purchased power expense and the amount recovered in base rates is now reflected on customers' bills in a purchased power cost adjustment factor that changes each month.

2. The contracts under which the Company buys electricity from its supplier of supplemental energy and capacity are regulated by the Federal Energy Regulatory Commission. Therefore, Nantahala has little control over its actual purchased power costs.

3. Because the level of purchased power expense fluctuates substantially from month to month due to changes in temperature, Nantahala's ability to generate, and customer usage patterns, customers have difficulty in understanding their electricity bills or budgeting what their electrical costs will be. Nantahala has requested permission to alter its method of recovery of its purchased power expense in order to eliminate the customer confusion and dissatisfaction that results from its current method of recovery.

4. All of Nantahala's approved rate schedules (R, RC, SG, LG, YL, and SL) include an "ADJUSTMENT" paragraph which states, in part, that "[t]he customer's bill for each month shall be increased or decreased in accordance with the Purchased Power Adjustment Clause . . . " Nantahala proposes to revise this wording in each rate schedule to read "[t]he customer's bills for each month shall be adjusted in accordance with Schedule 'CP'. . ." The Company thus proposes to cancel the "Purchased Power Adjustment Clause" and institute Schedule "CP," attached to Nantahala's application as Exhibit 5.

5. Nantahala proposes to eliminate the purchased power adjustment factor from its customers' bills altogether. Under the new method Nantahala proposes, the Company, after an initial six-month transitional period, would estimate its

purchased power costs and total kWh sales for a future 12-month period and derive an average cents per kWh of purchased power. The Company would estimate its future purchased power costs based on average rainfall. Nantahala would then adjust electric rates to reflect the new purchased power component by a rider to all retail rate schedules. The adjusted rates would be provisional, estimated rates in effect for the future 12-month period.

6. At the end of each 12-month period, Nantahala, upon approval by the Commission, would adjust its provisional rates to reflect the purchased power costs actually incurred in the previous 12-month period. Under the proposed method, the Company would calculate the difference between actual retail purchased power costs and the amounts collected from its retail customers each month and accumulate these differences in an account. Nantahala proposes to calculate interest monthly at its short-term borrowing interest rate on the current balance of the account. To the extent net collections exceed costs, interest would accrue in favor of Nantahala's retail customers. To the extent net costs exceed collections, interest would accrue in favor of Nantahala. The balance of the account at the end of each year, including net interest, would then be used to adjust the estimated costs in the following 12-month period.

7. On March 10 of every year, Nantahala proposes to file its estimates of kWh sales and related purchased power costs for the 12-month period beginning April 1. This filing will also show the actual activity in the deferred account for the 11-month period ending at the end of February. An estimate of the deferred account activity for the month of March will be provided. On April 10, the Company will update the filing to show the actual data on the over/undercollections for the full preceding period, including accrued interest. The net over/under account balance, including interest, will be used to adjust the estimates for the succeeding 12-month period to determine the actual billing factor to be used.

8. Upon approval and adoption of Nantahala's proposal, the Company proposes to modify its method of accounting for deferred purchased power costs. In a month when the charges for purchased power exceed the revenue received for purchased power, Nantahala will expense the full amount of the invoice from its supplier and credit or reduce expense for the difference between cost and revenue. The offsetting entry will be to debit or increase the deferred account for the amounts due from customers in the future. In those months where the revenue for the month exceeds the monthly cost, the above entries will be reversed.

9. Upon receiving approval of the plan, Nantahala proposes to phase-in the plan over a six-month transitional period. During this phase-in period, Nantahala will use a fixed purchased power adjustment factor for the first two months of the transitional period (October and November 1989) and a second fixed purchased power adjustment factor for the remaining four months of the transitional period (December 1989 and January, February, and March 1990).

WHEREUPON, the Commission now reaches the following

CONCLUSIONS

The Attorney General asserts that the Commission is without explicit statutory authority to approve Nantahala's application for an annual purchased

power adjustment and that G.S. 62-133.2, the current fuel adjustment statute, appears to be the only statutory authority which allows for the pass-through of purchased power expense. Both Nantahala and the Public Staff take the position that G.S. 62-133.2 applies only to electric utilities "engaged in the generation and production of electric power by fossil or nuclear fuels" and that this statute cannot and does not apply to Nantahala which generates only hydroelectric power. The Commission agrees with the Company and the Public Staff on this point.

Likewise, in Nantahala's last general rate case, we held that the preceding fuel adjustment statute, G.S. 62-134(e), did not apply to Nantahala and that the nature of the Company's needs could not have been met by use of that statute. Therefore, we entered an Order in Docket No. E-13, Sub 44, on December 22, 1983, reaffirming use of the purchase power adjustment (PPA) clause pursuant to G.S. 62-130(d) and offered the following rationale in support of that decision:

> "Nantahala's rates have, for many years, contained a purchase power adjustment clause as an adjunct to its base rates. Under Nantahala's purchase power adjustment clause, rates are adjusted each month based upon a rolling average of purchase power expense for a prior three-month period. Since 1971, the output from Nantahala's hydroelectric generating resources has been insufficient to serve the complete needs of its customers, and Nantahala has purchased its stand-by and supplemental needs from TVA. Nantahala's monthly purchase power adjustments occur after filing and consideration of Nantahala's request by the Commission. Nantahala has never filed its requests to adjust purchase power expenses in accordance with G.S. 62-134(e), and the nature of its needs could not have been met by use of this statute. Under its 1983 contract with TVA, Nantahala dispatches and controls its own generation.
>
> "Under the 1962 New Fontana Agreement and the 1971 Apportionment Agreement, Nantahala received a levelized entitlement each month based upon estimated average stream conditions and purchased its needs in excess of said entitlement from TVA. Therefore, Nantahala's current purchase power costs are more likely to fluctuate as a result of water conditions, extreme weather and equipment unavailability than in the past. Nantahala's purchase power adjustment clause allows Nantahala to recover expeditiously increases in purchase power expense, and likewise allows Nantahala to expeditiously pass on reductions in purchase power expense to its customers.
>
> "North Carolina G.S. 62-130(d) states that: 'The Commission shall from time-to-time as often as circumstances may require, change and revise or cause to be changed or revised any rates fixed by the Commission, or allowed to be charged by any public utility.' Pursuant to the authority of this statutory provision, the Commission is of the opinion that it is appropriate for Nantahala to continue to adjust its rates through changes in the power adjustment clause. In State of North Carolina ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976), the North Carolina Supreme Court authorized use of a Commission-approved automatic fuel adjustment clause pursuant to G.S. 62-130. The Court noted that instead of

approving fixed monetary rates for electric service, the Commission may approve rates expressed as a formula which will vary with changes in the different elements that make up the formula.

"The Commission finds that based on the above authority, Nantahala's purchase power adjustment clause is in all respects proper and approves same for use as an adjunct to the base rates approved herein."

Based upon our interpretation of G.S. 62-130(d) and relevant case law, we conclude that the Commission possesses the necessary authority to approve an annual purchased power adjustment procedure for Nantahala, including an annual true-up of reasonable and prudently incurred purchased power costs. See State ex rel. Utilities Commission v. Public Service Company of North Carolina, Inc., 35 N.C. App. 156, 241 S.E. 2d 79 (1978) (Court of Appeals upheld year-end adjustment in rate structure formula which tracked the effects of curtailment of natural gas in order to reflect actual curtailment level experienced during the year); and State of North Carolina ex rel. Utilities Commission v. CF Industries, Inc., 299 N.C. 504, 263 S.E. 2d 559 (1980) (Supreme Court upheld year-end adjustment in curtailment tracking rate device based upon projected gas availability in order to reflect actual gas availability experienced during the year). The adjustment to base electric rates that Nantahala proposes to make at the beginning of each 12-month period will produce merely a provisional, estimated rate based upon projected purchased power costs. At the end of 12 months, when the actual purchased power costs for the period are ascertainable, the Company, upon approval by the Commission, would correct the estimated or provisional rate to reflect actual purchased power costs incurred.

From a review and study of the application submitted by Nantahala, supporting material and other information in our files, the Commission is of the opinion that the new annual method for recovery of purchased power costs proposed by Nantahala appears to be in the best interest of both Nantahala and its customers and should be allowed to become effective on an interim basis, with two modifications, pending investigation and hearing.

In its application, Nantahala proposed to recover the deferred purchased power costs in existence at the time of our approval of the proposed plan during the first six-month period of the plan. During the course of the oral argument held in this docket on October 12, 1989, Nantahala presented an exhibit which indicated that the Company's uncollected retail purchased power costs for the months of July through September 1989, were $174,999. It is this amount of deferred purchased power costs which Nantahala proposes to collect through rates during the first six-month period of the plan. The Public Staff and the Attorney General take the position that, as a matter of law, Nantahala may not be authorized to charge rates to recover these deferred costs of purchased power. The Public Staff and the Attorney General cite the case of State of North Carolina ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 232 S.E. 2d 184 (1977), in support of their position.

The Commission agrees with the Public Staff and the Attorney General on this issue and we conclude that the principles clearly enunciated by our Supreme Court in the Edmisten case, supra, prohibit Nantahala from recovering the deferred purchased power costs in question. Nantahala's monthly PPA, which has been in use with Commission approval for many years, contains no true-up

procedure, either explicit or implicit, which would serve to legally entitle the Company to recover the deferred costs in the amount of $174,999 for the months of June through September 1989. Nantahala has never before sought to recover any such deferred costs through operation of its PPA and there is no justification to allow any such recovery now. The Edmisten case is clearly on point and determinative of this issue. Likewise, the Commission agrees with the Public Staff that our approval of Nantahala's request to use deferred accounting for purchased power expenses in Docket No. E-13, Sub 106 (Order dated January 14, 1987) did not, in any way, authorize Nantahala to collect those revenues from future ratepayers. That Order clearly stated that ". . . deferring the purchased power expense, until the revenue is recorded, is appropriate for financial reporting and should be approved. . ." (Emphasis added). There was no deferred accounting of purchased power expense authorized and/or used by Nantahala at the time of inception of the PPA. In fact, use of this accounting technique was not approved by the Commission until many years later on January 14, 1987. There is nothing in the record to support Nantahala's contention that our approval of deferred accounting may now be used to authorize the Company to collect the deferred costs of $174,199 from future customers. This amount of deferred costs should be removed from Nantahala's plan and the levelized rates for the first six-month period of the plan should be recalculated.

The Commission also finds good cause to amend the interest portion of Nantahala's proposal to conform with the methodology for the accrual of interest which we adopted in Docket No. E-100, Sub 55, for fuel adjustment proceedings conducted pursuant to G.S. 62-133.2 and Rule R8-55. Under Nantahala's proposal, the Company would calculate the difference between actual retail purchased power costs and the amounts collected from its retail customers each month and accumulate those differences in an account. Nantahala would then calculate interest monthly at its short-term borrowing interest rate on the current balance of the account. To the extent net collections exceed costs, interest would accrue in favor of Nantahala's retail customers. To the extent net costs exceed collections, interest would accrue in favor of Nantahala. The balance of the account at the end of each year, including net interest, would then be used to adjust the estimated costs in the following 12-month period.

The methodology for the accrual of interest approved in Docket No. E-100, Sub 55, 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 refund period. This methodology is superior to Nantahala's proposal in that interest due ratepayers will always be provided on net overcollections. Interest will not accrue in favor of Nantahala if a net undercollection exists at the end of the test period. Nantahala should calculate interest on net overcollections utilizing an interest rate of 10% per annum. Adoption of this methodology for application to Nantahaha will ensure a consistent regulatory treatment for the accrual of interest on net overcollections for Duke Power Company, Carolina Power & Light Company, North Carolina Power, and Nantahala.

Accordingly, the Commission determines that Nantahala should be permitted to alter the method of recovering its purchased power expense not presently recovered through base rates for all bills rendered after October 27, 1989. The Commission is of the further opinion, however, that an investigation should

be instituted and that a public hearing should be scheduled at a subsequent time to receive the comments of any interested parties and to decide whether Nantahala's proposal will be adopted as a permanent provisional rate. The requested rider will be implemented as a temporary interim rate at this time. The Commission will schedule a public hearing in this docket by further Order. The hearing will be held after the plan, as modified, has been in effect for approximately six months.

One other matter is in need of brief mention. Nantahala currently purchases its supplemental power needs from the Tennessee Valley Authority (TVA), but anticipates that it will begin purchasing its needs from Duke Power Company in October 1990. Based upon the terms of the existing agreement between Nantahala and TVA, Nantahala anticipates that it will incur additional costs under ratchets at or after the termination of the TVA contract. Nantahala states in its application in this docket that it does not intend to recover these additional costs through the proposed annual purchased power mechanism. Instead, Nantahala states that it will defer these costs and seek to recover them through amortization over a reasonable period of time in rates established in the Company's next general rate case. The Commission takes no position on this matter at this time. We will rule on the merits of this issue at the appropriate time and in the appropriate proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That Nantahala Power and Light Company is hereby allowed to alter the method of recovery of its purchased power expenses and its method of accounting for purchased power costs pursuant to the terms and conditions set forth in its application and the modifications set forth in this Order, subject to investigation and public hearing to decide whether Nantahala's proposal will be adopted as a permanent provisional rate. Schedule "CP" shall be implemented as a temporary interim rate pursuant to G.S. 62-130(d) and shall be subject to true-up on a prospective basis.

2. That Nantahala shall recalculate and refile the fixed purchased power adjustment factors for the six-month transitional period in conformity with the provisions of this Order and shall exclude the deferred purchased power costs in the amount of $174,999 in making such recalculations. Schedule "CP," as so revised, shall be refiled not later than five days from the date of this Order effective for all bills rendered on and after October 27, 1989. Underlying workpapers shall also be filed. Nantahala shall also file a proposed customer notice for review by the Commission.

3. That interest on net overcollections shall be accrued and computed in conformity with the provisions of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of October 1989.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 562

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 Tuesday and Wednesday, August 1 and 2, 1989

BEFORE: Commissioner Sarah Lindsay Tate, Presiding, and Commissioners Julius A. Wright and Robert O. Wells

APPEARANCES:

For Carolina Power & Light Company:

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

For Carolina Utility Customers Association, Inc.:

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

For Carolina Industrial Group for Fair Utility Rates:

Ralph McDonald and Carson Carmichael, Bailey & Dixon, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865

For the Public Staff:

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

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 May 30, 1989, Carolina Power & Light Company (CP&L or the Company) filed an application for a change in rates based solely on the cost of fuel in accordance with the provisions of G.S. § 62-133.2 and Commission amended Rule R8-55. In its application, CP&L proposed an increment

of .049¢/kWh (.051¢/kWh including gross receipts tax) to the base factor of 1.276¢/kWh approved in Docket No. E-2, Sub 537. This preliminary fuel factor of 1.325¢/kWh was based on the adjusted historical 12-month test period ending March 31, 1989. The Company also requested a .049¢/kWh (.051¢/kWh including gross receipts tax) increment for the Experience Modification Factor (EMF) to recover approximately $12.3 million of unrecovered fuel revenues during the April 1, 1988, to March 31, 1989, period. The Company proposed that the EMF rider be in effect for a fixed 12-month period.

On May 31, 1989, the Carolina Industrial Group for Fair Utility Rates (CIGFUR-II) filed a Petition to Intervene. The Petition was allowed by Commission Order issued June 2, 1989. On June 9, 1989, the Attorney General filed Notice of Intervention pursuant to G.S. § 62-20.

On June 16, 1989, the Commission issued its Order which scheduled the hearing, established certain filing dates, and required public notice.

On July 14, 1989, Carolina Utilities Customers Association, Inc. (CUCA), filed a Petition to Intervene. The Petition to Intervene was allowed by Commission Order issued July 18, 1989. The intervention of the Public Staff is noted pursuant to NCUC Rule R1-19(e).

On July 28, 1989, the Company filed a Motion to Quash and Vacate Subpoena seeking relief from a subpoena that had been served upon Senior Vice President, R. A. Watson by the Attorney General. Oral argument on the Motion was scheduled for Monday, July 31, 1989, by Commission Order issued July 31, 1989. The oral arguments were heard as scheduled. After hearing arguments, the Commission ruled that the hearing would proceed on August 1, at 9:30 a.m., that Attorney Long would file a written statement of the issues to be raised and any documents to be used in her examination of Mr. Watson, and that the hearing for Mr. Watson's testimony would be on Wednesday, August 2, 1989, at 9:30 a.m. On July 31, 1989, the Attorney General filed its Issues and Documents Which the Attorney General Intends to Raise in His Examination of CP&L Employee R. A. Watson.

The matter came on for hearing on August 1, 1989, as scheduled. One public witness, Mr. Joseph R. Overby, appeared and offered testimony. The Company reopened argument on Mr. Watson's being required to appear and testify. The Commission again denied the Company's Motion to Quash. The hearing then proceeded with the Company presenting the testimony and exhibits of David R. Nevil, Manager - Rate Development and Administration in Rates and Service Practices Department. The Public Staff presented the testimony, appendix and exhibits of Benjamin R. Turner, Jr., Engineer, Electric Division. On August 2, 1989, the Attorney General presented the testimony of R. A. Watson, Senior Vice President - Nuclear Generation.

On August 3, 1989, the Public Staff filed Turner Late-filed Exhibit. On August 4, 1989, the Company filed affidavits of publication 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, the entire record in this matter and the Commission Order in Docket No. E-2, Sub 544, of which the Commission takes judicial notice, 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, 1989.

3. CP&L's fuel procurement and power purchasing practices were reasonable and prudent during the test period.

4. For the purposes of calculating the appropriate fuel cost factor in this proceeding, the adjustments proposed by the Company to normalize for weather and customer growth are adopted.

5. Use of a normalized generation mix and the latest North American Electric Reliability Council Equipment Availability Report 1983-1987 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 58.61% which is appropriate for use in this proceeding.

6. The use of burned fuel costs for the month of March 1989 is reasonable and appropriate for purposes of this proceeding.

7. A fuel cost factor of 1.325¢/kWh (excluding gross receipts tax) which includes the burned fuel expense of purchases from cogenerator Cogentrix's Southport and Roxboro plants for North Carolina retail service is appropriate for use in this proceeding. This results in a fuel cost increment of .049¢/kWh (.051¢/kWh including gross receipts tax) when compared to the base fuel factor of 1.276¢/kWh determined to be appropriate in Docket No. E-2, Sub 537.

8. An Experience Modification Factor (EMF) increment of .049¢/kWh (.051¢/kWh including gross receipts tax) is reasonable and appropriate for use in this proceeding. This EMF reflects 100 percent of the difference between CP&L's actual 12-month (April 1, 1988, to March 31, 1989) level of reasonable and prudently incurred costs for fuel and purchased power and the fuel-related revenues, exclusive of the EMF-related revenues, collected as a result of the Commission Orders in Docket Nos. E-2, Sub 533 and E-2, Sub 544. The .051¢/kWh rider increment will remain in effect for 12 months from the date of this Order.

9. The appropriate net fuel factor approved herein is 1.374¢/kWh, excluding gross receipts tax.

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 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 30, 1989, utilized the 12 months ended March 31, 1989, 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, 1989, as the test year for purposes of this proceeding.

The Commission concludes that the test period which is appropriate for use in this proceeding is the 12 months ended March 31, 1989, adjusted for weather normalization, customer growth, and generation mix.

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, as well as each time the utility's fuel procurement practices change. In its application, the Company 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.

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 Public Staff agreed with the Company on all load adjustments for weather normalization and customer growth with the exception of the customer growth calculation for the two retail jurisdictions.

Both the Company and the Public Staff used the same methodology for calculating the customer growth adjustment with the exception of the end-of-period (EOP) level of customers used for the retail jurisdictions. The

Company used the actual EOP level of customers in its customer growth calculation, whereas the Public Staff used regression analysis in computing an EOP level of customers for use in its customer growth adjustment.

Public Staff witness Turner's customer growth calculation resulted in kWh sales which were 77,595,393 higher than those calculated by the Company. Incorporating this difference in the calculation of a fuel factor produced a fuel cost factor which was .002¢/kWh higher than the factor proposed by the Company. Witness Turner, however, recommended the use of the Company's fuel cost factor of 1.325¢/kWh.

The Commission concludes that the customer growth adjustment proposed by the Company should be used in determining an appropriate fuel cost factor in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

For the nuclear units the Company and the Public Staff used a 58.61% capacity factor, which was based on 70% for Harris and on the five-year industry average capacity factors for PWRs (Robinson 2 at 61.71%) and for BWRs (Brunswick 1 and 2 at 51.10%), reflected in the latest North American Electric Reliability Council (NERC) 5-year Generating Availability Report. The Company and the Public Staff 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 63.32% for the test year.

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."

The Attorney General, CUCA, and CIGFUR-II cross-examined witness Nevil as to the appropriateness of the five-year NERC data for normalization in light of actual and projected performance by the individual units. In their respective proposed orders, the Attorney General and CUCA propose that CP&L's system nuclear capacity factor be normalized at 61.93% which was approved by the Commission in CP&L's last general rate case and fuel clause proceeding. CIGFUR-II states in its brief that the 58.61% nuclear capacity factor proposed by CP&L is unreasonably low and this results in a unreasonably low standard of presumed efficiency. In support of their proposals, the Attorney General, CUCA, and CIGFUR-II cite the actual nuclear capacity factor achieved during the test year of 63.32% as well as CP&L's projections for future periods.

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. Both CP&L and the Public Staff have recommended that CP&L's nuclear performance be normalized at 58.61% according to the provisions of Commission Rule R8-55(c)(1). The Commission finds their testimony and recommendations to be convincing. The Commission finds no evidence of unique, inherent factors of a type not reflected in the NERC five-year average. The Commission therefore concludes that CP&L's nuclear capacity factor should be normalized at 58.61% for purposes of this proceeding.

Witness Watson, CP&L's Senior Vice President for Nuclear Generation, testified as to CP&L's nuclear performance. He testified that in July of 1988 CP&L established an internal corporate management oversight team which studied the Brunswick nuclear plant and identified certain areas of concern. At the same time, CP&L retained Cresap, McCormick, and Paget to do a broader independent study of CP&L's management systems and processes at both Brunswick and Robinson. Witness Watson also testified that the NRC had conducted its own diagnostic evaluation of the Brunswick plant in April--May of 1989, that the NRC report has not yet been released and he does not know what will be in it, but that NRC's senior management did not put Brunswick on their semi-annual list of problem plants in June 1989.

Witness Watson testified about the problem of intergranular stress corrosion cracking in the recirculating water piping at the two Brunswick units. He testified that CP&L would probably replace the piping in Unit 2 during the September 1989 outage if the materials are available and would replace the piping in Unit 1 during the 1990 refueling outage. He testified that the Company's projected nuclear capacity factors allow for replacing the piping in Unit 2 this fall and that the Company was confident that it would replace the pipes within the time scheduled. He also testified that should the materials not be available and should the degree of cracking preclude operation of the plant, "we will have to wait on the material." The Public Staff has asked the Commission to order CP&L to file reports regarding the pipe replacement. The Commission will require the Company to file such reports and will order the Company to work with the Public Staff in order to develop the scope and frequency of the reports on the Brunswick Units 1 and 2 recirculating water pipe replacement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Both the Company and Public Staff proposed fuel factors based on March 1989 burned fuel costs. The Public Staff calculated a fuel factor using April 1989 burned fuel costs but recommended use of March costs. Company witness Nevil introduced a fuel factor using burned cost for June, the latest month available, but did not recommend that the Commission adopt it. Accordingly, the Commission concludes that the burned fuel costs at March 1989 are appropriate for this proceeding.

CP&L witness Nevil testified that the Company included in the derivation of the fuel factor the burned fuel expense reported to CP&L by Cogentrix for its two cogeneration plants that commenced service subsequent to the test period in CP&L's previous rate case, Docket No. E-2, Sub 537. No party offered evidence challenging inclusion of these costs in the calculation of the fuel

factor. The Commission, therefore, concludes the Company properly accounted for these cogeneration costs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Based on the foregoing, the Commission concludes that a fuel factor of 1.325¢/kWh is just and reasonable. This factor is .049¢/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 1.325¢/kWh is shown in the following table:

	MWH Gen	$/MWH	Fuel Cost
Coal	25,399,545	17.57	$446,270,006
Nuclear	15,941,022	5.02	80,023,929
IC	68,901	90.97	6,267,924
Hydro	711,727	-	-
Purchases: Co-Gen	2,576,088	-	31,777,762
SEPA	177,948	-	-
Other	139,490	18.81	2,623,807
Sales	(1,331,748)	18.62	(24,797,148)
Total Adjusted	43,682,973		$542,166,280
NCEMPA Adjustments:			
Nuclear Ownership			(10,788,703)
Coal Ownership			(24,578,655)
Harris Buyback			1,747,936
Mayo Buyback			3,993,116
Net Fuel Cost			$512,539,974
kWh for Fuel Factor			38,667,884,458
Fuel Factor (¢/kWh)			1.325

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..."

Company witness Nevil indicated that during the March 31, 1989, test year, CP&L experienced an under-recovery of $12,340,223, which translates into an EMF increment of .049¢/kWh (.051¢/kWh with gross receipts tax). Witness Nevil stated that cogeneration actual burned fuel cost was the main reason for the under-recovery. As previously discussed, this cogeneration expense was associated with the two Cogentrix plants that came on line after the test period in the Sub 537 rate case. Public Staff witness Turner recommended that the EMF factor, as proposed by the Company, be adopted. He stated on cross-examination that the Public Staff had reviewed the cogeneration costs the Company was asking for and had no problem with them. This being uncontroverted

in this case, the Commission concludes that an EMF increment of .049¢/kWh, excluding gross receipts tax, is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSION FOR FINDING OF FACT NO. 9

As a result of the Commission's decision in this docket, CP&L's rates will include a net fuel factor of 1.374¢/kWh (excluding gross receipts taxes), as shown in the chart below:

	Item	Amount (¢/kWh)
1.	Base fuel factor	1.276
2.	Primary fuel adjustment rider	.049
3.	Experience modification factor rider	.049
4.	Net fuel factor excluding gross receipts taxes [LN1 + LN2 + LN3]	1.374 1/

1/ The net fuel factor excluding gross receipts taxes previously in effect was 1.279¢/kWh, therefore, the factor has increased by .095¢/kWh. Including gross receipts taxes, the rate impact is .099¢/kWh.

During cross-examination of witnesses Nevil and Turner, counsel for CUCA alleged that the Company's rate schedule or tariff was difficult to read and understand because of the various riders that were in effect. Company witness Nevil testified that the method used by the Company is logical and not difficult to understand. Public Staff witness Turner testified that he did not have a problem understanding CP&L's tariff. Therefore, the Commission concludes that no significant changes to the Company's rate schedules are necessary at this time. However, in its examination of said rate schedules, the Commission notes that it may be appropriate to include a clear statement indicating the effect of the Commission Order on rates. Therefore, the Commission concludes that a sentence similar to the following should be added to its rate schedules in connection with its fuel riders.

> The effect of the Commission order, including its impact on the Company's gross receipts tax expense, is an [increase] [decrease] in rates of _____¢/kWh as compared to the rates in effect immediately prior to [effective date].

Inclusion of this sentence will enable the ratepayers to quickly ascertain the effect of the Commission Order on their rates.

IT IS, THEREFORE, ORDERED as follows:

1. That effective for service rendered on and after September 15, 1989, CP&L shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a .049¢/kWh increment (.051¢/kWh including gross receipts tax). Such increment is in addition to 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 of its rate structure in a manner consistent with the findings set forth herein by an increment of .049¢/kWh (.051¢/kWh including gross receipts tax) so as to give

effect to the Commission's findings regarding the Experience Modification Factor (EMF). The EMF is to remain in effect for a 12-month period from September 15, 1989.

3. That CP&L shall file appropriate rate schedules and riders with the Commission in order to implement the fuel charge adjustments approved herein not later than five days from the date of this Order.

4. That CP&L shall file reports with the Commission in the appropriate fuel adjustment proceeding docket regarding the planned replacement of the recirculating water piping on Brunswick 1 and Brunswick 2 and CP&L shall work with the Public Staff in order to develop the scope and frequency of such reports.

5. That CP&L shall modify the language of its Rate Schedules as set forth in this Order.

6. That CP&L shall notify its North Carolina retail customers of the fuel adjustment approved herein. Such notice shall include the mailing of the "Notice to Customers of Net Rate Increase", 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 5th day of September 1989.

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

APPENDIX A

DOCKET NO. E-2, SUB 562

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Carolina Power & Light	)	
Company for Authority to Adjust Its	)	NOTICE TO CUSTOMERS
Electric Rates and Charges Pursuant to	)	OF NET RATE INCREASE
G.S. § 62-133.2	)	

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has entered an Order, after public hearings, approving a fuel charge net rate increase of approximately $24.7 million in the rates and charges paid by the retail customers of Carolina Power & Light Company in North Carolina. The net rate increase will be effective for service rendered on and after September 15, 1989. The rate increase was allowed by the Commission after review of CP&L's fuel expense during the 12-month test period ended March 31, 1989, 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 Order will result in a monthly net rate increase of approximately $.99 for a typical residential customer using 1,000 kWh per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of September 1989.

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

DOCKET NO. E-7, SUB 408
(REMANDED)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Power Company for	)	ORDER ON REMAND ADJUSTING
Authority to Adjust and Increase its	)	RATE OF RETURN AND REQUIRING
Electric Rates and Charges	)	RATE REDUCTIONS AND REFUNDS

BY THE COMMISSION: On March 27, 1986, Duke Power Company (Company or Duke) filed an application with the North Carolina Utilities Commission (Commission) seeking authority to adjust and increase electric rates and charges for its retail customers in North Carolina. The application sought rates which would produce approximately $289,316,000 of additional revenues from the Company's North Carolina retail operations.

Hearings on the application began on September 3, 1986, and ended on September 24, 1986. The Commission issued its Order on October 31, 1986. The Commission found that Duke should be granted a rate increase which would allow it to collect additional revenues of approximately $133,080,000, or approximately 46% of the original request, based upon a finding that the allowed rate of return on Duke's common equity should be 13.4%.

The Commission's Order was appealed by the Public Staff, the Attorney General, the City of Durham, and Wells Eddleman. These intervenors challenged the Commission's treatment of plant abandonment expenses, capital structure, and the allowed rate of return on common equity. Oral argument was held before the Supreme Court on December 7, 1987.

On July 28, 1988, the Supreme Court entered its opinion. The Supreme Court affirmed all aspects of the Commission's Order except the Commission's finding on the allowed rate of return on common equity. With respect to this finding, the Supreme Court held that the Commission's finding was insufficient in two respects and that the Commission's decision should be reconsidered in light of the opinion. The Supreme Court directed the Commission to support its conclusions with specific findings as to the Commission's treatment of financing costs and down market protection.

On September 22, 1988, the Commission entered an Order in this docket requesting briefs of the parties concerning the Commission's implementation of the Supreme Court's opinion on remand. These briefs were received on

November 30, 1988. Reply briefs were subsequently filed by the parties on January 1, 1989.

On remand, no oral argument was requested or held and no additional evidence was taken.

The Commission, having studied the opinion of the Supreme Court, the briefs of the parties, and the testimony and exhibits received into evidence at the hearing, now makes the following

FINDINGS OF FACT ON REMAND

1. The Company's proper embedded costs of debt and preferred stock are 8.91% and 8.27%, respectively. The reasonable rate of return for Duke to be allowed to earn on its common equity is 13.2%. Using a weighted average for the Company's costs of long term debt, preferred stock, and common equity, with reference to the reasonable capital structure heretofore determined, yields an overall fair rate of return of 10.83% to be applied to the Company's original cost rate base. Such rate of return will enable Duke, by sound management, to produce a fair return for its shareholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on terms which are reasonable and fair to customers and existing investors.

2. The determination of Duke's authorized rate of return on common equity in this case has been based upon a careful exercise by the Commission of its overall judgment and expertise after considering all of the evidence of record. The Commission has used no mechanical formula to derive the allowed rate of return on common equity in this case, but has made that determination based upon the totality of the evidence.

3. The allowed rate of return on common equity of 13.2% approved by the Commission in this case contains no down market adjustment.

4. The allowed rate of return on common equity of 13.2% approved by the Commission in this case contains an adjustment of 0.1% for reasonable stock flotation or issuance costs.

5. As a result of this Order, Duke Power Company will be required to prospectively reduce its rates by approximately $7.3 million on an annual basis and to refund approximately $17.6 million plus interest calculated at the rate of 10% per annum to its North Carolina retail ratepayers. The above-referenced rate reduction and refund calculations are based on test year units and are consistent with the rate reductions approved in Docket No. M-100, Sub 113. The levels of the actual annual rate reduction and refunds required by this Order will be greater than the amounts calculated using test year units because of the impact of customer growth which has occurred since the Company's last general rate case.

SUMMARY OF THE EVIDENCE

The evidence for the above-referenced findings of fact is contained in the direct testimony of Company witness Olson, Public Staff witness Sessoms, and Attorney General witness Wilson and in the rebuttal testimony of Company

witness Erickson. There was no disagreement concerning the cost of preferred stock to be used in this proceeding. All parties used the embedded cost of Duke's preferred stock of 8.27%.

Both the Company and the Public Staff used Duke's embedded long-term debt cost of 8.91%. Dr. Wilson used a cost of long-term debt of 8.87%. There was no explanation given by Dr. Wilson for his use of the 8.87% figure. The Commission will utilize the embedded cost of long-term debt of 8.91% recommended by both Duke and the Public Staff.

In his prefiled testimony, Company witness Olson recommended a return on common equity of 14.5% to 15%. This testimony was filed on March 27, 1986. Dr. Olson updated his testimony at the time of hearing. He testified that due to changes in the capital markets occurring from the date he prefiled his testimony, he currently was recommending a rate of return for Duke of 13.5% to 14%. He testified that he had advised the Company to utilize the figure of 14% due to current economic conditions and the performance of the Company's management. Dr. Olson's approach for determining Duke's cost of common equity was based on the discounted cash flow (DCF) methodology for Duke and included a risk premium study and a discounted cash flow study of comparable electric utilities. Dr. Olson's DCF methodology showed a dividend yield of 5.9% based on a dividend rate of $2.68 and an average of the high and low market prices of the Company's common stock since March 1, 1986. Dr. Olson also determined that investors expect a future growth rate of 6% to 6.5%. He stated that his estimate of the investors' expected growth rate had increased from the time of his prefiled testimony because Duke's stock price had risen substantially since the filing of his prefiled testimony while long-term interest rates had gone up, and he concluded that the only explanation for this is an increase in growth expectation. Dr. Olson's opinion was that growth expectations were enhanced because of the prospect of increased competition, a weakened dollar, falling short-term interest rates, and takeover speculation. This growth rate of 6.0% to 6.5% may, according to Dr. Olson, understate investor expectations. When the yield and investors' expected growth rate are combined, the result is an investor return requirement of 11.9% to 12.4% which Dr. Olson then factored upward to 12.9% to 13.4% to reflect appropriate financing costs and market conditions. Dr. Olson checked this determination with an interest premium study. His interest premium study showed that the average risk premium for bonds during the period 1974-79 was 4.75%. Dr. Olson stated that this premium was the most appropriate for use in this case because AA rate utilities are currently selling in the same interest range they sold in during the period 1974-79. Dr. Olson testified that studies have shown that when bond yields go down the premium required by an investor of common equity tends to increase. Therefore, recent bond premium studies based upon AA bond yields of 12.5%, as used by Dr. Olson in his prefiled testimony, are no longer appropriate. This risk premium study, when factored upward for market to book considerations, resulted in a return of 14.85%. Finally, Dr. Olson's updated DCF of comparable companies study showed an investor return requirement of 13.5% to 14%.

Dr. Olson testified that the reason it is necessary to make an adjustment for Duke's cost of capital to allow for financing costs in down markets is that a utility should be able to issue common stock with net proceeds of at least book value, even under adverse market conditions. If the utility's stock is not selling at slightly above book value, when financing costs are taken into account, the issuance of new shares will cause dilution to other shareholders.

The same dilution would take place if an adjustment were not made for down markets. Dr. Olson also testified that the rate of return for a utility should be the same whether or not the utility anticipates the need to attract capital in the near future. A reduction in the rate of return when the utility is not financing would be unfair to existing shareholders and would make it more difficult for the utility to attract new capital on reasonable terms when the utility needed to issue common stock because investors at that time would anticipate that the regulators would again reduce the rate of return as soon as it perceived that the utility no longer needed to attract capital. This would cause shareholders to lose trust in the regulator which would cause investors to require a higher rate of return.

Witness Sessoms recommended that the allowed return for Duke on common equity be set at 12.3%. To determine the cost of common equity, he relied upon the results of a DCF study of Duke and the results of a group of companies which exhibit risk measures similar to those which Duke exhibits. The results of the DCF study for Duke indicated an investor return requirement of 11.5% - 12.3%, based upon a dividend yield of 5.7% - 6.1% and an expected growth rate of 5.8% - 6.2%. The results of the DCF study of the comparable group indicated an investor return requirement of 12.0% - 12.9%, based upon a dividend yield of 6.0% - 6.4% and an expected growth rate of 6.0% - 6.5%. From these ranges, witness Sessoms concluded that the investor return requirement for Duke common equity is 12.2%. Based on the known and actual financing costs attributable to the issuance of new common equity shares over the years 1976-1985, witness Sessoms calculated a weighted average selling expense factor of .1%. Adding the .1% factor to the investor return requirement of 12.2%, witness Sessoms' cost of equity recommendation equalled 12.3%.

Dr. Wilson recommended a rate of return for common equity for Duke of 11%. Dr. Wilson based his conclusion as to the fair rate of return on equity primarily on the DCF model, which employs a regression and correlation analysis of the historical growth rates of 79 electric utilities, including Duke, to derive his estimate of investor growth expectations. Dr. Wilson derived a current dividend yield of 6.5% based upon market prices over a six-month period and the current dividend rate. Using his correlation and regression analysis, he examined 30 historical growth rates in relation to the dividend yields of the 79 utilities (10 each in dividends, earnings, and book value) and concluded that the "single best growth rate" to use as a proxy for investor long-term dividend growth expectations is the eight-year growth in book value and that the best combination indicator is the eight-year growth in book value combined with the one-year dividend growth. He also examined the results of all 30 growth rates, weighted by their respective correlation coefficients. Based upon this data, he derived an expected investor growth rate of 3.5% to 5.0%.

Dr. Edward W. Erickson, Director of the Center for Economic and Business Studies and Professor of Economics and Business at North Carolina State University, testified in rebuttal with respect to Dr. Wilson's testimony. Dr. Erickson testified that he had reviewed the economic, statistical, and algebraic logic of Dr. Wilson's model in this case and determined that Dr. Wilson's methodology is essentially the same as that employed by Dr. Wilson in Docket No. E-7, Sub 391, and by Dr. Caroline Smith in Docket No. E-7, Subs 373 and 358. Dr. Erickson testified that he had replicated Dr. Wilson's results using his own data for the 79 companies; that Dr. Wilson's model in this docket continues to omit risk variables and therefore contains the same error in

algebraic and statistical logic which invalidated the approach in Docket No. E-7, Subs 391, 373, and 358; that Dr. Wilson ignores a statistically significant risk variable produced by his model; that what Dr. Wilson calls E without differentiation is in fact two different numbers; that the statistical manipulations upon which Dr. Wilson bases his estimate of Duke's cost of equity capital are essentially equivalent to a random numbers generator; and that the invalid statistical results which Dr. Wilson uses are overwhelmingly driven by the statistical constant which derives and accounts for over 95% of the sum of his regression coefficients, resulting in little opportunity for individual company characteristics to influence the outcome of an individual company's estimated cost of equity capital. Based upon these conclusions, Dr. Erickson testified that Dr. Wilson does not have a meaningful estimate of Duke's cost of equity capital.

CONCLUSIONS ON REMAND

The determination of the appropriate fair rate of return for Duke Power Company is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on 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 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 requirement of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States . . ." State ex rel. Utilities Commission v. Duke Power Co., 285 N.C. 377, 388, 206 S.E.2d 269 (1974).

The nature of the evidence in a case such as this makes it extremely difficult to balance all of the opposing interests, since much, if not all, of the evidence is based on individual witnesses' perceptions and interpretations of trends and data from the capital market. The Commission must use impartial judgment to ensure that all the parties involved are treated fairly and equitably.

By our Order of October 31, 1986, the Commission found that Duke Power Company should be authorized a rate of return on its common equity of 13.4% in

this case. That determination, among others, was appealed to the North Carolina Supreme Court by the Public Staff.

The Supreme Court issued its opinion on July 28, 1988. In its opinion, the Supreme Court upheld all aspects of the Commission's Order except the Commission's finding on the allowed rate of return for Duke's common equity. With respect to this issue, the Supreme Court remanded the case to the Commission for clarification of two aspects of the Commission's rate of return decision. The Supreme Court directed the Commission as follows:

> On remand the Commission is directed to reconsider the proper rate of return on Duke's common equity in light of this opinion. The Commission is directed further to support its conclusion on this issue with specific findings as to its treatment of financing costs and down market protection. The Commission may make such other findings of material facts in support of its conclusion on this issue as it deems appropriate. State ex rel. Utilities Commission v. Public Staff, 322 N.C. 689, 701, 370 S.E.2d 567 (1988).

On remand of this case, the Commission has reviewed the entire record in this proceeding and concludes that the appropriate rate of return for Duke Power Company on its common equity is 13.2% rather than the 13.4% allowed in the Order of October 31, 1986. We reach this conclusion for the reasons set forth below:

1. The determination of Duke's allowed rate of return on common equity has been based upon a careful exercise by the Commission of its overall judgment and expertise after considering all of the evidence of record in this case. The Commission has used no mechanical formula to derive the allowed rate of return on common equity in this case, but has made that determination based upon the totality of the evidence.

This finding of fact is based upon the Commission's process in arriving at the allowed rate of return. In the Order of October 31, 1986, the Commission did not utilize a mechanical process in arriving at the allowed rate of return but arrived at our determination based upon the totality of the evidence. Specifically, the Commission did not rely either entirely or primarily on the discounted cash flow methodology which was recommended by the witnesses. As the Commission found in its Order, "[m]arket prices are only one of many factors which should bear on the Commission's final judgment as to the fair rate of return." The discounted cash flow methodology uses the prevailing market price of the utility's common stock to determine one of its two components. During periods when market prices are subject to significant fluctuations, the results of DCF studies can vary dramatically.

That the Commission utilized an overall judgment rather than a mechanical approach is also shown by our treatment of the Public Staff's motion in the Order of October 31, 1986. The Public Staff sought to have the Commission find specifically the separate components of the DCF the Commission utilized in arriving at the allowed rate of return. The Commission declined to do so. The Public Staff's motion assumed that the Commission relies on a specific methodology such as the DCF in deriving a rate of return, which is not the case. In our Order at pages 6-7, the Commission stated that the motion:

> "seeks to require the Commission to make findings which none of the expert witnesses in this case could or would make. What the Public Staff and the Attorney General are seeking are the specific individual components which make up the Commission's final determination. Dr. Olson testified repeatedly that the determination of a reasonable rate of return was, in the end, a matter of judgment. This judgment is not readily capable of being separated into individual components."

The Commission notes that each of the witnesses in this proceeding relied principally on the DCF methodology in deriving an estimate of Duke's cost of equity capital. Nevertheless, the foregoing discussion indicates considerable differences between the Company, the Public Staff, and the Attorney General in the results obtained concerning the cost of equity to Duke. The rates of return on common equity recommended by the parties range from a low of 11% recommended by Dr. Wilson to a high of 14% recommended by Dr. Olson. The DCF methodology looks to the past to determine market prices and to the future to estimate the growth in dividends. Yet, as we noted in our Order of October 31, 1986, the market prices of most stocks had fluctuated wildly in past months. The Dow Jones gained 38.38 points on September 4, 1986, and lost 86.61 points on September 11, 1986. Therefore, it is easy to understand that the market prices used in the DCF model can also vary widely. Likewise, any estimate of future dividend growth can be affected by a dismal or rosy view of the future. Low inflation and low interest rates are favorable factors while the sizeable federal budget deficit, the large balance of trade deficit and sluggish GNP growth are alarming. Economists differ widely in their analysis of which of these factors will most determine dividend growth.

It is generally agreed that the determination of the fair and reasonable rate of return is a matter of informed judgment and that the discounted cash flow method is no more than a guide or channel to aid such judgment. In the final analysis, the judgment must be made by the Commission. In State ex rel. Utilities Commission v. General Telephone Company of the Southeast, 281 N.C. 318, 370-71, 189 S.E.2d 705 (1972), the North Carolina Supreme Court said:

> "The apparent precision with which experts, both for the utility and the protestants, compute a fair return is somewhat illusory. The habitual bickering and theorizing of such witnesses over the relative merits of methods of computing cost of equity capital, such as the earnings-to-price ratio or the discounted cash flow, lends a false appearance of certainty to the ultimate decision which is for the Commission."

See also State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 23, 287 S.E.2d 786 (1982) ("the determination of what constitutes a fair rate of return requires the exercise of subjective judgment by the Commission...").

The DCF derives the rate of return from investors' total required return, computed as the sum of the current dividend yield and investors' expected growth in dividends and other cash returns (e.g., capital gains) from the stock in the future. Stock market prices are therefore a key determinant of the DCF rate of return. The key question then becomes whether a precipitous rise in the market price (and an accompanying drop in dividend yield) should prompt a corresponding decrease in the allowed rate of return and, conversely, whether a

sharp drop in the price of a stock during a bear market in and of itself should prompt an increase in the allowed rate of return.

Stock market prices respond to a variety of stimuli, and as we noted in our Order of October 31, 1986, the stock market had recently been more volatile and sensitive than usual and utility stock price movements had tended to be particularly volatile. From a low of $38 per share in February 1986, Duke's stock moved to a high of $52 per share in August 1986, an increase of more than 37%. It is obvious that a change of this magnitude does not mirror a corresponding change in the cost of capital, especially when long-term bond yields in the same period changed very little, if at all. The yield on recently issued long-term AA electric utility bonds on February 28, 1986, when Duke filed this rate case, was 9.35%, and at the close of the hearings on September 24, 1986, it was 9.35%. (The Wall Street Journal, March 3, 1986, p. 26; September 25, 1986, p. 49). From this data it is clear that when the mechanical application of arithmetic models produces results which do not comport with experience and common sense, the judgment of the Commission becomes paramount. The record contains substantial evidence to aid the Commission in this regard. It appears that the precipitous price rise in Duke's (and other utilities) stock in the spring and summer of 1986 may have resulted, at least in part, from takeover speculation. As Dr. Olson testified, there was a "fever that's out there in the market as far as mergers and acquisitions and the discussions about electric utilities being candidates. . ." Witness Sessoms confirmed this interest in mergers and acquisitions on cross-examination. In fact, Sessoms Cross-Examination Exhibit 5 (an article from The Wall Street Journal) specifically identifies Duke as one of the candidates of takeover speculation. Witness Sessoms concurred that a person buying Duke stock in anticipation of a possible takeover bid would expect a capital gains element of growth in addition to growth in dividends.

In this regard, it is interesting to consider the price movements in Duke's stock since the high of $52 in August 1986. On September 12, 1986, the price was down to $43; and on September 24, 1986, when the hearings in this case closed, it was at $45 5/8. A strict adherence to the mathematical application of the DCF could be interpreted to suggest that the cost of capital had begun to increase. Obviously, market prices are only one of many factors which should bear on the Commission's final judgment as to the fair rate of return.

For the reasons set forth above, the Commission concludes that the Duke-specific DCF produced a rate of return lower than what would normally be expected. This result was materially exacerbated because of takeover speculation which distorted the price of Duke's stock. For these reasons, the Commission has given limited weight to these DCF results in this case. A similar argument can also be made for the comparable group DCF results. While Dr. Olson's comparable group DCF results (12.4% - 12.9%) and Mr. Sessoms' comparable group DCF results (12.0% - 12.9%) are both higher than their Duke-specific results (further evidence that the results of the Duke-specific model are uncharacteristically low), the Commission is also doubtful about these comparable group models in view of the volatility of the stock market during the time period in question.

Furthermore, as a general rule the Commission has never utilized any mechanical formula in deriving the allowed rate of return. There are several

practical reasons why the Commission should not pick a methodology and set out specifically the various components. It would make it exceedingly difficult for the Commission to reach a decision. The rate of return allowed by the Commission reflects the collective judgment of the individual members of the Commission who join in the majority opinion. Each individual member may or may not base his or her determination on the same factors. While the Commission might agree on the total it could find itself unable to agree on the parts. More importantly, use of a specific, mechanical methodology would take away the Commission's exercise of judgment.[1] In State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 23, 287 S.E.2d 786 (1982), the Supreme Court stated that, "the determination of what constitutes a fair rate of return requires the exercise of subjective judgment by the Commission. . ."

2. The allowed rate of return on common equity of 13.2% contains no allowance for a down market adjustment.

In remanding this case, the Supreme Court noted that

> ". . . the Commission's approved rate of return coincides precisely with Dr. Olson's testimony as to the proper return suggested by his Duke-specific DCF study as he adjusted it to protect Duke investors against down markets and to compensate for flotation costs. But the Commission made no findings as to whether it considered protecting Duke's investors against down markets in setting a proper rate of return on common equity, and if so, the extent to which this factor was employed."

---

1 Adoption of a mechanical process by the Commission would lead to unending battles before the Commission and the courts. The Commission's Order would have to contain numerous determinations. First, the Commission would have to determine which methodology or mix of methodologies was relied upon. As discussed above, because of the collective nature of the Commission's decision, this might itself be impossible to achieve. If the Commission adopted a mixture of methodologies, we would then have to determine what weight should be given to each of the methodologies. Finally, the Commission would have to make findings on the components of each of the methodologies utilized. All of these findings would be subject to challenge on appeal. Furthermore, the Commission would have to justify any change in the methodology utilized from one case to the next. The final decision of the Commission would be no better, and could be worse, than under the Commission's current practices because it would simply reflect a number of compromises by individual commissioners in determining the individual factors. The Commission would not be exercising its judgment on the basis of the total record, but would simply be making determinations based on isolated parts of the record. Lastly, for the Commission to even attempt to adopt a rigid rate of return methodology is asking this Commission to do what no two expert witnesses have been able to agree upon in this case. These experts, even with Ph.D. degrees and years of experience, cannot even agree on the appropriate application of individual models and their parameters. Consequently, it is appropriate and reasonable for the Commission to use collective judgment and no specific model for these type decisions.

We agree with the Supreme Court that there is no evidence in the record that Duke proposes or can reasonably be expected to issue common stock under market conditions that would cause the value of its outstanding stock to fall. We did not include any allowance for a down market adjustment in the 13.4% rate of return on common equity originally allowed Duke and the return of 13.2% reflected in this Order on remand also includes no down market adjustment. We agree with witnesses Sessoms and Wilson that such an adjustment would be totally unjustified and improper in this case.

3. The allowed rate of return on common equity of 13.2% contains an adjustment of only 0.1% for reasonable stock flotation or issuance costs.

In our Order of October 31, 1986, we specifically acknowledged that the rate of return on common equity of 13.4% ". . .includes an adjustment to allow for reasonable stock or issuance financing costs for the reasons generally stated by witnesses Olson and Sessoms in this case." However, as noted by the Supreme Court,

> ". . . the Commission failed to quantify this factor, or to specify the extent to which this factor affected the ultimate rate of return approved. This again is a missing material factual finding. Because of its absence we are unable to say whether the Commission erred in its rate of return decision."

The Supreme Court further stated that, on the basis of the evidence in this case,

> ". . . since the .1% financing cost adjustment suggested by Mr. Sessoms will provide annual revenues of $4.2 million, it will 'more than compensate investors for the cost of issuance of new common stock' presently contemplated by Duke. On the other hand, the .5% financing costs adjustment recommended by Dr. Olson would be, on this record, grossly extravagant and not justified."

We have reviewed the entire record in this case on remand and, as directed by the Supreme Court, have reconsidered the proper rate of return on Duke's common equity in light of the Supreme Court's opinion and conclude that, based upon our previous reliance on the testimony of both Dr. Olson and Mr. Sessoms, the rate of return on common equity of 13.4% erroneously included and reflected an allowance for financing costs of up to 0.3%. The record in this case will not support a financing cost or issuance adjustment in excess of 0.1%. We base our decision to allow an adjustment of 0.1% on the testimony of Public Staff witness Sessoms concerning his calculation and use of a weighted average selling expense factor of 0.1%. Therefore, in order to comply with the mandate of the Supreme Court in this case on remand, we find it necessary and appropriate to reduce the allowed rate of return on common equity by 0.2% to reflect the reasonable and representative factor for issuance costs.

4. Other factors support the authorization of a rate of return of 13.2% on common equity in this proceeding.

First, in our Order of October 31, 1986, we concluded and hereby reaffirm our conclusion that the rate of return on common equity of 14.0% requested by

the Company is excessive, while the rates of return on common equity of 12.3% and 11.0% recommended by the Public Staff and the Attorney General, respectively, are too conservative and stringent and would severely handicap the Company in continuing to provide adequate and reasonably priced electric service to its customers.

The Commission did not find Dr. Wilson's testimony to be credible. Mr. Sessoms' recommendation, while more reasonable than Dr. Wilson's, was suspect because it was based solely on a mechanical application of the DCF. No consideration was given by Mr. Sessoms to the distortion of the price of Duke's stock. Mr. Sessoms' recommendation would have resulted in a decrease of Duke's allowed return of almost 20%, which would have been at odds with our general policy against extreme adjustments to the allowed return on equity. Mr. Sessoms' recommendation would have also put the Commission at odds with the returns being granted by other Commissions to comparable utilities. Furthermore, his recommendation was much less than that which he had given several months prior to his testimony in this case in which he recommended an allowed return on common equity of 14.4% for AT&T Communications of the Southern States. Mr. Sessoms admitted that long-term interest rates had increased since the time of his testimony in that case and that Duke was comparable in many respects to AT&T Communications, but yet he still recommended a rate of return 2.1% lower for Duke.

Second, just one year earlier the Commission had found Duke's return on equity to be 14.9%. In finding the rate of return in this case on remand to be 13.2%, the Commission has now decreased the Company's allowed rate of return by more than 11%. We have not changed our opinion that as a general rule there should not be extreme fluctuations in the allowed return on common equity in fixing the rate of return. As a matter of general regulatory policy, the Commission attempts to avoid extreme adjustments to the allowed return on equity, either up or down, from the utility's preceding case. The reduction of 170 basis points in this case comes even closer to being an extreme adjustment than was our initial reduction of 150 basis points in the Order of October 31, 1986. We are obviously concerned about this as a factor to be considered in arriving at the appropriate rate of return on common equity.

Third, the Commission levelized the costs Duke will incur from the payments the Company makes to the owners of the Catawba Nuclear Station. In our opinion, this somewhat increased Duke's risk by requiring Duke to defer collection of substantial revenues.

Fourth, while the Supreme Court is technically correct that the 13.4% allowed rate of return found by the Commission in the Order of October 31, 1986, was in the range arrived at in witness Olson's testimony when computing a Duke-specific DCF, that was simply a coincidence. There was other credible rate of return evidence before the Commission which indicated that a rate of return higher than the 13.4% was reasonable; i.e., witness Olson's risk premium methodology which produced a 13.75% rate of return before adjustment for issuance costs and down markets;[2] the average return on equity allowed by other

---

2 The Public Staff attacked Dr. Olson's risk premium methodology because it was based on the premium equity capital received over long-term bond rates

state regulatory commissions to electric utilities during the time frame of 14.47% (Erickson Exhibit 2);[3] and the 15% rate of return on common equity allowed by this Commission in July 1986 to AT&T Communications of the Southern States, Inc., in Docket No. P-140, Sub 9. This latter case was based upon a 58.21% common equity ratio while Duke's common equity ratio in this case is, by comparison, only 46.3%. Among the recent rate of return decisions in evidence in this case was one from the Virginia Corporation Commission allowing Virginia Electric and Power Company, a utility comparable in many respects to Duke, a return of 14.5%.

Therefore, it is the judgment of the Commission on remand, after weighing the conflicting testimony offered by the expert witnesses, that the reasonable and appropriate rate of return on common equity for Duke is 13.2%. Combining this with the appropriate capital structure and cost of debt heretofore determined yields an overall just and reasonable rate of return of 10.83% to be applied to the Company's original cost rate base. Such a rate of return will enable Duke by sound management to produce a fair return for its stockholders, to maintain facilities and services in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on terms which are reasonable and fair to the Company's customers and existing investors.

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

---

during 1974 to 1979. Dr. Olson explained that the use of this data was necessary because the premium that investors require is based on the level of long-term interest rates. Long-term interest rates at the time of hearing were comparable to interest rates prevailing during the period from 1974 to 1979, not to interest rates during more recent periods subsequent to 1979. Use of more recent data, with much higher interest rates, would have been inappropriate.

3 The dissent contended that the Commission should have looked to five other regulatory decisions in which an average return of 12.6% had been allowed. These decisions were not part of the record of this case. Furthermore, the companies involved in these decisions were not comparable to Duke. Four of those five companies were significantly smaller and had limited or no nuclear programs. Obviously, if one is so inclined, it is possible to pick and choose and gather data outside the record of the case to support whatever point one wishes to make. However, we feel bound by the record in this case concerning the rates of return allowed other companies. That evidence was not rebutted by the rates of return allowed other comanies. That evidence was not rebutted by any of the intervenors. If it is necessary to look outside the record in this case, then one should not pick and choose the data and a more appropriate source is the September 29, 1986, issue of Electric Utility Week which showed that the average rate of return allowed electric utilities during the second quarter of 1986 was 14.33%, which is much higher than the allowed rate of return in this case.

Commission v. Duke Power Company, 305 N.C. 1, 287 S.E. 2d 786 (1982). The Commission has followed these principles in good faith in exercising our expert judgment in determining the fair and reasonable rate of return in this proceeding. The determination of the appropriate rate of return is not a mechanical process and can only be made after a study of the evidence based upon careful consideration of a number of different methodologies weighed and tempered by the Commission's impartial judgment.

The Commission cannot guarantee that Duke will, in fact, achieve the levels of return on rate base and common equity herein found to be just and reasonable. Indeed, the Commission would not guarantee the authorized rates of return even if we could. Such a guarantee would remove necessary incentives for the Company to achieve the utmost in operational and managerial efficiencies. The Commission believes, and thus concludes, that the rates of return approved in this docket on remand will afford the Company a reasonable opportunity to earn a fair and reasonable return for its stockholders while providing adequate and economical service to ratepayers.

FURTHER CONCLUSIONS ON REMAND

On remand, the Commission has concluded that the appropriate rate of return on common equity for Duke Power Company is 13.2%. This being the case, the Company will be required to reduce its rates to reflect this change on a prospective basis and to make refunds, including interest calculated at the rate of 10% per annum, to its customers of all revenues collected for service rendered since October 31, 1986, in excess of those which should have been collected under the rates authorized by this Order on remand. To this end, the Commission concludes that Duke should be required to file the following information not later than 20 days from the date of this Order:

1. Revised Schedules I, II, and III as shown on pages 72, 73, and 74 in the Order of October 31, 1986, based on adjusting the cost of service for the substitution of a 13.2% rate of return on equity instead of the 13.4% included in the Order of October 31, 1986. This substitution should be made in every place the 13.4% rate of return was originally utilized, including the calculation of purchased power and net interchange.

2. A calculation of the impact on test year gross revenue requirements of the change in return on common equity to 13.2%, as applied under Item 1 above, and after consideration of the rate reduction approved in Docket No. M-100, Sub 113, on December 22, 1986. This calculation should be based on the test year billing units used in Docket No. E-7, Sub 408.

3. A calculation of the impact on test year gross revenue requirements of the change to 13.2%, as applied under Item 1 above, and after consideration of the rate reductions approved in Docket No. M-100, Sub 113, on December 22, 1986, and December 4, 1987. This calculation should be based on the test year billing units used in Docket No. E-7, Sub 408.

4. Revised tariffs which implement the rate reduction required by this Order and which reflect the gross revenue requirement calculated in Item 3 above.

5. A calculation of refunds due customers resulting from the difference in rates charged for the refund period beginning with service rendered from October 31, 1986, and continuing through the date new rates are proposed to become effective, and the rates that should have been charged based on the 13.2% approved return on equity and the rate reduction Orders in Docket No. M-100, Sub 113. This calculation should include interest at the rate of 10% per annum.

6. A plan for refunding the amount owed customers calculated in Item 5 above.

The Commission further concludes that the Company should file 10 sets of workpapers clearly supporting the calculations necessary to meet the reporting requirements of the items listed above. In order to aid us in our review of those workpapers and calculations, the Commission concludes that any interested intervenor should be allowed to file comments on those items within 15 days of the Company's filing of the items in question with the Chief Clerk of the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke Power Company be, and the same is hereby, authorized a rate of return on common equity of 13.2% and a rate of return of 10.83% on rate base in this proceeding.

2. That Duke Power Company be, and the same is hereby, required to file the following information not later than 20 days from the date of this Order:

A. Revised Schedules I, II, and III as shown on pages 72, 73, and 74 in the Order of October 31, 1986, based on adjusting the cost of service for the substitution of a 13.2% rate of return on equity instead of the 13.4% rate of return included in the Order of October 31, 1986. This substitution should be made in every place the 13.4% rate of return was originally utilized, including the calculation of purchased power and net interchange.

B. A calculation of the impact on test year gross revenue requirements of the change in return on common equity to 13.2%, as applied under decretal paragraph 2A above, and after consideration of the rate reduction approved in Docket No. M-100, Sub 113, on December 22, 1986. This calculation should be based on the test year billing units used in Docket No. E-7, Sub 408.

C. A calculation of the impact on test year gross revenue requirements of the change to 13.2%, as applied under under decretal paragraph 2A above, and after consideration of the rate reductions approved in Docket No. M-100, Sub 113, on December 22, 1986, and December 4, 1987. This calculation should be based on the test year billing units used in Docket No. E-7, Sub 408.

D. Revised tariffs which implement the rate reduction required by this Order and which reflect the gross revenue requirement calculated in decretal paragraph 2C above. In developing these revised tariffs, Duke shall adjust the unit price per kWh in each of its North Carolina retail rate schedules by the same decrement amount per kWh in such a way as to produce the decrease in its North Carolina retail revenues set forth in decretal paragraph 2C above. Duke shall also provide a computation of the decrease in revenues and the final revenues produced by each North Carolina retail rate schedule; plus a computation showing the rate of return for each major North Carolina retail rate class after consideration of the decrement in revenues.

E. A calculation of refunds due customers resulting from the difference in rates charged for the refund period beginning with service rendered from October 31, 1986, and continuing through the date new rates are proposed to become effective, and the rates that should have been charged based on the 13.2% approved return on equity and the applicable rate reduction Orders in Docket No. M-100, Sub 113. This calculation shall include interest at the rate of 10% per annum.

F. A plan for refunding the amounts owed customers calculated in decretal paragraph 2E above.

3. That Duke shall file 10 sets of the workpapers supporting the calculations necessary to meet the reporting requirements required by decretal paragraph 2 above.

4. That interested parties be, and the same are hereby, allowed to file comments regarding the information to be filed by Duke in response to decretal paragraph 2 above. These comments shall be filed not later than 15 days subsequent to the date Duke makes its filing.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of March 1989.

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

Chairman Robert O. Wells dissents by separate opinion.
Commissioner Ruth E. Cook dissents by separate opinion.
Commissioner Sarah Lindsay Tate concurs by separate opinion.

Chairman Robert O. Wells Dissenting:

I dissent from the Majority's Order on Remand allowing Duke a 13.2% return on its common equity capital. I believe that the Majority's decision cannot be justified based upon the evidence of record and is contrary to well established principles of law. I would have allowed the Company a return of 12.3%. I continue to believe that a 12.3% return is appropriate for the reasons set forth in my original dissent in this case back in October of 1986.

The Majority has reduced Duke's return from 13.4% to 13.2%. The Majority has reduced the rate increase which it initially allowed Duke by $7.3 million annually and has ordered a one-time refund of $17.6 million, excluding

interest. By reducing Duke's return on common equity to 12.3%, the Commission could have and should have reduced Duke's rates by $38.9 million annually and it could have and should have required Duke to make a one-time refund of $94.4 million, excluding interest. The additional and unjustified costs imposed on consumers as a result of the Majority having granted Duke an excessive return on common equity is $31.6 million annually, after consideration of the minimal rate reduction and the one-time refund ordered by the Majority. The impact of the Majority's excessive equity return on the requirement that Duke make a one-time refund to its customers equates to an additional and unjustified one-time charge to consumers of $76.8 million, excluding interest. Therefore, in the first year following, and as a direct result of, the Majority's Order on Remand, Duke's customers will be faced with excessive and unjustified charges of $108.4 million. Each year thereafter such excessive and unjustified charges to Duke's customers will be $31.6 million annually.

The North Carolina Supreme Court has stated in enunciating the regulatory powers conferred upon the Commission by Chapter 62 that ". . . The primary purpose of this chapter is not to guarantee to the stockholders of a public utility constant growth in the value of and in the dividend yield from their investment, but is to assure the public of adequate service at a reasonable charge. . ." State ex rel. Utilities Commission v. General Telephone Company, 285 N.C. 671, 208 S.E. 2d 681 (1974). The Majority recognizes that "the Legislature intended for the Commission to fix rates as low as may be reasonably consistent with the requirements of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States," State ex rel. Utilities Commission v. Duke Power Company, 285 N.C. 377, 388, 206 S.E. 2nd 269 (1974); however, the Majority fails to implement the General Assembly's intent in this case. I recognize that it is for the Commission to weigh the evidence and to exercise its judgment within the scope of its authority on the issues presented to it. I also recognize that the Commission must exercise a measure of its subjective judgment in fixing rates. State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E. 2nd 786 (1982); State ex rel. Utilities Commission v. Edmisten, 29 N.C. App. 428, 225 S.E. 2nd 101, affirmed, 291 N.C. 424, 230 S.E. 2nd 647 (1976). However, the Commission's decisions must be supported by competent, material, and substantial evidence in view of the entire record as submitted. Substantial evidence is "more than a scintilla or a permissible inference." Utilities Commission vs. Southern Coach Company, 19 N.C. App. 597, 1988 S.E. 2nd 731 (1973), cert. denied, 284 N.C. 623, 201 S.E. 2nd 693 (1974). The standard of substantial evidence requires "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Id. I believe, and will demonstrate in this dissent, that the Majority's decision on remand is unsupported by competent, material, and substantial evidence in view of the record as a whole and that such decision is contrary to established principles of law.

Specifically, I will show:

(1) That the Majority has failed to give appropriate weight to substantial evidence of record which results in the Majority unlawfully allowing Duke an excessive return on equity and one that exceeds the return recommended by Duke's own cost of capital witness, after correction for certain costs which our Supreme Court considers, and the Majority itself now concedes, to be excessive, improper, and unwarranted;

(2) That the Majority has rejected the centerpiece of modern day finance and investment analysis and virtually all of the testimony of expert witnesses in deference to its own subjective judgment based upon shallow, vague, and largely unquantified considerations; and

(3) That the Majority has erroneously and unlawfully considered and applied a concept which may be referred to as "gradualism" in an attempt to justify its excessive cost of common equity capital.

The Rate of Return on Common Equity Authorized by the Majority Is Not Supported by the Evidence

In presenting its discussion of the evidence regarding the cost of common equity capital, the Majority creates the illusion that it has carefully considered and weighed the evidence in reaching its decision. However, it has not done so. The Majority has determined the cost of Duke's common equity capital to be 13.2%. Such a conclusion cannot be justified in any rational way based upon the evidence of record, including the testimony, exhibits, and cross-examination of Duke's own witness. To reach its conclusion in this regard, it was necessary for the Majority to reject material and substantial evidence, including the testimony and exhibits of Duke's own expert witness, Dr. Charles E. Olson.

1. The rate of return on common equity authorized by the Majority exceeds the return recommended by Duke's own cost of capital witness.

Duke witness Olson's approach for determining Duke's cost of common equity capital was based on the discounted cash flow (DCF) methodology applied to Duke specifically. Dr. Olson's Duke-specific study, standing alone, indicated a common equity return requirement of 11.9% to 12.4%. He "checked" the results of his Duke-specific study by performing a DCF study of a group of electric utilities comparable in risk to Duke. This study indicated a return requirement of 12.4% to 12.9% after correction of the dividend yield component of the study as agreed to by Dr. Olson during cross-examination. Dr. Olson performed another "check" of the reasonableness of the results of his Duke-specific DCF study through use of a "risk premium study". He referred to the risk premium study as ". . . a check that is inferior, I shouldn't use the word inferior, it's not as good as the DCF . . ." Dr. Olson's risk premium study indicated a common equity return requirement of 13.75%. Dr. Olson ultimately determined the appropriate return on equity to be in the range from 13.5% to 14.0%. Dr. Olson stated that ". . . I have advised the Company to utilize a figure of 14 percent. The conclusion to utilize the high end of the range is based on current economic conditions and the performance of the Company's management. . ." In arriving at his recommended range of 13.5% to 14.0%, Dr. Olson made two upward adjustments to the results obtained from his DCF studies and his risk premium study. These adjustments, according to Dr. Olson, were necessary in order to compensate Duke's common equity investors for the cost of issuance of new common stock and to protect existing common equity investors from "down markets". In essence, Dr. Olson's issuance cost adjustment and his down market adjustment are equivalent to adding 0.5% for each adjustment, or a total of 1.0%, to the cost of Duke's common equity capital. Dr. Olson's findings may be summarized as follows:

Item	Investor Return Requirement (%)	Investor Return Requirement After Adjustments (%)[1]
Duke-specific DCF	11.9 - 12.4	12.9 - 13.4
Comparable companies DCF	12.4 - 12.9	13.4 - 13.9
Risk premium approach	13.75	14.85
Overall recommendation	12.5 - 13.0	13.5 - 14.0

It is clear from his testimony that, for each methodology, the procedure Dr. Olson followed in arriving at his ultimate recommendation as to the cost of common equity capital was first to reach his overall conclusion regarding investor return requirements and then, as a separate and distinct step, to factor up investor return requirements so as to include his adjustments for issuance costs and down markets.

Dr. Olson, as stated above, ultimately determined the appropriate total cost of common equity capital to be in the range from 13.5% to 14.0%. Based upon the foregoing and other evidence of record, it is clear that Dr. Olson's 13.5% to 14.0% overall recommendation had been factored up to include a total of 1.0% for issuance costs and down markets. Thus, it reasonably follows that Dr. Olson considered Duke's cost of common equity capital to be in the range from 12.5% to 13.0% before the allowances for issuance costs and down markets. The Majority now concedes that ". . . [t]he record in this case will not support a financing cost or issuance adjustment in excess of 0.1%. . ." and that an adjustment for down markets ". . . would be totally unjustified and improper in this case. . ." Therefore, after correction to exclude Dr. Olson's excessive issuance costs and his unjustified and improper adjustment for down markets, Dr. Olson's overall recommendation as to the cost of common equity capital would be in the range from 12.6% to 13.1%. This range of returns includes an allowance of 0.1% for common stock issuance cost. The Majority's approved return on common equity of 13.2% exceeds the upper bound of the highest return recommended by any cost of capital witness who testified in this proceeding, including the recommendation of Duke witness Olson, after correction as described hereinabove. The evidence, quite simply, does not support the conclusion of the Majority.

2. The Majority has rejected the centerpiece of modern day finance and investment analysis and virtually all of the testimony of the expert witnesses in deference to its own subjective judgment based upon shallow, vague, and largely unquantified considerations.

A principal error reflected in the Majority's decision is the minimal weight which it accords the evidence derived through use of the discounted cash

---

1 Mathematically, Dr. Olson effectuated his allowances for issuance cost and down markets by factoring up his investor return requirements derived from his DCF studies and his risk premium study by a factor of 8.0%; i.e., he multiplied the various aforementioned investor return requirements by a constant factor of 1.08 times. This explains why the risk premium figure increased 1.1% while the DCF figures increased 1.0%.

flow (DCF) methodology. The Majority attaches little or no significance to such evidence notwithstanding the fact that all cost of capital witnesses placed major emphasis on the DCF methodology in reaching their conclusions as to the cost of Duke's common equity capital. As stated in the Majority's decision of October 31, 1986, in this docket, ". . . the witnesses in this proceeding relied principally, if not exclusively, on the DCF methodology in deriving an estimate of Duke's cost of equity capital. . ." Moreover, as reflected in the record and as stated in the remand decision of our Supreme Court ". . . the parties in the present case agreed that a Duke-specific DCF is the best method for determining Duke's rate of return on common equity. . ." In the words of Dr. Olson, Duke's own witness, ". . . the DCF approach is the best single method for determining the cost of equity capital. . . "

Without question the DCF model is a classical, analytical, and quantitative approach that is accepted and highly regarded by virtually all enlightened, sophisticated investors and investment analysts. It is the centerpiece of modern day financial analysis and its theoretical and empirical underpinnings are incontrovertible. Nevertheless, the Majority has sought to discredit the DCF model by suggesting that it is simply a rigid, formalistic, and mechanical approach which must be blindly followed and which is totally devoid of the dynamics of sound judgment. Such rhetoric signifies either a lack of understanding of the concept or an unwillingness to accept the results of its application.

A major thrust of the Majority's attempt to discredit the DCF model is its attack on the common stock price variable component of the model. In essence, the Majority contends because of price volatility in the market place the ". . . Duke-specific DCF produced a rate of return lower than what would normally be expected. . ." First of all the Duke-specific DCF model was used to <u>determine</u> investor expectation regarding the cost of common equity capital. It was not used to <u>validate</u> some groundless, perceived, and whimsical notion as to what investor expectations might be. Further, it should be understood that the objective of this process is not to estimate the cost of common equity capital on a daily basis, but rather to estimate investor expectation regarding their common equity return requirements for some indefinite time period into the future. The expert witnesses clearly recognized the inherent variability of market price and provided for such variability in their studies in a way identical to that of virtually all rational investors. Moreover, they indicated that they had carefully examined the economic and other factors which the Majority implies they did not consider. As previously stated, the witnesses specifically recognized and took into account market price variability. For example, the price variable used by witness Sessoms was based on the week-ending stock prices over the period March 10, 1986 through September 1, 1986, a period of 26 weeks or 6 months. Dr. Olson's price variable was based on the average of the high and low market prices during the period March 1, 1986 through August 31, 1986, a period of six months. Suffice it to say that the witnesses were very much aware of all the factors cited by the Majority as reasons why the DCF model could not be relied upon for purposes of determining the cost of common equity capital. Nevertheless, all expert witnesses agreed, in the words of Dr. Olson, ". . . that the DCF approach is the best single method for determining the cost of equity capital. . ."

The Majority has placed virtually every argument it can conjure up in its justification for allowing Duke a clearly excessive return on common equity.

The Majority portrays the DCF model as too mechanical and of little value, but cost allocation models such as the Summer Coincidental Peak Demand methodology used by the Commission to allocate costs between jurisdictions and between customer classes are far more mechanical as to their operation and subjective as to their inputs. Other methodologies used by the Commission in determining cost of service, such as load dispatch models and generation-mix fuel costing models, are, in most instances, far more mechanical than the DCF model.

The Majority expresses concern over the reduction of Duke's equity return by 170 basis points in comparison to the equity return granted in Duke's previous rate case. Yet, since September of 1985, when the Commission decided Duke's previous general rate case, yields on long-term double-A rated utility bonds have dropped a minimum of 330 basis points. In Duke's previous rate case, the Commission allowed a common equity return of 14.9% at a time when the yield on long-term double-A rated utility bonds averaged 11.61% during the rate case hearing. This represented a spread of 329 basis points. Witness Sessoms testified in this case that current estimated yields on new issues of such bonds are approximately 9%. A spread similar to that used by the Commission in Duke's previous rate case would, in the present case, produce the 12.3% return that I support. The Majority, rather than explaining why it has reduced Duke's common equity return from 14.9%, should be explaining why it has limited the reduction to a mere 170 basis points. Duke itself concedes that the maximum cost of its common equity capital is now 14.0%. This 14.0% cost rate, as previously explained, inappropriately includes an allowance of 100 basis points for issuance costs and down markets. After adjusting the 14.0% cost rate so as to reflect a more realistic issuance costs allowance of 10 basis points and so as to eliminate the completely unjustified allowance for down markets, Duke's maximum cost rate becomes 13.1%. Therefore, "a reasonable mind" must conclude, based upon the testimony of Duke's own expert witness, that Duke's cost of common equity capital in this case, at its maximum, is a full 180 basis points below the 14.9% return last allowed Duke. If the resulting 13.1% return is further adjusted to the mid-point of Dr. Olson's range so as to eliminate his unlawful allowance for management efficiency, Dr. Olson's recommended return becomes 12.85%. That, of course, represents a reduction of 205 basis points from the return last allowed Duke.

While the Majority attaches substantial significance to the basis-point difference, it is my view that the number of basis points by which Duke's cost of common equity capital is being reduced has nothing whatsoever to do with the fair and reasonable return on equity established in this case. The basis-point difference between the return on equity allowed in this case and that allowed in Duke's last general rate case is just that; i.e., a difference. It has virtually nothing to contribute regarding the fairness and reasonableness of the cost of common equity capital. It does, I concede, measure the magnitude of change that has taken place over a specific period of time, but nothing more. Such a measurement is totally devoid of explanatory power and no such power can reasonably be inferred.

The Majority does not state with any degree of specificity the basis of its findings. It seeks to deny the propriety of the Public Staff's and the Attorney General's motions asking for specific findings by stating "that such motions seek to require the Commission to make findings which none of the expert witnesses in this case could or would make." Such a statement is not quite accurate. For example, with regard to the issuance cost of new common

stock all witnesses presented their specific recommendation in this regard. Dr. Olson stated that the proper issuance cost allowance was .5%, Mr. Sessoms stated that the proper allowance for such cost was .1%, and Dr. Wilson stated that no allowance should be made in this regard. The Majority does, however, now state that the 13.2% return it allows includes an allowance of 0.1% for issuance cost.

The witnesses were also specific with regard to the range of common equity returns they considered appropriate. With respect to utilization of the DCF model, the witnesses were specific as to the appropriate range of dividend yields and the appropriate range of the rate of growth of dividend yields which they considered to be proper for use in the model. Based upon such criteria, each witness then exercised his best judgment as to a single point estimate of the cost of common equity capital. The point estimate was within the specific range estimates of the witnesses. The Majority's problem is that while all witnesses agree that the Duke-specific DCF model is the superior method for use in this proceeding, no combination of a dividend yield rate within the dividend yield rate ranges of all witnesses and a growth rate within the dividend yield growth rate ranges of all witnesses for a Duke-specific DCF model will produce a return greater than 12.6%.

The Majority asserts that there is great disparity between the witnesses with respect to their findings in regard to their DCF studies. Such an assertion is not completely true. Dr. Olson's Duke-specific study indicated a common equity return requirement of 11.9% to 12.4%. Witness Sessoms' Duke-specific DCF study yielded a return requirement of 11.5% to 12.3%. With respect to their comparable companies' DCF studies, Dr. Olson determined the return requirement to be in the range from 12.4% to 12.9% and witness Sessoms determined the return requirement to be in the range from 12.0% to 12.9%. In my view, the closeness of these findings tends to validate rather than discredit the DCF model.

As expressed in my original dissent in this docket, I have several problems with Dr. Olson's testimony. However, the majority has now resolved two of the problems by rejecting Dr. Olson's testimony concerning issuance cost and down markets. The Majority now states that the cost of common equity capital allowed Duke ". . . contains no allowance for down markets. . ." and that ". . . [t]he allowed rate of return on common equity of 13.2% contains an adjustment of only 0.1% for reasonable stock flotation or issuance costs. . ." In effect, the Majority rejects the testimony of Dr. Olson in these regards and adopts the recommendation of Public Staff witness Sessoms. While I continue to find Dr. Olson's allowance for issuance cost and down markets profoundly unreasonable, since the Majority has rejected this testimony, I will not comment further as to the gross impropriety of Dr. Olson's position. I would point out, though, that the excessiveness of Dr. Olson's allowances for issuance cost and down markets should in the mind of an objective observer create serious doubt as to the credibility of the testimony of this witness as it relates to other matters in controversy, such as Dr. Olson's risk premium analysis. Also, I wish to make it clear that I continue to hold the same view with respect to Dr. Olson's allowances for issuance cost and down markets as that which was expressed in my dissent of October 31, 1986.

My remaining problem with Dr. Olson's testimony concerns his risk premium study. This matter was addressed fully in my earlier dissent. Therefore, I

will not comment further in this regard other than to affirm that I continue to hold the same view.

The Majority contends that the common equity returns allowed by other state regulatory bodies which it presents, are for companies far more comparable to Duke than are the returns which I presented in my earlier dissent. If that be the case, and I do not concede that it is, it is truly a miraculous result since the Majority's returns were simply lifted from a Duke exhibit which is page 62 from the September 4, 1986 edition of Public Utilities Fortnightly. The Majority simply presents all of the returns for electric utilities reflected on page 62 without regard to their comparability to Duke. No evidence was presented to the effect that these companies were comparable to Duke, and no such conclusion can be reached based upon the information presented in the exhibit. Both the returns which I presented and those which the Majority presented can only be taken at face value and nothing more.

The Majority implies that Duke is comparable in risk to AT&T Communications of the Southern States, Inc. (AT&T). I do not believe that even a casual observer could reach such a conclusion based upon a review of the facts. AT&T's rate base is $53.2 million. Duke's rate base is $3.4 billion or 64 times greater than AT&T's. AT&T's annual operating revenues are $313.5 million. Duke's annual operating revenues are $2.1 billion or seven times greater than AT&T's. Revenues divided by rate base is a measure of capital intensity. AT&T's capital intensity ratio is six. Duke's capital intensity ratio is 0.6. Thus, Duke is 10 times more capital intensive than AT&T. AT&T faces significant competition from 16 interexchange long distance companies including MCI and Sprint and to a lesser degree certain local exchange companies including Southern Bell. Duke faces virtually no competition. A change in annual revenues of $0.5 million will change AT&T's return on common equity by 100 basis points (1.0%). A change of $35 million in annual revenues is required in order to change Duke's return on common equity capital by 100 basis points (1.0%). From the standpoint of financial and operational risk, AT&T and Duke are not comparable companies. They are as different as night and day.

On the one-hand, the Majority rejects the returns on common equity capital allowed by other regulatory agencies which I presented contending that the companies were "significantly smaller" than Duke. On the other hand, the Majority contends that AT&T and Duke are comparable companies even though AT&T's rate base is 64 times smaller than Duke's. Such reasoning appears to be incomprehensible. Perhaps, the Majority, having rejected virtually all of the evidence on this issue, is simply struggling to support the excessive cost of common equity capital it has allowed in this case.

The Majority first criticized the Commissioners who dissented from the initial decision in this case for looking outside of the record. The Majority then proceeds itself to look outside of the record in an attempt to find support for its decision. In my original dissent, I explained why it was necessary to present returns on common equity capital allowed by other regulatory bodies that were not part of the record. However, a return which was not presented that should have been presented and one which I will present now is the "advisory" benchmark return on common equity capital established by the Federal Energy Regulatory Commission (FERC) for the three-month period

August through October 1986. The rate of return on common equity capital established for the electric utility industry for this period was 12.75%. This return was published in the Federal Register, Vol. 51, No. 140, page 26237 on July 22, 1986. The FERC's benchmark rate of return is set equal to its estimate of the industry average cost of common equity capital. A review of the record will clearly reveal that Duke's cost of common equity capital is significantly below the industry average.

Neither the evidence of record nor the Majority's Order reveal the basis of the Majority's decision that the cost of Duke's common equity capital is 13.2%. The record, however, is replete with evidence that clearly reveals the excessiveness of the Majority's findings in regard to the cost of equity capital. The Majority decision on the cost of common equity capital requires the residential, commercial, and industrial customers of Duke in North Carolina to pay an additional $31.6 million annually to cover a cost of capital that, in fact, does not exist. Further, the Majority's decision also denies such customers a one-time refund of $76.8 million, excluding interest. I reject the Majority's findings on this issue.

The Majority's Decision Is Contrary To Established Principles Of Law

Not only is the Majority's decision unsupported by the evidence, it is also contrary to certain well-established principles of law.

The Majority has erroneously and unlawfully considered and applied a concept which may be referred to as "gradualism" in an attempt to justify its excessive cost of common equity capital.

The Majority's decision was clearly influenced by a reluctance to order "extreme fluctuations" in the allowed return on common equity. The Majority states, ". . . We are obviously concerned about this as a factor to be considered in arriving at the appropriate rate of return on common equity. . ." The Majority goes on to state that ". . . [a]s a matter of general regulatory policy, the Commission attempts to avoid extreme adjustments to the allowed return on equity, either up or down, from the utility's preceding case. . ." and that ". . . Mr. Sessom's recommendation would have resulted in a decrease of Duke's allowed return of almost 20%, which would have been at odds with our general policy against extreme adjustments to the allowed return on equity. . ." If such a policy [which may be referred to as "gradualism"] exists, it is a previously unwritten, unspoken policy. It is a policy from which I wish to disassociate myself. When there has been a major change in the cost of providing public utility service, I believe that the change must be fully reflected in the utility's rates. This is particularly so when the cost has decreased since, as noted earlier, the Commission is required by law to fix rates as low as reasonably consistent with the requirements of due process. State ex rel. Utilities Commission v. Duke, supra.

The Commission's original Order in this docket expressed concern about reducing Duke's equity return by 150 basis points. The Majority now states that ". . . [t]he reduction of 170 basis points in this case comes even closer to being an extreme adjustment than was our initial reduction of 150 basis points. . ." However, just ten months after the Commission's original Order in this docket, on August 27, 1987, in Docket No. E-2, Sub 526, the Commission reduced CP&L's return on common equity capital from 15.25% to 12.63%, a

decrease of 262 basis points from the level established in its preceding general rate case. Moreover, on December 17, 1981, the Commission increased Duke's return on equity capital by 240 basis points from 14.1% to 16.5% in Docket No. E-2, Sub 314. It would appear that the Majority's theory of gradualism is of recent birth and was shortlived.

It would seem in this instance that the Majority has determined that there needs to be a gradual elimination of excess profits from Duke's cost of service in order to avoid "investor shock". While offering up its theory of gradualism, the Majority seems in substance to be saying, that Duke's cost of common equity capital is less than the 13.2% return it has allowed, but that it is so concerned about investor shock that it finds a lower return unacceptable. The Majority is apparently not concerned that ratepayers are being required to pay excessive rates during the unspecified period over which the cost of Duke's common equity capital is being phased down to its actual cost. The Majority has made no provision to compensate consumers for losses they will sustain during the "phase-down" period. As a result, ratepayers are being unlawfully and irreparably harmed due to the Majority's unwillingness to base Duke's rates on a lower and more realistic cost of common equity capital.

Based upon the foregoing I must conclude that the Majority's theory of gradualism is in essence nothing more than a transparent ex post facto rationalization offered in an attempt to justify its decision to grant Duke a return on common equity capital greater than that which can be supported by the evidence in this case. The gradualism theory only reflects the shallowness of the Majority's decision by revealing the extent to which the Majority must go to find justification to support its decision. The Majority's decision flies in the face of overwhelming evidence, and I, therefore, reject the Majority's reasoning in this regard.

Conclusion

In reaching its decisions regarding the appropriate rate of return on common equity, the Majority has disregarded the evidence.

The Majority in this case has unjustly approved rates that are excessive by $31.6 million dollars annually and the Majority has without justification denied Duke's ratepayers a one-time refund of $76.8 million, excluding interest. The Majority could have done differently. It could have and should have provided for a reasonable return on common equity of 12.3% rather than an excessive return of 13.2%.

For the foregoing reasons I dissent from the Majority's decision, which burdens Duke's North Carolina retail residential, commercial, and industrial ratepayers with unreasonable and unjustifiable additional costs in excess of $31.6 million annually and denies such customers a one-time refund of $76.8 million, excluding interest.

Robert O. Wells, Chairman

COMMISSIONER RUTH E. COOK DISSENTING:

I dissented from the Majority's original decision allowing Duke a 13.4% rate of return on common equity. The Supreme Court reversed that decision and

directed the Commission to reconsider it. In remanding this case to the Commission, the Court held it inappropriate on this record to include any allowance in the rate of return to protect Duke's investors against "down markets," and it held that an issuance costs allowance of .1% would "more than compensate investors" for issuance of new stock. On remand, the Majority asserts that its original decision of 13.4% included no down market adjustment but did include an allowance for issuance costs of "up to .3%." The Majority therefore reduces the issuance costs allowance to .1%, resulting in an overall return of 13.2%. The rate of return that I found to be reasonable in my original dissent allowing the Company an opportunity to earn 12.3% on common equity is the rate I would allow on remand. Nothing has happened to change my mind. I therefore dissent from the Majority's Order on Remand.

I agree that the Commission must exercise its informed judgment in fixing the rate of return. However, that exercise of judgment must be logical in its reasoning, it must be supported by competent, material and substantial evidence of record, and it must be consistent with the law.

First, I find some of the Majority's reasoning fallacious.

The Majority argues at length that a rate of return decision represents a collective judgment which cannot be based on any particular methodology or any specific components. Yet it then turns around and flatly asserts that its original decision of 13.4% included no down market component and an issuance costs component of .3%! Which is it?

Another inconsistency in the Majority's reasoning relates to the matter of returns allowed other utilities within the same general time frame as the original Order herein. In the original Order, the Majority cited electric utility returns from other jurisdictions which averaged 14.47%. The original dissents cited still other electric utility returns which averaged 12.6%. The Majority now argues on remand that the returns it cited were for "more comparable" companies, and it criticizes the dissents for "picking and choosing" data outside the record. Yet the Majority immediately goes on to pick and choose the 15% which this Commission allowed AT&T Communications in July of 1986. AT&T is not comparable to Duke; it is not even an electric utility. The Majority cannot have it both ways.

If it was improper for the original dissents to "pick and choose" returns outside the record, then so is it improper for the Majority to pick and choose the AT&T return. On the other hand, if the AT&T return is relevant, then the returns cited by the original dissents are even more so. I believe that the returns cited by the original dissents are indeed relevant and that they counterbalance the returns cited by the Majority.

Second, I believe that the evidence simply does not support a rate of return of 13.2%.

In my memory, the Commission has never before granted a rate of return higher than that proposed by a Company witness. The recommendations of the three rate of return witnesses in this case may be summarized as follows:

	Duke specific result	Comparable risk result	Risk premium result	Recommendation
Olson[1]	12.9 - 13.4	13.4 - 13.9	14.85	14
Sessoms[2]	11.6 - 12.4	12.1 - 13	--	12.3
Wilson	11	--	--	11

When Olson's testimony is corrected to delete his .5% down market adjustment and .4% of his issuance costs adjustment, his recommendation becomes 13.1%. Thus, the Majority had to look beyond the recommendations of the rate of return witnesses to support its 13.2% decision. It does so in section 4 of its Order on Remand.

First, the Majority criticizes Public Staff witness Sessoms. However, criticism of witness Sessoms' 12.3% recommendation does not justify the Majority's 13.2% decision. Second, the Majority cites what has been called "gradualism." I will address this point below. Third, the Majority cites deferral of revenues associated with levelization of the Catawba buy-back as increasing Duke's risk. The Commission's levelization provides for full recovery of the buy-back costs over time. It is not a certainty whether Duke's risk is in fact increased at all. In any event, this factor does not amount to competent, material and substantial evidence in support of a 13.2% return. Substantial evidence requires more than a mere scintilla or permissible inference. If this levelization is all the Majority has to rely on, it rests on a slender reed. Fourth, the Majority cites three additional factors: witness Olson's risk premium study which indicated a 13.75% return without down market or issuance costs adjustments, electric utility returns from other jurisdictions which averaged 14.47%, and the Commission's own 15% return granted to AT&T Communications in July 1986. I have already addressed the last two factors. As to the risk premium study, suffice it to say that Olson himself termed this methodology "not as good as" the DCF methodology, that he did not recommend a return as high as that indicated by this study, that his risk premium result was out of line with the results of all other studies and all other witnesses, and that the study was convincingly challenged during cross examination. Again, the study does not rise to the level of competent, material and substantial evidence supporting the majority's decision.

Third, I believe that the Majority's decision suffers from an error of law by its reliance on what we call "gradualism."

The Majority writes, "As a matter of general regulatory policy, the Commission attempts to avoid extreme adjustments to the allowed return on equity, either up or down, from the utility's preceding case. . . We are obviously concerned about this as a factor to be considered in arriving at the appropriate rate of return on common equity." I believe that gradualism is an improper consideration for two reasons. It violates G.S. 62-133(b)(4) which requires the Commission to fix a rate of return which "will enable the public

1 With .5% for down markets and .5% for issuance costs.
2 With .1% for issuance costs.

utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they then exist. . ." Further, consideration of gradualism violates the principle that "the Legislature intended for the Commission to fix rates as low as may be reasonably consistent with the requirements of [due process]." Utilities Commission v. Duke Power Co., 285 N.C. 377, 388 (1974). In reversing the Majority's original decision herein, the Supreme Court agreed "that ordinarily 'it is not the responsibility of the ratepayers to protect investors from swings in the marketplace.'" Just as the Court held it improper on this record to require ratepayers to protect investors from down markets, so too is it improper to require ratepayers to protect investors from fluctuations, extreme or otherwise, in the appropriate rate of return on common equity.

In conclusion, I believe the Majority was reluctant to change its original 13.4% decision despite the holdings of the Supreme Court. It made a small reduction and constructed a rationale to support it, but that rationale is flawed. If appealed, the Majority's Order on Remand will, I believe, be reversed and the Commission will be given yet another opportunity to set a fair and reasonable rate of return in this case.

Ruth E. Cook, Commissioner

COMMISSIONER TATE, CONCURRING: This Order on Remand is a compromise, just as the original Order in 1986 was a compromise. Apparently, compromise is a universal problem in judicial bodies as shown in the following:

> "Chief Judge Cardozo said that a group of seven in the New York Court of Appeals could reason together, but Mr. Justice Cardozo found that nine justices of the Supreme Court of the United States could only vote.
>
> In a group of five, or seven, selected by others without regard to their inter-personal relations, normally unknown to each other before appointment, and in our case with life tenure, candor is compulsory. But diplomacy is not excluded. Often enough the choices are not between right and wrong, but among innumerable alternatives. Some wise man invented the principle that parliamentary bodies can vote Yes or No, but cannot vote on reasons. But judges of appellate courts are required to agree, if they can, on reasons." Braucher, Robert, The Management Point of View. Vol. 22, Harvard Law School Bulletin (No. 6, August, 1971), p.11.

In September and October of 1986, the Commission spent several days wrestling with and deciding 23 accounting issues. We took up and resolved legal questions and rate design issues in the Duke rate case. The Commission approached the return on equity determination with full knowledge of every issue that was presented in the case.

At the final decision-making meetings in October, 1986, each Commissioner had probably selected his/her separate range of returns on equity that would be personally acceptable. Unfortunately, the dissent to the original Order has left some impressions which require clarification. First of all the dissent rests on the premise that the majority based its 13.4% return on equity on Dr. Olson's discounted cash flow (DCF) analysis. Our Order never stated that the

Commission was adopting Dr. Olson's number. Espressum facit cessare tacitum. At no time was there any decision to accept Dr. Olson's number as the basis for the decision. The decision-making process involved obtaining a concensus vote from five individual Commissioners and it is very likely that not one of those five Commissioners was totally satisfied with that number. It was simply necessary that a majority be able to accept some number as the best accommodation that could be made among the five Commissioners voting for it. Two of the five Commissioners reaching that decision no longer serve on the Commission. Now we are six.

Five Commissioners labored hard to reach a number that we all considered a fair rate of return. One Commissioner may have compromised high; another lower in order for us to have a concensus number. One may have placed his/her faith in the DCF's presented; another may have preferred to rely on comparable earnings. The capital structure may have caused one voter to lower his number; the adjustment to the Buy-Back agreement could have caused someone to give a higher rate of return. Someone may have felt a drop of 150 basis points in the rate of return was too drastic. But there were seven individuals with different approaches and different reasons, each exercising his/her best judgment. The DCF's offered were the witnesses' judgments. The Majority did not adopt any one study in coming to its collegial choice of the fair rate of return.

Likewise, in the writing of the Order, some accommodation has to be made because each Commissioner may have had very different reasons for coming to his or her individual conclusions. The Order must, therefore, be drafted so that at least a majority feel that it is representative of the thinking that went into the decision. Since the Commission has a statutory deadline to get rate Orders out 180 days after the rates are suspended, there was a good deal of pressure to get the Order out so that Duke could not put its proposed rates into effect under bond. In the Duke case, the Order went out one week late. None of these facts are intended as excuses; all five Commissioners signed the Order and agreed to its issuance.

The Supreme Court has told us:

> 1) "On remand the Commission is directed to reconsider the proper rate of return on Duke's common equity... State ex rel Utilities Commission v. Public Staff, 322 N.C. 689, 701
>
> 2) "Summarizing, we hold the Commission erred only in failing to make sufficient material factual findings necessary to support its conclusion that 13.4% is a fair rate of return on common equity. This portion of the Commission's decision is reversed and the matter is remanded to the Commission for further proceedings consistent with this opinion." Ibid. 706

On remand consideration, members of the Commission were divided on whether a new return on equity had to be determined or whether the Commission was only required to make proper findings for the 13.4% return on equity.

The Commission accepts its obligation to obey the directions of the Court. We today issue an Order finding a 13.2% return on equity and giving adequate

reasons for our decision. For the reasons set forth in this opinion, I concur in the findings and conclusions set forth in the Majority Order.

Commissioner Sarah Lindsay Tate

DOCKET NO. E-7, SUB 447

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Power Company	)	RECOMMENDED ORDER
Pursuant to G.S. 62-133.2 and NCUC	)	APPROVING NET FUEL
Rule R8-55 Relating to Fuel Charge	)	CHARGE RATE REDUCTION
Adjustments For Electric Utilities	)	

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Tuesday, May 2, 1989 at 9:30 a. m.

BEFORE: Commissioner Ruth E. Cook, Presiding, and Commissioners Edward B. Hipp and Charles H. Hughes

APPEARANCES:

For Duke Power Company:

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 March 2, 1989, Duke Power Company (Duke or the Company) 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 fuel factor of 1.1581¢/kWh (including nuclear fuel disposal costs and excluding gross receipts tax), which is a reduction of .0084¢/kWh

(excluding gross receipts tax) from the base fuel factor of 1.1665¢/kWh set in the Company's last general rate case, Docket No. E-7, Sub 408. The Company further adjusted the proposed factor by decrements (excluding gross receipts tax) of .0841¢/kWh and .0126¢/kWh for the Experience Modification Factor (EMF) and EMF interest respectively.

On March 14, 1989, the Commission issued its Order which scheduled the hearing, established certain filing dates and required public notice.

On March 21, 1989, the Attorney General filed Notice of Intervention pursuant to G.S. § 62-20. On April 12, 1989, Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene. The Petition to Intervene was allowed by Commission Order issued April 14, 1989. The intervention of the Public Staff is noted pursuant to NCUC Rule R1-19(e).

On April 17, 1989 the Public Staff filed the testimony and exhibits of Thomas S. Lam, Engineer, Electric Division.

On April 20, 1989, the Company filed the Supplemental Testimony of William R. Stimart, with certain revised exhibits. The Company therein changed its recommended fuel factor to 1.1579¢/kWh (excluding gross receipts tax) and maintained the recommended decrements of 0.0841¢/kWh and .0126¢/kWh related to the EMF and EMF interest respectively.

At the public hearing, Duke presented the testimony of William R. Stimart, Vice President, Regulatory Affairs. The Public Staff presented the testimony of Thomas S. Lam, 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.

On May 15, 1989, Duke filed a late-filed exhibit (Duke Exhibit No. 6) providing information regarding the rerating of the Company's nuclear units.

Based upon the verified application, the evidence adduced at the hearing, the Orders in Docket No. E-7, Subs 408, 417, and 434, of which the Commission takes judicial notice, and the entire record in this matter, 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, 1988, normalized and adjusted for certain changes through the close of the hearing.

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.

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 63% capacity factor. The reasonable and appropriate level of total normalized nuclear generation for use in this proceeding is 28,025,847,000 mWh.

7. The rerating of all Duke's nuclear units is not unreasonable and should be used to establish normalized nuclear generation in this proceeding.

8. The use of the most recent nuclear fuel cycle costs for nuclear units scheduled to be shut down for refueling during July 1989 is appropriate for use in this proceeding.

9. The primary fuel factor which is appropriate for use in this proceeding is 1.1409¢/kWh (excluding gross receipts tax), which reflects a reasonable fuel cost for North Carolina retail service. The result is a primary fuel factor which is .0256¢/kWh lower than the existing base of 1.1665¢/kWh adopted in Docket No. E-7, Sub 408, the Company's last general rate case.

10. An Experience Modification Factor (EMF) decrement of .0841¢/kWh is reasonable and appropriate for use in this proceeding.

11. An EMF interest refund factor of .0126¢/kWh is reasonable and appropriate for use in this proceeding. This decrement is based on an interest liability to the ratepayers of $4,834,308.

12. The net fuel factor approved in this proceeding after consideration of the EMF and related interest is 1.0442¢/kWh.

13. The rate impact of the net fuel factor approved of 1.0442¢/kWh compared to the net fuel factor of 1.0777¢/kWh approved in the last fuel proceeding is .0346¢/kWh (including gross receipts taxes).

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 2, 1989,

utilized the 12-months ended December 31, 1988, 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, 1988, as the test year for purposes of this proceeding.

The Commission concludes that the test period which is appropriate for use in this proceeding is the 12 months ended December 31, 1988, adjusted for weather normalization, customer growth, generation mix and other known changes through the close of the hearing.

2. 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, 1988, as indicated by Mr. Stimart's testimony. He further indicated during cross-examination by the Public Staff that Duke also files with the Commission monthly reports on the Company's fuel costs under their present fuel procurement practices, which are available to the public.

No evidence was offered in this proceeding in opposition to the Company's fuel procurement and power purchasing practices. The Commission therefore concludes that Duke's fuel procurement and power purchasing practices and procedures were reasonable and prudent during the test period.

3. The Company's proposed adjustments to normalize the test year for weather and customer growth were reviewed and accepted by the Public Staff, and their use was not opposed by any party in this proceeding. Therefore, the Commission concludes that the adjustments proposed by the Company to normalize for weather and customer growth in this proceeding are reasonable and appropriate.

4. For the purpose of setting rates in this proceeding, a 62% nuclear capacity factor was proposed by both Duke and the Public Staff. This is the same nuclear capacity factor adopted by the Commission in Duke's last general rate case, Docket No. E-7, Sub 408, and in Duke's last two fuel adjustment proceedings, Docket No. E-7, Subs 417 and 434. Duke's actual system nuclear capacity factor for the test year ended December 31, 1988, using Duke's rerated maximum net dependable capability (MNDC), was 77%. Based upon national data and Duke's past lifetime nuclear performance of approximately 65.85%, 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 it recently amended Rule R8-55, 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. The Commission used 62% for Duke in earlier proceedings rather than the NERC five-year average because unique factors justified a higher capacity factor. In this case, Duke witness Stimart testified that Duke's test year actual nuclear capacity factor was 77%, that after this year of exceptional nuclear performance, Duke's lifetime nuclear capacity factor increased to 65.85%, and that Duke projected a nuclear capacity factor for 1989 in the range of 70%. All of these nuclear capacity factors are above the NERC five-year average of 61.71%. Mr. Stimart further indicated that Duke has routinely projected nuclear capacity factors around 70%, but its projections do not have a good handle on unknown or unexpected outages. Based on the foregoing, 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.

CUCA cross-examined witness Stimart about the use of a fuel factor based upon Duke's historical nuclear lifetime capacity factor. Mr. Stimart testified that at one time he probably supported such a procedure but to adopt that now would require a rewriting of the rules and that such rewriting should not be done selectively just because one utility had an over-recovery. In addition, he testified that, since there have been major revisions on how to handle fuel over the last 15 years, he would like to see the Commission stay with the present rule awhile and then, if necessary, rehear the issue.

The Attorney General and CUCA assert that the Commission should adopt a nuclear capacity factor of 65.85% for setting rates in this proceeding. As noted above, this is Duke's lifetime system average nuclear capacity factor.

In supporting use of a 62% nuclear capacity factor, the Public Staff asserted that current Commission rules approved for handling fuel costs had worked satisfactorily overall. Therefore, the Public Staff concluded that there is no reason to adopt lifetime nuclear capacity factors in determining the appropriate fuel costs in this proceeding.

The Commission has carefully reviewed the evidence of record regarding this matter and concludes that it is reasonable and appropriate to use a 63% nuclear capacity factor for purposes of setting rates in this proceeding. The Commission is of the opinion that use of a 63% nuclear capacity factor in this case is more realistic than the 62% factor used in the past in view of Duke's historical level of operating efficiency which has materially exceeded 62% and which, by Duke's own testimony, is certainly expected to continue during the period of time these rates will be in effect. Use of a 63% nuclear capacity factor will also serve to better match actual fuel costs with fuel revenues to minimize as much as possible any over- or under-recovery of such costs. The Commission notes that during the period January 1, 1989, through March 31, 1989, Duke has over-recovered fuel costs by $10,542,434 which is already more than twice the $4 million additional annual rate reduction which will result from use of a nuclear capacity factor of 63% rather than 62%. Furthermore, in the two calendar years since the Company's last general rate case, the Company has achieved a level of nuclear generation materially greater than the normalized level, which resulted in the Company over-recovering its actual fuel costs by $23.1 million during 1987 and by $32.2 million during 1988.

All of the foregoing facts justify increasing the nuclear capacity factor in this proceeding from 62% to 63% in order to better match actual fuel costs with fuel revenues and to set rates as low as reasonably possible on an ongoing basis. Duke's past operating performance has resulted in an actual lifetime nuclear capacity factor of 65.85% for the Company's system and the over-recoveries of fuel cost which the Company experienced during the 1987 and 1988 calendar years and thus far in 1989 have been significant. While the increased nuclear capacity factor adopted by the Commission is not nearly as extreme as the change recommended by the Attorney General and CUCA, it represents a reasonable and prudent increase which will minimize future over- or under-recoveries of fuel expense and will cause annual rates to be set $4 million lower on a prospective basis.

5. Duke witness Stimart and Public Staff witness Lam were cross-examined by several parties on the MNDC rerating of Duke's nuclear units. They both testified that Duke and the Public Staff had discussed these reratings. Public Staff witness Lam testified that the rerating of the nuclear units was appropriate. However, it was established at the hearing that the Company had not filed data with the Commission supporting the reratings. The effects of the reratings are shown in the power plant performance reports but justification supporting the reratings was never filed with the Commission.

In response to Commission request, on May 15, 1989, Duke filed its Late-filed Exhibit No. 6 which included workpapers supporting the MNDC rerating of its nuclear power plants. Review of these documents shows that the tests for the rerating of these units were performed according to American Society of Mechanical Engineers (ASME) performance Test Code #6 and that the major reason for the rerating was the increase in condenser cooling water temperature and the subsequent increase in condenser absolute backpressure, which results in a reduction of power. Additionally, the analysis shows that there are design problems with the low pressure turbine rotors at McGuire 1 nuclear unit. While mathematically the reratings do impact the generation normalization, they do not affect the level of actual kWh production.

In its proposed Order, CUCA argues that the nuclear plants' certificates of public convenience and necessity should be modified when the plants are rerated and that Duke should apply for such modifications in a separate docket. The Commission does not agree. G.S. 62-110 provides that no utility shall "begin the construction or operation of any public utility plant or system or acquire ownership or control thereof. . ." without first obtaining a certificate of public convenience and necessity. There is nothing in the language of the statute to support CUCA's argument. The Commission has never before required a plant's certificate to be modified when the plant's MNDC is rerated. Such a rerating will instead be monitored as hereinafter provided and will be decided in the context of the appropriate general rate case or annual fuel charge adjustment proceeding.

Having carefully reviewed the Late-filed Exhibit No. 6 and the recommendation of the Public Staff on this matter, the Commission concludes that the nuclear plant reratings should be incorporated in this proceeding's calculation of normalized nuclear generation. Nevertheless, the Commission feels compelled to advise Duke that verbal explanations to the Public Staff of such significant changes are insufficient and that written justification of such matters should always be filed with the Commission as soon as possible.

Therefore, the Commission concludes that in connection with any future MNDC rerating of any base load power plant, as defined in Rule-R8-53(b)(2), the results and associated workpapers of the test performed to determine the MNDC rerating should be filed with the Commission under separate cover along with the appropriate Base Load Power Plant Performance Report.

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 1.1579¢/kWh revised fuel factor requested by the Company included the test year burned price for coal of 1.634¢/kWh. Witness Lam of the Public Staff determined that the fuel factor calculated using the Commission adopted methodology from general rate case Docket No. E-7, Sub 408, using fossil fuel prices from the most recent month available, March 1989, would be 1.1767¢/kWh, which is higher than that requested and included in the public notice by Duke. This fuel factor was not recommended to the Commission by Mr. Lam because, "It is the Public Staff's belief and policy that it is inappropriate to recommend a fuel factor or revenue level greater than requested by the company and noticed to the general public." Mr. Lam recommended a fuel factor of 1.1508¢/kWh, which is obtained by correcting Mr. Stimart's revised system fuel factor of 1.1579¢/kWh to use the new nuclear fuel cycle prices after start-up for Oconee 2 and McGuire 2. Mr. Lam testified that Oconee 2 and McGuire 2 are scheduled to be shut down for refueling in July 1989 and to be restarted in September 1989, and that the correct price for nuclear fuel in Mr. Stimart's system fuel calculation should be .580¢/kWh rather than .596¢/kWh. Mr. Lam testified that the most accurate fuel cost for a nuclear unit refueled in July is obtained by use of the fuel cycle cost after start-up, as Duke filed and the Commission adopted in Docket No. E-7, Sub 417, for Oconee 1. This unit was shut down for refueling in July 1987 and restarted in September 1987. Mr. Lam was not cross-examined by any party on this point.

The Commission has previously adopted the use of the most recent nuclear fuel cycle cost after start-up for units shut down at the start of the new fuel billing period. There being no evidence in this proceeding that this has resulted in undue harm to the utility or its customers and because it represents the most accurate nuclear fuel cost, the Commission is of the opinion that the use of the most recent nuclear fuel cycle cost for units scheduled to be shut down for refueling during July 1989 is appropriate in this proceeding. Therefore, the correct nuclear fuel cost in this proceeding is .580¢/kWh.

As to the appropriate level of fossil fuel costs to be used in establishing rates in this preceding, the Commission has carefully studied the various related cost analyses included in the Company's Monthly Fuel Reports filed with this Commission. Data in these reports clearly show that Duke's burned cost of coal has been declining for many years. Additionally, it is clear that the achieved burned cost of coal experienced in Duke's last two calendar years was less than the approved level. This is true, even though the approved level was the lowest value presented at the respective hearings.

Further, the Commission has closely studied the impact of spot coal purchases on the Company's burned cost of coal. In the past the Company asserted that spot coal purchases were materially impacting the burned cost of coal used by the Commission to establish normalized fuel costs. Even so, the achieved burned cost of coal was always less than the approved cost of coal.

The coal purchase data for the test period and through March 1989, shows that, contrary to the past, Duke's spot coal purchases were materially less in the six months ended March 1989. This reduction appears to be the result of higher coal inventory in the fall of 1988, and better nuclear plant performance (attributing to the achieved nuclear capacity factor of 77%), which resulted in lower coal inventory in the spring of 1989. This change in the timing of spot coal purchases forced the burned cost of coal materially downward in August 1988 but caused it to increase at the end of the test period, through the spring of 1989.

Nothing in the evidence supports the conclusion that spot coal purchases will decline in the future or that annualized burned cost of coal is increasing. Therefore, in recognition of the change in the timing of the spot coal purchases in the test period and the spring of 1989, the Commission concludes that the test period burned cost of fuel numbers, as supported by the Public Staff and the Company, should be used in establishing rates in this proceeding.

7. Based upon the previously discussed evidence and conclusions, the Commission concludes that the primary fuel factor of 1.1409¢/kWh is just and reasonable. This is .0256¢/kWh lower than the base fuel cost of 1.1665¢/kWh approved in Docket No. E-7, Sub 408. The calculation of the fuel factor of 1.1409¢/kWh is shown in the following table:

	Adjusted Generation (MWH)	Fuel Price $/MWH	Fuel Dollars (000s)
Coal	32,076,263	16.34	524,126
Oil and Gas	15,075	71.31	1,075
Light Off	-	-	2,865
Nuclear	28,025,847	5.80	162,550
Hydro	1,868,900	-	-
Net Pumped Storage	(326,431)	-	-
Purchased Power	550,675	13.63	7,506
Interchange In	1,090,895	23.78	25,941
Interchange Out	(1,223,779)	14.33	(17,537)
Catawba Contract Purchases (including NFDC)	8,203,808	6.41	52,586
TOTAL	70,281,253		759,112
Less: Intersystem Sales	1,531,340		26,482
Line Loss	4,537,494		
System MWH Sales & Fuel Cost	64,212,419		732,630
Fuel Factor ¢/kWh			1.1409

8. In this proceeding, CUCA alleged that it is difficult for ratepayers to trace the change in Duke's fuel cost approved by the Commission in fuel cases to the resulting change in approved rates. Witness Lam of the Public Staff testified that he was not aware of any complaints concerning Rider 50D. Moreover, ratepayers have been provided ample protection by the reviews of rate changes performed by the Public Staff and the Commission. Therefore, the Commission concludes that no significant changes to the Company's Fuel Cost Adjustment Rider 50D are necessary at this time. However, in its examination

of Rider 50D, the Commission has noted that the rider does not include a clear statement indicating the effect of the Commission's Order on rates. Therefore, the Commission concludes that the following sentence should be added to the section of Rider 50D labeled "Effect on Rates":

> The effect of the Commission's order, including its impact on the Company's gross receipts tax expense, is an [increase] [decrease] in rates in all rate schedules of -------¢/kWh as compared to the rates in effect immediately prior to [effective date].

The amount used in the above sentence shall be the difference between the newly approved net fuel factor (fuel factor including the EMF and all other riders) and the previously effective net fuel factor, adjusted to reflect the impact of gross receipts tax. Inclusion of this sentence will enable the ratepayers to quickly ascertain the effect of the Commission's Order on their rates.

9. N.C.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 Stimart and Public Staff witness Lam indicated that during the December 31, 1988, test year, Duke experienced an over-recovery of $32,228,723, which amounts to an EMF decrement of .0841¢/kWh. There being no evidence to the contrary, the Commission concludes that an EMF decrement of .0841¢/kWh (excluding gross receipts tax) is appropriate for use in this proceeding.

10. The Public Staff and Duke presented a calculation of the EMF related 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 Lam and Company witness Stimart testified that the appropriate amount of interest to be refunded to the ratepayers is $4,834,308.

Pursuant to the Commission order of June 24, 1988, in Docket No. E-100, Sub 55, that adopts the method for calculating such interest, the Commission concludes that the appropriate level of interest on the over-recovery achieved during this test period is $4,834,308, which results in an EMF interest decrement of .0126¢/kWh (excluding gross receipts tax).

10. As a result of the Commission's decision in this docket, as noted herein above, Duke's rates will include a net fuel factor of 1.0442¢/kWh (excluding gross receipts taxes), as shown in the chart below:

	Item	Amount (¢/kWh)
1.	Base fuel factor	1.1665
2.	Primary fuel adjustment rider	(.0256)
3.	Experience modification factor	(.0841)
4.	EMF interest	(.0126)
5.	Net fuel factor excluding gross receipts taxes [LN1 - LN2 - LN3 - LN4]	1.0442 [1/]

[1/] The net fuel factor excluding gross receipts taxes previously in effect was 1.0777¢/kWh, therefore, the factor has decreased by .0335¢/kWh. Including gross receipts taxes, the rate impact is .0346¢/kWh.

The Commission concludes that the Company should consider including a similar chart on Rider 50D, in order to increase customer understanding of the rate impact of the normalized fuel costs adopted in this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That for service rendered on and after the effective date of this Order, Duke shall adjust the base fuel cost approved in Docket No. E-7, Sub 408, in its North Carolina retail rates by an amount equal to a .0256¢/kWh decrement (excluding gross receipts tax); and further that Duke shall adjust the resultant approved fuel cost by decrements (excluding gross receipts tax) of .0841¢/kWh and .0126¢/kWh for the EMF and EMF interest, respectively. The EMF and EMF interest portion are to remain in effect for a 12 month period beginning July 1, 1989.

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 file the results and associated worksheets of any tests performed to determine the MNDC rating of any base load power plant, as defined in Rule R8-53(b)(2), under separate cover, in the appropriate Base Load Power Plant Performance Review Plan Docket for the year the test is performed.

4. That Duke shall modify the wording of its "Fuel Cost Adjustment Rider" Sheet 50D as specified in this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of June 1989.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Charles H. Hughes dissents in part.

COMMISSIONER CHARLES H. HUGHES, DISSENTING IN PART AND CONCURRING IN PART:

I respectfully dissent from the decision of the Majority in this case, Docket No. E-7, Sub 447, insofar as the Majority utilizes a 63% nuclear capacity factor for purposes of establishing a reasonable and prudent level of fuel cost to be included in Duke's rates. I concur in and support the remaining findings and conclusions set forth in the Majority's Order.

I submit that the Commission should have maintained Duke's nuclear capacity factor at 62%.

Both of the expert witnesses, who were the only witnesses in the proceeding, recommended that the Commission employ a 62% nuclear capacity factor in setting the fuel cost component of Duke's rates. Such a capacity factor is the same nuclear capacity factor utilized by the Commission in Duke's last general rate case, which was decided in 1986, and in Duke's last two annual fuel charge adjustment proceedings which were decided in 1987 and 1988. Neither the evidence offered in this case nor the reasoning offered by the Majority justifies use of a nuclear capacity factor greater than 62% for purposes of this proceeding.

The Majority asserts that Duke's recent history of highly efficient nuclear operations dictates that a nuclear capacity factor greater than 62% should be used in setting rates in this proceeding. I assert that the historic record does not support this change. In 1986, the Company's achieved system nuclear capacity factor was 61.08% and in 1982 it was 45.57%. The Majority seems to place great weight on the results achieved in 1987 and 1988. What about the results in 1982 and 1986? I find nothing in the record to support the notion that Duke's performance, during the period in which the rates approved herein will be in effect, will more likely be greater than 62% (as in 1987 and 1988) than less than 62% (as in 1982 and 1986). Absent this support, I believe the approved nuclear capacity factor should be maintained at 62%, which is fair and reasonable based on the Commission's rules and Duke's operating performance.

Though it is true that the Company over-recovered fuel costs in both 1987 and 1988, it is equally true that fuel costs were under-recovered in 1982 and 1986. Additionally, it should be noted that Commission rules allow for interest on over-recoveries to be refunded to the Company's customers, but does not allow interest on fuel cost under-recoveries to be collected from customers.

The record shows that Duke's achieved nuclear performance has fluctuated widely in the recent past. This wide fluctuation makes it much more risky to predict future nuclear generation in any particular year based on any perceived operating trend. I note that the NERC annual performance has been much more stable and has resulted in a five year average nuclear capacity factor of 61.71%. Though I am willing to adjust upward the 5 year NERC average to 62%, which is the nuclear capacity factor consistently approved by this Commission, I am unwilling to raise it up to the 63% supported by the Majority.

In accepting the 62% nuclear capacity factor, I agree with the Public Staff's assertion that current Commission rules approved for handling fuel costs have worked satisfactorily overall.

The rates approved herein this proceeding will be in effect for the twelve months ended June 30, 1990. The record shows that during this time it is likely that all of Duke's nuclear units will be shutdown for refueling. These refuelings will assert downward pressure on Duke's achieved nuclear capacity factor during this period of time.

As previously stated, utilities are required by statute and Commission Rule to refund all fuel cost overcollections plus interest. In recent years the interest rate applied to such overcollections has been set at the rate of 10% per annum. Therefore, even though utilities are not fully compensated for their cost when fuel cost are undercollected, consumers are fully compensated when fuel cost are overcollected.

The Majority is apparently confident that Duke will overcollect its fuel cost during the next 12 month period subject to true-up. It notes that as of March 31, 1989, "Duke has over-recovered fuel costs by $10,542,434". The Majority fails to note that Duke's fuel cost was undercollected by $1,412,856 as of January 31, 1989.

In the past, the Commission has applied its rules in a fair and reasonable manner and established a 62% nuclear capacity factor. I believe nothing in the record supports the conclusion that this factor should be changed. Therefore, based on all the foregoing, I conclude that the 62% nuclear capacity factor continues to be appropriate for Duke Power Company and should be used in establishing rates in this proceeding. The 62% nuclear capacity benchmark continues to be appropriate and is fully supported by the record.

For the reasons set forth hereinabove, I dissent from the decision of the Majority in this case.

Charles H. Hughes, Commissioner

DOCKET NO. E-7, SUB 447

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Power Company	)	FINAL ORDER
Pursuant to G.S. 62-133.2 and NCUC	)	APPROVING NET FUEL
Rule R8-55 Relating to Fuel Charge	)	CHARGE RATE REDUCTION
Adjustments For Electric Utilities	)	

BEFORE: Chairman W. W. Redman, Jr., and Commissioners Sarah Lindsay Tate, Ruth E. Cook, Julius A. Wright, Robert O. Wells, Charles H. Hughes, and Laurence A. Cobb

BY THE COMMISSION: On March 2, 1989, Duke Power Company (Duke or the Company) 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 fuel factor of 1.1581¢/kWh (including nuclear fuel disposal costs and excluding gross receipts tax), which is a reduction of 0.0084¢/kWh (excluding gross receipts tax) from the base fuel factor of 1.1665¢/kWh set in

the Company's last general rate case, Docket No. E-7, Sub 408. The Company further adjusted the proposed factor by decrements (excluding gross receipts tax) of 0.0841¢/kWh and 0.0126¢/kWh for the Experience Modification Factor (EMF) and EMF interest, respectively.

On March 14, 1989, the Commission issued its Order which scheduled the hearing, established certain filing dates and required public notice.

On March 21, 1989, the Attorney General filed Notice of Intervention pursuant to G.S. 62-20. On April 12, 1989, Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene. The Petition to Intervene was allowed by Commission Order issued April 14, 1989. The intervention of the Public Staff is noted pursuant to NCUC Rule R1-19(e).

On April 17, 1989 the Public Staff filed the testimony and exhibits of Thomas S. Lam, Engineer, Electric Division.

On April 20, 1989, the Company filed the Supplemental Testimony of William R. Stimart, with certain revised exhibits. The Company therein changed its recommended fuel factor to 1.1579¢/kWh (excluding gross receipts tax) and maintained the recommended decrements of 0.0841¢/kWh and 0.0126¢/kWh related to the EMF and EMF interest respectively.

The matter was heard on May 2, 1989, by a Commission Hearing Panel consisting of Commissioners Ruth E. Cook, Edward B. Hipp, and Charles H. Hughes, with Commissioner Cook presiding. At the public hearing, Duke presented the testimony of William R. Stimart, Vice President, Regulatory Affairs. The Public Staff presented the testimony of Thomas S. Lam, 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.

On May 15, 1989, Duke filed a late-filed exhibit (Duke Exhibit No. 6) providing information regarding the rerating of the Company's nuclear units.

On June 30, 1989, the Commission Hearing Panel entered a Recommended Order in this docket whereby Commissioners Cook and Hipp approved a net annual fuel charge rate reduction for Duke Power Company of approximately $13.3 million. The decision was a Recommended Order because Commissioner Charles H. Hughes filed a dissent on the issue of the appropriate nuclear capacity factor to be used in establishing a reasonable and prudent level of fuel cost to be included in Duke's rates. Commissioners Cook and Hipp adopted a 63% nuclear capacity factory for use in this case, while Commissioner Hughes advocated use of a 62% nuclear capacity factor.

The Recommended Order provided that it would become effective and final on July 22, 1989, if no exceptions were filed by the parties.

On June 30, 1989, Duke filed revised rate schedules to implement the Recommended Order. These revised rate schedules were effective for service rendered on and after July 1, 1989. Duke reserved the right to contend before the full Commission that Duke's proposed rates as set forth in its application should be adopted and implemented by the Commission.

On July 17, 1989, Duke Power Company filed the following exception to the Recommended Order:

> "The Panel's use of a 63 percent nuclear capacity factor for purposes of establishing a reasonable and prudent level of fuel cost is unsupported by competent, material and substantial evidence in view of the entire Record. G.S. 62-94(b)(5)."

Duke requested the full Commission to reverse the Recommended Order insofar as it used a 63% nuclear capacity factor and enter an Order requiring use of 62% as proposed by Duke and the Public Staff. In the alternative, should the full Commission adopt the Panel's recommended use of 63% capacity factor, Duke requested the Commission to set forth in its Order that 62% would continue to be used for determining the presumption of imprudence under Commission Rule R8-55(i).

Duke did not request the Commission to schedule an oral argument to consider its exception to the Recommended Order.

On July 25, 1989, CUCA filed a response in opposition to Duke's exception and requested the Commission to affirm the Recommended Order of June 30, 1989, and thereby deny Duke's exception.

On July 28, 1989, the Attorney General filed a legal brief in opposition to Duke's exception and requested the Commission to affirm the Recommended Order and to deny Duke's alternative proposal.

The Public Staff made no filing in response to Duke's exception.

Based upon the verified application, the evidence adduced at the hearing, the Orders in Docket Nos. E-7, Subs 408, 417, and 434, of which the Commission takes judicial notice, and the entire record in this matter, the full Commission now makes the following

FINDINGS OF FACT

1. Duke Power Company is duly organized as a public utility company under the laws of the State of North Carolina and is subject to the jurisdiction of 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, 1988, normalized and adjusted for certain changes through the close of the hearing.

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.

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. The reasonable and appropriate level of total normalized nuclear generation for use in this proceeding is 27,580,991 mWh.

7. The rerating of all Duke's nuclear units is not unreasonable and should be used to establish normalized nuclear generation in this proceeding.

8. The use of the most recent nuclear fuel cycle costs for nuclear units scheduled to be shut down for refueling during July 1989 is appropriate for use in this proceeding.

9. The primary fuel factor which is appropriate for use in this proceeding is 1.1508¢/kWh (excluding gross receipts tax). This factor reflects a reasonable fuel cost for North Carolina retail service. The primary fuel factor of 1.1508¢/kWh is 0.0157¢/kWh less than the existing base of 1.1665¢/kWh which was established in the Company's last general rate case, Docket No. E-7, Sub 408. The primary fuel factor of 1.1508¢/kWh is 0.0099¢/kWh greater than the primary fuel factor of 1.1409¢/kWh adopted for use by the Commission Hearing Panel in its Recommended Order issued in this docket, Docket No. E-7, Sub 447, on June 30, 1989, and implemented by Duke effective July 1, 1989. In terms of instant economic impact, this difference of 0.0099¢/kWh (1.1508¢/kWh less 1.1409¢/kWh), excluding gross receipts tax, represents the totality of the difference between the decision reached by the Panel in its Recommended Order and that reached by the Commission herein. Therefore, due to the relatively minor instant economic impact, from the Company's perspective, of the Commission's decision relative to the decision of the Panel, and for other reasons reflected herein, the Commission will defer implementation of any rate change from the level of rates approved by the Panel in this regard until Duke's next annual fuel charge adjustment proceeding, which will be held in May 1990. The Commission is taking this action so as to avoid further change in Duke's rates unnecessarily at this time, thereby maintaining rate stability to the maximum extent possible.

10. Duke should be required to place in a deferred account all costs associated with the Commission's deferral of implementation of the 0.0099¢/kWh incremental increase in rates related to increased fuel cost as described hereinabove, including a reasonable allowance for carrying charges, which should be calculated at the rate of 10% per annum. These deferred costs will be appropriately considered at the time of Duke's next annual fuel charge adjustment proceeding.

11. An Experience Modification Factor (EMF) decrement of 0.0841¢/kWh is reasonable and appropriate for use in this proceeding.

12. An EMF interest refund factor of 0.0126¢/kWh is reasonable and appropriate for use in this proceeding. This decrement is based on an interest liability to the ratepayers of $4,834,308.

13. The net fuel factor approved in this proceeding after consideration of the EMF and related interest is 1.0541¢/kWh. However, consistent with the foregoing findings of fact, implementation of the 0.0099¢/kWh segment of said

net fuel factor as a component of Duke's rates shall be deferred and appropriately considered at the time of the Company's next annual fuel charge adjustment proceeding.

14. The overall impact of the net fuel factor of 1.0541¢/kWh approved herein compared to the net fuel factor of 1.0777¢/kWh approved in the last fuel charge adjustment proceeding reflects a decrease of 0.0244¢/kWh (including gross receipts tax). However, due to the deferral of implementation of the 0.0099¢/kWh segment of the 1.0541¢/kWh net fuel factor, rates currently in effect and which will remain in effect, consistent with the provisions of this Order, reflect a decrease of 0.0346¢/kWh (including gross receipts tax) when compared to the net fuel factor of 1.0777¢/kWh approved in Duke's last fuel charge adjustment proceeding.

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 2, 1989, utilized the 12-months ended December 31, 1988, 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, 1988, as the test year for purposes of this proceeding.

The Commission concludes that the test period which is appropriate for use in this proceeding is the 12 months ended December 31, 1988, adjusted for weather normalization, customer growth, generation mix and other known changes through the close of the hearing.

2. 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, 1988, as indicated by Mr. Stimart's testimony. He further indicated during cross-examination by the Public Staff that Duke also files with the Commission monthly reports on the Company's fuel costs under their present fuel procurement practices, which are available to the public.

No evidence was offered in this proceeding in opposition to the Company's fuel procurement and power purchasing practices. The Commission therefore concludes that Duke's fuel procurement and power purchasing practices and procedures were reasonable and prudent during the test period.

3. The Company's proposed adjustments to normalize the test year for weather and customer growth were reviewed and accepted by the Public Staff, and their use was not opposed by any party in this proceeding. Therefore, the

Commission concludes that the adjustments proposed by the Company to normalize for weather and customer growth in this proceeding are reasonable and appropriate.

4. For the purpose of setting rates in this proceeding, a 62% nuclear capacity factor was proposed by both Duke and the Public Staff. This is the same nuclear capacity factor adopted by the Commission in Duke's last general rate case, Docket No. E-7, Sub 408, and in Duke's last two fuel adjustment proceedings, Docket Nos. E-7, Subs 417 and 434. Duke's actual system nuclear capacity factor for the test year ended December 31, 1988, using Duke's rerated maximum net dependable capability (MNDC), was 77%. Based upon national data and Duke's past lifetime nuclear performance of approximately 65.85%, 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.

CUCA cross-examined witness Stimart about the use of a fuel factor based upon Duke's historical nuclear lifetime capacity factor. Mr. Stimart testified that at one time he probably supported such a procedure but to adopt that now would require a rewriting of the rules and that such rewriting should not be done selectively just because one utility had an over-recovery. In addition, he testified that, since there have been major revisions on how to handle fuel over the last 15 years, he would like to see the Commission stay with the present rule awhile and then, if necessary, rehear the issue.

The Attorney General and CUCA assert that the Commission should adopt a nuclear capacity factor of 65.85% for setting rates in this proceeding. As noted above, this is Duke's lifetime system average nuclear capacity factor.

In supporting use of a 62% nuclear capacity factor, the Public Staff asserted that current Commission rules approved for handling fuel costs had worked satisfactorily overall. Therefore, the Public Staff concluded that there is no reason to adopt lifetime nuclear capacity factors in determining the appropriate fuel costs in this proceeding.

The Commission agrees with the Public Staff that the method recently approved for handling fuel costs has in fact worked satisfactorily overall and that the over-recovery by one utility at this time does not require a revision in the Commission's rules. Even if such a revision was necessary, it would be improper to rewrite the Commission's rules in a utility fuel proceeding; such changes should be performed in a rulemaking proceeding. Therefore, the Commission concludes that there is no reason nor is any procedure necessary to

alter the recently approved fuel clause methodology to use lifetime nuclear capacity factors in determining the appropriate fuel costs in this proceeding.

As the Commission recognized when we recently amended Rule R8-55, 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 77%; that after this year of nuclear performance, Duke's lifetime nuclear capacity factor increased to 65.9%; and that Duke projected a nuclear capacity factor for 1989 in the range of 70%. All of these nuclear capacity factors are above the NERC five-year average recommended by Duke pursuant to Rule R8-55(c)(1). Mr. Stimart further indicated that Duke has routinely projected nuclear capacity factors around 70%, but its projections do not have a good handle on unknown or unexpected outages. 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. However, the Commission will not raise the normalized nuclear capacity factor above 62% because of the danger of wide swings in the fuel factor and resulting rate instability. Wide swings can and do occur in nuclear capacity factors. The 1988 capacity factor for Duke's nuclear units was 77%. The 1982 capacity factor for Duke's nuclear units was 45.57%. Maintaining a stable nuclear capacity factor can help the fuel factor remain stable. This avoids rate instability which is an important consideration of the Commission in this proceeding. According, 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 the Company's last two fuel adjustment proceedings and it is also the nuclear capacity factor recommended by both expert witnesses in this proceeding.

The use of a nuclear capacity factor higher than 62% would also have an adverse impact on Duke which was not discussed by the Panel in the Recommended Order. Under Rule R8-55(i), the use of a 63% nuclear capacity factor for setting rates raises the capacity factor used to create a presumption of imprudently incurred fuel costs.

Rule R8-55(i) provides in pertinent part:

> 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. [Rule R8-55(i) as amended by the Commission's June 22,

1988, Order on Request for Clarification Regarding Presumption of Imprudence; Emphasis provided.]

The 62% capacity factor previously used by the Commission for setting rates which was recommended by the Public Staff in this proceeding is already higher than the 5-year national average capacity factor for similar units, which is 61.71%. The Panel's Order would raise the standard even higher. The threshold level of imprudence would be set at the new 63% capacity factor, rather than at 62%. The Recommended Order would raise the threshold level for creating a presumption of imprudence that is not justified by the evidence.

5. Duke witness Stimart and Public Staff witness Lam were cross-examined by several parties on the MNDC rerating of Duke's nuclear units. They both testified that Duke and the Public Staff had discussed these reratings. Public Staff witness Lam testified that the rerating of the nuclear units was appropriate. However, it was established at the hearing that the Company had not filed data with the Commission supporting the reratings. The effects of the reratings are shown in the power plant performance reports but justification supporting the reratings was never filed with the Commission.

In response to Commission request, on May 15, 1989, Duke filed its Late-filed Exhibit No. 6 which included workpapers supporting the MNDC rerating of its nuclear power plants. Review of these documents shows that the tests for the rerating of these units were performed according to American Society of Mechanical Engineers (ASME) performance Test Code #6 and that the major reason for the rerating was the increase in condenser cooling water temperature and the subsequent increase in condenser absolute backpressure, which results in a reduction of power. Additionally, the analysis shows that there are design problems with the low pressure turbine rotors at McGuire 1 nuclear unit. While mathematically the reratings do impact the generation normalization, they do not affect the level of actual kWh production.

In its proposed Order, CUCA argues that the nuclear plants' certificates of public convenience and necessity should be modified when the plants are rerated and that Duke should apply for such modifications in a separate docket. The Commission does not agree. G.S. 62-110 provides that no utility shall "begin the construction or operation of any public utility plant or system or acquire ownership or control thereof. . ." without first obtaining a certificate of public convenience and necessity. There is nothing in the language of the statute to support CUCA's argument. The Commission has never before required a plant's certificate to be modified when the plant's MNDC is rerated. Such a rerating will instead be monitored as hereinafter provided and will be decided in the context of the appropriate general rate case or annual fuel charge adjustment proceeding.

Having carefully reviewed Duke's Late-filed Exhibit No. 6 and the recommendation of the Public Staff on this matter, the Commission concludes that the nuclear plant reratings should be incorporated in the calculation of normalized nuclear generation. Nevertheless, the Commission feels compelled to advise Duke that verbal explanations to the Public Staff of such significant changes are insufficient and that written justification of such matters should always be filed with the Commission as soon as possible. Therefore, the Commission concludes that in connection with any future MNDC rerating of any base load power plant, as defined in Rule R8-53(b)(2), the results and

associated workpapers of the test performed to determine the MNDC rerating should be filed with the Commission under separate cover along with the appropriate Base Load Power Plant Performance Report. The Commission will soon initiate an investigation in Docket No. E-100, Sub 55, to consider issues related to the MNDC rerating of base load power plants.

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 1.1579¢/kWh revised fuel factor requested by the Company included the test year burned price for coal of 1.634¢/kWh. Witness Lam of the Public Staff determined that the fuel factor calculated using the Commission adopted methodology from general rate case Docket No. E-7, Sub 408, using fossil fuel prices from the most recent month available, March 1989, would be 1.1767¢/kWh, which is higher than that requested and included in the public notice by Duke. This fuel factor was not recommended to the Commission by Mr. Lam because, "It is the Public Staff's belief and policy that it is inappropriate to recommend a fuel factor or revenue level greater than requested by the company and noticed to the general public." Mr. Lam recommended a fuel factor of 1.1508¢/kWh, which is obtained by correcting Mr. Stimart's revised system fuel factor of 1.1579¢/kWh to use the new nuclear fuel cycle prices after start-up for Oconee 2 and McGuire 2. Mr. Lam testified that Oconee 2 and McGuire 2 are scheduled to be shut down for refueling in July 1989 and to be restarted in September 1989, and that the correct price for nuclear fuel in Mr. Stimart's system fuel calculation should be .580¢/kWh rather than .596¢/kWh. Mr. Lam testified that the most accurate fuel cost for a nuclear unit refueled in July is obtained by use of the fuel cycle cost after start-up, as Duke filed and the Commission adopted in Docket No. E-7, Sub 417, for Oconee 1. This unit was shut down for refueling in July 1987 and restarted in September 1987. Mr. Lam was not cross-examined by any party on this point.

The Commission has previously adopted the use of the most recent nuclear fuel cycle cost after start-up for units shut down at the start of the new fuel billing period. There being no evidence in this proceeding that this has resulted in undue harm to the utility or its customers and because it represents the most accurate nuclear fuel cost, the Commission is of the opinion that the use of the most recent nuclear fuel cycle cost for units scheduled to be shut down for refueling during July 1989 is appropriate in this proceeding. Therefore, the correct nuclear fuel cost in this proceeding is .580¢/kWh.

As to the appropriate level of fossil fuel costs to be used in establishing rates in this proceeding, the Commission has carefully studied the various related cost analyses included in the Company's Monthly Fuel Reports filed with this Commission. Data in these reports clearly show that Duke's burned cost of coal has been declining for many years. Additionally, it is clear that the achieved burned cost of coal experienced in Duke's last two calendar years was less than the approved level. This is true, even though the approved level was the lowest value presented at the respective hearings.

Further, the Commission has closely studied the impact of spot coal purchases on the Company's burned cost of coal. In the past the Company asserted that spot coal purchases were materially impacting the burned cost of coal used by the Commission to establish normalized fuel costs. Even so, the achieved burned cost of coal was always less than the approved cost of coal.

The coal purchase data for the test period and through March 1989, shows that, contrary to the past, Duke's spot coal purchases were materially less in the six months ended March 1989. This reduction appears to be the result of higher coal inventory in the fall of 1988, and better nuclear plant performance (attributing to the achieved nuclear capacity factor of 77%), which resulted in lower coal inventory in the spring of 1989. This change in the timing of spot coal purchases forced the burned cost of coal materially downward in August 1988 but caused it to increase at the end of the test period, through the spring of 1989.

Nothing in the evidence supports the conclusion that spot coal purchases will decline in the future or that annualized burned cost of coal is increasing. Therefore, in recognition of the change in the timing of the spot coal purchases in the test period and the spring of 1989, the Commission concludes that the test period burned cost of fuel numbers, as supported by the Public Staff and the Company, should be used in establishing rates in this proceeding.

7. Based upon the previously discussed evidence and conclusions, the Commission concludes that the primary fuel factor of 1.1508¢/kWh is just and reasonable. The calculation of the fuel factor of 1.1508¢/kWh is shown in the following table:

	Adjusted Generation (MWH)	Fuel Price $/MWH	Fuel Dollars (000s)
Coal	32,698,426	16.34	534,292
Oil and Gas	15,075	71.31	1,075
Light Off	-	-	2,865
Nuclear	27,580,991	5.80	159,970
Hydro	1,868,900	-	-
Net Pumped Storage	(326,431)	-	-
Purchased Power	550,675	13.63	7,506
Interchange In	1,112,058	23.78	26,445
Interchange Out	(1,247,520)	14.33	(17,877)
Catawba Contract Purchases (including NFDC)	8,073,591	6.40	51,671
TOTAL	70,325,765		765,947
Less: Intersystem Sales	1,531,340		26,482
Line Loss	4,540,432		
System MWH Sales & Fuel Cost	64,253,993		739,465
Fuel Factor ¢/kWh			1.1508

As previously stated, the primary fuel factor which is appropriate for use in this proceeding is 1.1508¢/kWh (excluding gross receipts tax). This primary fuel factor of 1.1508¢/kWh is 0.0157¢/kWh less than the existing base of 1.1665¢/kWh which was established in the Company's last general rate case, Docket No. E-7, Sub 408. The primary fuel factor of 1.1508¢/kWh is 0.0099¢/kWh greater than the primary fuel factor of 1.1409¢/kWh adopted for use by the Commission Hearing Panel in its Recommended Order issued in this docket, Docket No. E-7, Sub 447, on June 30, 1989, and implemented by Duke effective July 1, 1989. In terms of instant economic impact, this difference of 0.0099¢/kWh

(1.1508¢/kWh less 1.1409¢/kWh), excluding gross receipts tax, represents the totality of the difference between the decision reached by the Panel in its Recommended Order and that reached by the Commission herein. Therefore, due to the relatively minor instant economic impact, from the Company's perspective, of the Commission's decision relative to the decision of the Panel, and for other reasons reflected herein, the Commission will defer implementation of any rate change from the level of rates approved by the Panel in this regard until Duke's next annual fuel charge adjustment proceeding, which will be held in May 1990. The Commission is taking this action so as to avoid further change in Duke's rates unnecessarily at this time, thereby maintaining rate stability to the maximum extent possible.

Consistent with the foregoing decision, Duke is being required to place in a deferred account all costs associated with the Commission's deferral of implementation of the 0.0099¢/kWh incremental increase in rates related to increased fuel costs as described hereinabove, including a reasonable allowance for carrying charges which should be calculated at the rate of 10% per annum. These deferred costs will be appropriately considered at the time of Duke's next annual fuel charge adjustment proceeding, which, as indicated above, will be held in May 1990.

In terms of fuel costs on a North Carolina retail basis, the Commission's instant Order reflects a level of fuel cost approximately $3.8 million greater than the level of fuel cost approved by the Hearing Panel. Duke's total annual level of fuel cost as adopted herein is $739.5 million. The Company's North Carolina retail operations represent approximately 60% of its total Company operations. The Company's total North Carolina retail revenue requirement as determined by the Commission at the time of Duke's last general rate case proceeding was $2.1 billion. This case was decided in October 1986. Finally, before proceeding, it should be noted that the Commission is very much aware of the fact that, when the fuel costs as established herein are trued-up in conjunction with the Company's next annual fuel charge adjustment proceeding, the Company will be required to refund with interest any and all overcollection of fuel costs in excess of its actual fuel costs then determined to have been reasonable and prudently incurred, should such an overcollection occur.

8. In this proceeding, CUCA alleged that it is difficult for ratepayers to trace the change in Duke's fuel cost approved by the Commission in fuel cases to the resulting change in approved rates. Witness Lam of the Public Staff testified that he was not aware of any complaints concerning Rider 50D. Moreover, ratepayers have been provided ample protection by the reviews of rate changes performed by the Public Staff and the Commission. Therefore, the Commission concludes that no significant changes to the Company's Fuel Cost Adjustment Rider 50D are necessary at this time. However, in its examination of Rider 50D, the Commission has noted that the rider does not include a clear statement indicating the effect of the Commission's Order on rates. Therefore, the Commission concludes that the following sentence should be added to the section of Rider 50D labeled "Effect on Rates":

> The effect of the Commission's order, including its impact on the Company's gross receipts tax expense, is an [increase] [decrease] in rates in all rate schedules of -------¢/kWh as compared to the rates in effect immediately prior to [effective date].

The amount used in the above sentence shall be the difference between the newly approved net fuel factor (fuel factor including the EMF and all other riders) and the previously effective net fuel factor, adjusted to reflect the impact of gross receipts tax. Inclusion of this sentence will enable the ratepayers to quickly ascertain the effect of the Commission's Order on their rates.

9. 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 Stimart and Public Staff witness Lam indicated that during the December 31, 1988, test year, Duke experienced an over-recovery of $32,228,723, which amounts to an EMF decrement of 0.0841¢/kWh. There being no evidence to the contrary, the Commission concludes that an EMF decrement of 0.0841¢/kWh (excluding gross receipts tax) is appropriate for use in this proceeding.

10. The Public Staff and Duke presented a calculation of the EMF related 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 Lam and Company witness Stimart testified that the appropriate amount of interest to be refunded to the ratepayers is $4,834,308.

Pursuant to the Commission order of June 24, 1988, in Docket No. E-100, Sub 55, that adopts the method for calculating such interest, the Commission concludes that the appropriate level of interest on the over-recovery achieved during this test period is $4,834,308, which results in an EMF interest decrement of .0126¢/kWh (excluding gross receipts tax).

11. As a result of the Commission's decision in this docket, as noted hereinabove, the net fuel factor approved in this proceeding after consideration of the EMF and related interest is 1.0541¢/kWh. However, as previously discussed, implementation of a 0.0099¢/kWh segment of said net fuel factor as a component of Duke's rates has been deferred until such time as the Company's next annual fuel charge adjustment proceeding. Therefore, Duke's rates, which were placed into effect on July 1, 1989, will continue to reflect

an effective net fuel factor of 1.0442¢/kWh, which may be calculated as shown in the chart below:

	Item	Amount (¢/kWh)
1.	Base fuel factor	1.1665
2.	Primary fuel adjustment rider net of deferral [-0.0157¢/kWh -0.0099¢/kWh]	(.0256)
3.	Experience modification factor	(.0841)
4.	EMF interest	(.0126)
5.	Net fuel factor excluding gross receipts taxes [LN1 - LN2 - LN3 - LN4]	1.0442 1/

1/ The overall impact of the net fuel factor of 1.0541¢/kWh approved herein compared to the net fuel factor of 1.0777¢/kWh approved in the last fuel charge adjustment proceeding reflects a decrease of 0.0244¢/kWh (including gross receipts tax). However, due to the deferral of implementation of the 0.0099¢/kWh segment of the 1.0541¢/kWh net fuel factor, rates currently in effect and which will remain in effect, consistent with the provisions of this Order, reflect a decrease of 0.0346¢/kWh (including gross receipts tax) when compared to the net fuel factor of 1.0777¢/kWh approved in Duke's last fuel charge adjustment proceeding.

The Commission concludes that Ryder 50D should be revised consistent with the chart and footnote set forth above.

IT IS, THEREFORE, ORDERED as follows:

1. That for service rendered on and after July 1, 1989, Duke shall adjust the base cost of fuel approved in Docket No. E-7, Sub 408, by an amount equal to a decrement 0.0157¢/kWh (excluding gross receipts tax); provided, however, that Duke shall defer implementation of any change from the level of rates approved by the Commission Hearing Panel in its Recommended Order issued in this docket, Docket No. E-7, Sub 447, on June 30, 1989, in this regard until such time as Duke's next annual fuel charge adjustment proceeding. Thus, Duke shall be, and hereby is, required at this time to defer implementation of an increase of 0.0099¢/kWh with respect to rates currently in effect as discussed herein. Additionally, Duke shall further adjust its rates, exclusive of gross receipts tax, by decrements of 0.0841¢/kWh and 0.0126¢/kWh so as to reflect the impact of the Commission's decision with respect to the Experience Modification Factor and the impact of the Commission's decision with respect to interest related to the Experience Modification Factor, respectively. The decrements of 0.0841¢/kWh and 0.0126¢/kWh shall remain in effect for a 12-month period beginning July 1, 1989.

2. That Duke shall place in a deferred account all costs associated with the Commission's deferral of implementation of the 0.0099¢/kWh incremental increase in rates related to increased fuel cost as described herein, including a reasonable allowance for carrying charges which shall be calculated at the rate of 10% per annum. These deferred costs will be appropriately considered at the time of Duke's next annual fuel charge adjustment proceeding, which will be held in May 1990.

3. That, except for Rider 50D, the rate schedules and riders previously filed by Duke in this docket on June 30, 1989, shall remain in effect

consistent with the provisions of this Order. Duke shall revise and refile Rider 50D consistent with the chart and footnote set forth on pages 12 through 13 of this Order.

4. That Duke shall file the results and associated worksheets of any tests performed to determine the maximum net dependable capability rating of any base load power plant, as defined in Rule R8-53(b)(2), under separate cover, in the appropriate Base Load Power Plant Performance Review Plan Docket for the year the test is performed.

5. That Duke shall notify its North Carolina retail customers of the decisions set forth in this Order by mailing a copy of the Notice to Customers attached hereto as Appendix A as a customer bill insert with all bills rendered during the Company's next regular billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of October 1989.

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

Commissioner Ruth E. Cook dissents in part.

APPENDIX A

DOCKET NO. E-7, SUB 447

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke 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

NOTICE IS HEREBY GIVEN that on Friday, June 30, 1989, a Hearing Panel of the North Carolina Utilities Commission entered a Recommended Order approving a fuel charge net rate reduction in the rates and charges paid by the retail customers of Duke Power Company in North Carolina. The Recommended Order reduced Duke's rates by approximately $13.3 million on an annual basis. The rate decrease was ordered by the Hearing Panel after review of Duke's fuel expenses during the 12-month test period ended December 31, 1988, 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 decision was a Recommended Order because one member of the three-member Commission Hearing Panel dissented. The dissenting Commissioner, who disagreed as to the appropriate nuclear capacity factor to be used in calculating normalized nuclear generation, would have utilized a 62% nuclear capacity factor. The two other members of the Hearing Panel voted to use a 63% nuclear capacity factor in setting Duke's rates.

The Company placed the Recommended Order's rates into effect on July 1, 1989. The Recommended Order resulted in a monthly rate reduction of approximately 35¢ for a typical residential customer using 1,000 kWh per month.

Duke Power Company then appealed to the Full Commission to reverse the Recommended Order insofar as it used a 63% nuclear capacity factor and requested the Commission to enter an Order requiring use of 62% as proposed by Duke and the Public Staff.

On Wednesday, October 25, 1989, the Full Commission entered an Order granting Duke's exception and specifying that a 62% nuclear capacity factor should be used in setting Duke's rates. The net effect of this change is that instead of the $13.3 million rate reduction which became effective on July 1, 1989, pursuant to the Recommended Order, the Full Commission found that rates should only have been reduced by $9.3 million. This change would reduce the monthly rate reduction that became effective on July 1, 1989, for a typical residential customer using 1,000 kWh per month from 35¢ to 24¢. Rather than making a rate change at this time, however, the Full Commission decided to allow the existing rates which have been in effect since July 1, 1989, to remain in effect until Duke's next fuel adjustment proceeding in May 1990 and, in the interim, to defer all costs associated with deferral of implementation of the rate increase allowed today, including interest at the rate of 10% per annum. These deferred costs of approximately $4 million plus interest will be considered in Duke's next annual fuel adjustment proceeding. The Full Commission took this action so as to avoid a further change in Duke's rates unnecessarily at this time.

Commissioner Ruth E. Cook dissented from the Order of the Full Commission. Commissioner Cook voted to affirm the Recommended Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of October 1989.

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

COMMISSIONER RUTH E. COOK, DISSENTING:

I strenuously dissent from the Commission majority's decision to employ a 62% nuclear capacity factor in this proceeding rather than the 63% factor used by the Panel majority. Given the simplicity of the issue, it is surprising how many grounds for objection appear in the Commission majority's Order. First, Duke's achieved nuclear plant performance justifies a 63% nuclear capacity factor. Second, the nuclear plant rerate when applied to the Commission majority's 62% nuclear capacity factor results in a lower level of normalized nuclear generation than approved in the last fuel proceeding. Third, the Commission majority's use of a 62% nuclear capacity factor sets an unreasonably low standard by which to measure Duke's efficiency in minimizing fuel costs. Fourth, the Commission majority has misconstrued the purpose of the fuel charge adjustment statute, G.S. 62-133.2. Fifth, the Commission majority's scheme for deferring the effect of its decision violates G.S. 62-133.2 and tends to hide the effect of the decision from the public.

Contradictions abound in the Commission majority's Order. It is a veritable masterpiece of double talk. On the one hand, the Order states that the NERC national average nuclear capacity factor of 61.71% must be adjusted; on the other hand, it adjusts the factor by only 0.29%, hardly worth the effort. On the one hand, the Order states that the Panel majority's 63% factor would have an "adverse" impact on Duke; on the other hand, it states that the impact of the change to 62% is so "relatively minor" that the Commission majority does not even reflect it in current rates. On the one hand, the Order reasons that rate stability requires the Panel majority's 63% factor to be changed to 62%; on the other hand, it reasons that rate stability requires the current rates based on 63% to remain in effect. On the one hand, the Commission majority agrees with the Panel majority that Duke's fuel charge adjustment tariff rider must be amended so that customers can "quickly ascertain the effect of the Commission's Order on their rates"; on the other hand, the Commission majority implements its decision in a manner that creates confusion and inconsistencies in all Duke's tariffs. How is the public to know what approved rates are? The Commission majority's reasoning truly boggles the mind.

1. DUKE'S ACHIEVED NUCLEAR PLANT PERFORMANCE JUSTIFIES A 63% NUCLEAR CAPACITY FACTOR.

Duke Power Company continues to operate its nuclear plants in a highly efficient manner. Duke is proud of these results, and well it should be. My concern relates to the failure of both the Company and the Commission to realistically and fairly take the Company's excellent performance into consideration when establishing rates based on expected nuclear plant performance. Sound ratemaking principles require this Commission to carefully take all known facts into consideration when establishing normalized fuel costs in a fuel adjustment proceeding. One of the most important components of the normalized fuel costs calculation is the determination of the appropriate nuclear capacity factor.

The Commission majority has adopted 62% as the nuclear capacity factor to be used in determining normalized fuel costs, while the Panel majority supported 63%. Duke continues to achieve nuclear capacity factors well in excess of 62%, yet the Commission majority has refused to fairly consider this fact when adopting the 62% nuclear capacity factor. Duke achieved nuclear capacity factors of 71.34% in 1987 and 77.57% in 1988. The Base Load Power Plant Performance Reports filed by Duke show that the achieved nuclear capacity factor for the eight month period ended August 31, 1989, is 73%. Additionally, Duke's lifetime system nuclear capacity factor is 65.85%. The Commission majority seems to be simply blind to the facts in establishing a normalized nuclear capacity factor that is totally at odds with Duke's operating performance.

The end result of this ostrich approach has been tremendous over-collections by Duke of its actual fuel costs. This flawed commitment to a 62% nuclear capacity factor is the primary reason the Company has experienced over-recovered fuel costs in 1987 of $23.1 million, in 1988 of $32.2 million, and for the eight months ended August, 1989 of $19.1 million, ahead by $5.7 million for the same period last year. These huge over-collections from customers simply would not have occurred had the Commission used a more realistic nuclear capacity factor. It is time that greater consideration be

given to the achieved results generated by Duke's nuclear units. The Panel majority attempted to do just that by adopting the 63% nuclear capacity factor.

At the current pace, Duke's over-recovery for calendar year 1989 could approach $38 million. What an embarrassment for the Commission majority! Why must this trend of over-recoveries continue? It does not have to. It is time to stop. Current rates should be based on realistic projections of nuclear performance. That would be progress and would demonstrate the Commission's willingness to accept facts as they are. The Panel majority sought this goal, but, regrettably for the customers of Duke, the Commission majority has refused to do so.

2. THE NUCLEAR PLANT RERATE WHEN APPLIED TO THE COMMISSION MAJORITY'S 62% NUCLEAR CAPACITY FACTOR RESULTS IN A LOWER LEVEL OF NORMALIZED NUCLEAR GENERATION THAN APPROVED IN THE LAST FUEL PROCEEDING.

The Commission majority has accepted the Company's adjustment to rerate the nuclear units' maximum net dependable capability. The effect of this rerate is to lower the projected nuclear generation, when compared to the Company's last fuel proceeding in 1988. This reduction in projected nuclear generation results in higher revenue requirements for Duke and simply flies in the face of sound reasoning. Why would the Commission majority lower the projected nuclear generation when, in fact, recent achieved levels have consistently exceeded the projected levels? I find it hard to fathom.

As a result of the rerate, the Commission majority expects Duke's nuclear units to generate 27,580,991 mWh during the period of time the established rates are in effect. Because of the rerate, this is a reduction of 477,947 mWh from 28,058,938 mWh approved in the previous proceeding. This reduction has been approved, even though in the test period in this proceeding, Duke's nuclear units generated 35,854,796 mWh. The Commission majority has reduced the expected generation for Duke's nuclear units by 477,947 mWh, although during the most recent test year, Duke's nuclear units exceeded the higher former projections by 27.7%. Why this reluctance to accept the facts?

Duke presented no evidence with its application to support the rerating of the nuclear units. The only evidence of record concerning this matter is some cross-examination by an intervenor's attorney and a late-filed exhibit filed by Duke in response to the Commission's request for written justification for the rerate. Since this exhibit was filed after the close of the public hearing, it was not subject to cross-examination. I do not believe that the rerate should be allowed, if the resulting material reduction in projected generation is also allowed. This reduction is unreasonable.

I agreed with the rerate in the Recommended Order issued June 30, 1989, because the 63% nuclear capacity factor adopted therein generally offset this adjustment. The Commission majority's acceptance of the rerate as well as the reduction to a 62% nuclear capacity factor reduces Duke's proforma nuclear generation at a time when it is producing levels greater than that adopted by the Commission majority.

3. THE COMMISSION MAJORITY HAS SET AN UNREASONABLY LOW STANDARD FOR MEASURING DUKE'S EFFICIENCY IN MINIMIZING FUEL COSTS.

Due to the working of Commission Rule R8-55(i), the nuclear capacity factor used to calculate the fuel adjustment factor for the upcoming year becomes, in the next fuel charge adjustment proceeding, a standard for measuring whether that year's fuel expenses were reasonable and prudently incurred. It is clear from the Commission majority's Order that it adopts a 62% nuclear capacity factor, rather than 63%, because 62% imposes a lower standard of prudence for Duke's next fuel adjustment proceeding. Lowering the standard of prudence is clearly one of the Commission majority's purposes. It says so: "The Recommended Order would raise the threshold level for creating a presumption of imprudence that is not justified by the evidence." The Commission majority is letting the tail wag the dog.

Let us review the operation of the fuel charge adjustment true-up statute and rule. Only "reasonable and prudently incurred" fuel costs are entitled to be included in the annual true-up. The operation of nuclear generating plants is so complex that intervenors have often argued that it is easy for a utility to claim that all of its fuel costs were reasonably and prudently incurred and it is difficult for an intervenor to challenge such a claim. The Commission has addressed this situation in Commission Rule R8-55(i). The Commission first provides that the burden of proof as to the "reasonable and prudently incurred" standard is on the utility. The Commission then provides that a presumption of imprudence will arise if, in the test year, the utility failed to achieve an actual systemwide nuclear capacity factor that is at least equal to the systemwide nuclear capacity factor used for setting the rate in effect during the test year. However, recognizing that any utility can experience a low factor due to circumstances beyond its control, the Commission provides a second measure, an average of the nuclear capacity factors from the test year and the proceeding year. If the utility fails to achieve the nuclear capacity factor provided by the first measure, it can still avoid the presumption of imprudence if it has a "good year" preceding the test year to "bank on" and it can pass the second measure.[1] In any event, the presumption is rebuttable; the utility can still prove that its test year fuel costs were reasonable and prudently incurred (and thus entitled to be fully trued-up) by presenting detailed evidence to that effect at the hearing.

In February 1989, in its 1988 Annual Report, Duke rightfully boasted of its 77% nuclear capacity factor for 1988 and its 71% nuclear capacity factor for 1987. Duke commended its employees for "continuing our tradition of

---

1 For example, if a nuclear capacity factor of 60% had been used to set the fuel adjustment factor for Year 2 and the utility in fact achieved a nuclear capacity factor of 55% during Year 2, the increased costs (resulting from the utility having to operate generating plants that are more expensive than nuclear plants) would be presumed imprudent under the first measure of our Rule. However, if the utility had a "good year" preceding the test year to "bank on", i.e., a nuclear capacity factor of 70% during the preceding Year 1, it could avoid any presumption of imprudence under the second measure since its two-year average of 62.5% (70 plus 55 divided by 2) exceeds the 60% nuclear capacity factor used to set the rate in effect during Year 2. The fact that the utility failed to meed the first measure has no effect; no presumption of imprudence arises since the utility passed the second measure.

excellence in operating efficiencies." But by July 1989 (and despite the fact that Duke was then achieving a 1989 nuclear capacity factor of almost 71% through June), Duke felt that a 63% nuclear capacity factor was too high a standard of prudence for calendar year 1989. Duke's Exception filed July 17, 1989, refers to the Panel majority's use of a 63% nuclear capacity factor as having "an adverse impact on Duke" in that it "raises the capacity factor used to create a presumption of imprudently incurred fuel costs" under Commission Rule R8-55(i). Strange words indeed from a company that prides itself on excellence!

Stranger still is the Commission majority's acceptance of Duke's position. The Commission majority agrees that "use of a nuclear capacity factor higher than 62% would also have an adverse impact on Duke. . . " The Commission majority asserts that an increase of only 1% in the nuclear capacity factor "would raise the threshold level for creating a presumption of imprudence that is not justified by the evidence." Let us look again at the way Commission Rule R8-55(i) operates. If the Commission were to use a 63% factor to set the fuel adjustment factor for calendar year 1989, as the Panel majority voted to do, Duke could avoid any presumption of imprudence by simply achieving a 63% factor for 1989. Duke is well on the way to doing just that since it has a 73% factor through August 1989, based upon the latest information filed with the Commission. However, even if misfortune struck and Duke failed to achieve a 63% factor for 1989, it could still easily avoid any presumption of imprudence. Remember that Duke has a nuclear capacity factor of 77% from 1988 to "bank on." Duke could avoid any presumption of imprudence by using the 77% factor from 1988 to achieve a two-year average of 63%. Duke would have to fall to a factor of <u>below</u> 49% for 1989 in order for any presumption of imprudence to arise. (49 plus 77 divided by 2 would still equal 63 and would thus avoid any adverse presumption.) And then, if the presumption arose, Duke could still present evidence at the next fuel charge adjustment proceeding to explain what happened and, if the Commission was convinced by the evidence, to rebut the presumption of imprudence. Would the Commission majority not want a detailed explanation if, after achieving a 73% factor through August 1989, Duke was unable to achieve a 49% factor for the entire year? I certainly would. The Commission majority apparently would not. Without giving any real reason, the Majority states that a 63% standard of prudence is "not justified by the evidence" and that a 63% standard of prudence would "have an adverse impact on Duke."

The Commission should remember that the General Assembly sent a clear message when it enacted the fuel charge adjustment true-up legislation in 1987. The General Assembly provided for the entire fuel charge adjustment statute to sunset in 1989 (now extended until 1991). Further, the General Assembly required the Commission to "adopt a rule that establishes prudent standards and procedures with which it can appropriately measure management efficiency in minimizing fuel costs." It was in response to this directive that the Commission, following a rulemaking proceeding, provided for the nuclear capacity factor used in setting rates to be used also as a standard for whether the utility's fuel expenses were reasonable and prudently incurred. The General Assembly expects this Commission to take its directives seriously and to implement meaningful standards. The Commission majority failed to do so when it purposely set a prudency standard so low that the utility can hardly miss.

The Panel majority's increase in the nuclear capacity factor used to set the fuel adjustment factor from 62% to 63% was a modest increase in the prudence standard. There is clearly evidence to support it. There is no basis for concluding that it adversely impacts Duke. The Commission majority's refusal to accept even so modest an increase in the prudence standard raises concern as to how this Commission majority intends to implement the fuel charge adjustment statute, a statute that continues to be the subject of wide controversy.

4. THE COMMISSION MAJORITY MISCONSTRUES THE PURPOSE AND INTENT OF G. S. 62-133.2.

I do not remember any previous fuel adjustment order giving such deference to "rate stability." Rate stability "is an important consideration of the Commission in this proceeding," the Commission majority states. But it is a perplexing consideration. In explaining its decision to use a 62% nuclear capacity factor, it cites the fact that 62% was used in Duke's last general rate case and last two fuel adjustment proceedings. The Commission majority goes on to say "Maintaining a stable nuclear capacity factor can help the fuel factor remain stable. This avoids rate instability. . . " Further on in its Order, after having admitted that the difference between its 62% factor and the Panel majority's 63% factor is minor, the Commission majority decides that the rates based on 63%, which Duke has already implemented pursuant to the Panel majority's decision, shall remain in effect "thereby maintaining rate stability to the maximum extent possible." It is a mystery to me how rate stability first requires that the Commission majority change the nuclear capacity factor used to set rates from 63% to 62% and then requires that the Commission majority leave the rates based on 63% in effect. What a contradiction!

I believe that rate stability plays a role in G.S. 62-133.2, but not the role the Commission majority assigns it. The Commission majority simply fails to remember the history of fuel charge adjustments in this State. The Commission first established fuel charge adjustment formulas in the early 1970's in response to the Arab oil embargo. Fuel costs were rising rapidly, and the Commission used its discretionary power to authorize electric utilities to add a fuel factor to monthly bills based upon changes in the cost of fuel. This procedure resulted in fuel factors which varied from month to month, and the procedure was unpopular. In 1975 the General Assembly amended G.S. 62-134 to create a statutory fuel charge adjustment procedure. The Commission's implementation of this procedure resulted in fuel charge adjustment proceedings held at intervals which fluctuated from monthly to semi-annually. In 1982, the General Assembly repealed this procedure and enacted the original version of G.S. 62-133.2. This statute began the practice of annual fuel charge adjustment proceedings. Thus, G.S. 62-133.2 serves rate stability by allowing a change in the fuel factor only once a year--rather than more frequently as has been the case in the past. However, the General Assembly does expect the Commission to in fact change rates once a year to reflect changes in the cost of fuel. The Commission majority seems to cite rate stability as a factor militating against a change in the fuel factor even once a year.[2] The

2 Obviously, rate stability would be served by doing away with fuel charge adjustments altogether. Rates would remain the same from one general rate

Commission majority forgets the historical context and thereby misapplies the concept of rate stability.

What does all this talk of "rate stability" mean? I can only guess. The Commission majority wants to "help the fuel factor remain stable," i.e., the Commission majority wants Duke to continue to overcollect on its fuel expenses. Herein lies the Commission majority's most serious misuse of G.S. 62-133.2. By this statute, the General Assembly authorizes an increment or decrement to rates "to reflect actual changes in the cost of fuel and the fuel cost component of purchased power over or under base rates . . . ." Based on this language and the information and data which the General Assembly directs the Commission to consider, I believe that the General Assembly intended for the Commission to set a fuel factor, just like it sets general rates, as close to costs as possible. This Commission has said so itself in the past. In its comments to the Joint Legislative Utility Review Committee on October 14, 1988, this Commission stated, "Periodic adjustments to the level of reasonable and prudently incurred fuel costs included in public utility rates are required so as to minimize the under- or over-recovery of such costs." The addition of the true-up provision to G. S. 62-133.2 does not change this. The true-up recognizes that despite the Commission's best efforts, there will inevitably be some under- or over-recovery on fuel. However, the true-up does not relieve the Commission of its initial responsibility to minimize under- or over-recoveries.

Perhaps no other single decision in a fuel adjustment proceeding affects the under- or over-recovery so much as selection of the nuclear capacity factor to be used in setting the fuel factor. I recognize that any over-recovery will be refunded to ratepayers with interest, but ratepayers should not deliberately be required to pay an over-recovery to the utility in the first place.[3] That is what happens when the Commission majority sets a nuclear capacity factor so low that it virtually guarantees an over-recovery by Duke. G.S. 62-133.2 was never intended to be so used.

5. THE COMMISSION MAJORITY'S IMPLEMENTATION OF ITS DECISION VIOLATES THE PUBLIC UTILITIES ACT AND TENDS TO CONCEAL THE EFFECT OF THE DECISION FROM THE PUBLIC.

Perhaps the most troubling aspect of the Commission majority's decision is its scheme for implementing the rate increase it allows Duke. The Commission majority's decision to normalize Duke's nuclear capacity factor at 62%, rather than 63%, entitles Duke to a rate increase of approximately $3.9 million over the rates approved by the Panel majority. Duke filed rate schedules putting the Panel majority's rates into effect as of July 1, 1989, and the Commission majority leaves these rate schedules unchanged. The Commission majority "defers implementation" of its rate increase. The deferred amount, plus

---

case to the next. That is not what the General Assembly has directed the Commission to do.

3 Even with interest of 10%, many customers will not be made whole. Many customers have a higher cost of money than 10%, such as those who must purchase life's necessities through use of consumer credit, which normally carries interest rates substantially higher than 10%.

interest, will be "appropriately considered" in Duke's next annual fuel charge adjustment proceeding in 1990. Why, it may be asked, do I object to the deferral of a rate increase? Most customers would welcome such a deferral. My objection is twofold.

First, the fuel charge adjustment statute does not permit a deferral. G.S. 62-133.2(d) provides, "To the extent that the Commission determines that an increment or decrement . . . is just and reasonable, the Commission shall order that the increment or decrement become effective for all sales of electricity and remain in effect until changed in a subsequent general rate case or annual proceeding under this section." (Emphasis added.) The statute does not say that the Commission may defer an adjustment. It directs that the adjustment shall be made effective. "As used in statutes, the word 'shall' is generally imperative or mandatory. (Citations omitted)." State v. Johnson, 298 N.C. 355 (1979). The proper approach under the statute would have been for the Majority to order its adjustment into effect spread over the remaining months until the next fuel charge adjustment proceeding.

Second, the deferral creates confusion in Duke's rate schedules and tends to hide the rate increase from the public. Duke's current rate schedules on file simply do not reflect Duke's current rates as approved by the Commission majority. The Commission majority requires one tariff, Rider 50D, to be revised, but this does not solve the problem.

Let us examine Duke's tariffs. Duke has a separate rate schedule for each class of service it provides. Each rate schedule sets forth the rate in cents per kWh; this rate changes each time the fuel factor changes. According to the terms of each rate schedule, the "currently approved [fuel charge] adjustments are included in the Rate set forth above." All of these rate schedules are left unchanged, but they are all now wrong. All of these rate schedules reflect the Panel majority's net fuel factor of 1.0442¢/kWh. The Commission majority's Order clearly states that "the net fuel factor approved in this proceeding . . . is 1.0541¢/kWh." The difference (0.0099¢/kWh) is the rate increase that has been approved but deferred. Neither the rate increase nor the deferral is reflected on the individual rate schedules. The Commission majority requires Duke to refile only Rider 50D. This is a separate tariff rider which reflects the fuel factor alone. Revising Rider 50D does not solve the problem since the individual rate schedules still tell the reader that they are complete in and of themselves without need to refer to Rider 50D. The only solution would have been for each rate schedule to be revised in order to reflect the rate increase and the deferral.

Public disclosure of utility rates is a basic policy of the Public Utilities Act. G. S. 62-138 requires every public utility to "file with the Commission all schedules of rates . . . used or to be used within the jurisdiction of the Commission" and to "keep copies of such schedules . . . open to public inspection." This statute serves an essential purpose: the public must not be left to search out and read through page after page of Commission orders to know what utility rates are approved. Utilities must file tariffs which reflect the rates approved by the Commission and which remain open for public inspection. The Commission majority's deferral scheme confounds this policy.

The Commission majority's deferral scheme also confounds other language in its own order. Intervenor CUCA has repeatedly argued for greater clarity in Commission fuel charge adjustment decisions. The Commission has responded by standardizing its terminology and requiring utilities to state clearly the effect of its decisions in their tariffs. The Panel majority in this case required Duke to amend Rider 50D to include a "clear statement indicating the effect of the Commission's Order on Rates." The Commission majority picks up this language, but it then sets forth on a scheme that creates inevitable confusion in Duke's rate schedules.

The Commission majority's provision for public notice by bill insert is no solution. The bill insert does not address the rate schedules. It does not fulfill the requirements of G.S. 62-138. Further, neither new customers nor outsiders interested in Duke's rates (such as prospective industries) will ever see the bill insert.

The Commission majority's proper course of action should have been simple, straightforward, and obvious: having voted for a rate increase, it should have ordered its rate increase into effect and it should have required correct rate schedules to be filed. Why then did the Commission majority instead undertake this deferral? The Commission majority says that it wants to maintain rate stability. Surely that rationalization has already been debunked. The Commission majority states that the economic impact of its decision is minor. Is it permissible to obscure a rate increase when only $3.9 million is involved? The Commission majority says that it wishes to avoid a rate change "unnecessarily." If the rate increase is unnecessary, why did the Commission majority approve it?

I recognize that, if properly handled in the 1990 proceeding, the Commission majority's deferral scheme will even out mathematically. But this Commission has responsibilities in addition to keeping its accounting straight. The Commission has the responsibility to comply with the statutes enacted by the General Assembly and it has the responsibility to the public to maintain current utility tariffs reflecting currently approved rates open to public inspection. The Commission majority's Order fails to meet these responsibilities.

In conclusion, I dissent from the Commission majority's Order because I find it to be seriously flawed in several major areas. As I have already pointed out, Duke over-collected over $55 million during 1987 and 1988 when the 62% nuclear capacity factor was being used to set rates. Clearly the Commission majority is content to let such over-collections continue. I recognize that over-collections are trued-up, but that is no justification. In my opinion and in the opinion of the Panel majority, ratepayers should not deliberately be required to over-pay Duke in the first place. Ratepayers are not bankers for Duke.

Commissioner Ruth E. Cook

DOCKET NO. E-13, SUB 29
DOCKET NO. E-13, SUB 35
DOCKET NO. E-13, SUB 44

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Applications of Nantahala Power and Light Company for Authority to Adjust and Increase Its Rates and Charges	)	NOTICE OF DECISION AND ORDER

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Friday, October 20, 1989, at 10:00 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Laurence A. Cobb, Ruth E. Cook, Charles H. Hughes, Robert O. Wells, and Julius A. Wright (By stipulation, the parties hereto agreed that Chairman William W. Redman, Jr., could read the record and participate in the decision.)

APPEARANCES:

For Nantahala Power and Light Company:

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

For the Amici Curiae Intervenors:

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

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

For the Counties of Cherokee, Graham, Jackson, and Swain; the Towns of Andrews, Bryson City, Dillsboro, Robbinsville, and Sylva; the Tribal Council of the Eastern Band of the Cherokee Indians; and Henry J. Truett, et al.:

William T. Crisp, Robert B. Schwentker, and Robert F. Page, Crisp, Davis, Schwentker, Page & Currin, Post Office Drawer 30489, Raleigh, North Carolina 27622

For the Public Staff:

James D. Little, Staff Attorney, Public Staff, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, 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 June 8, 1989, the North Carolina Supreme Court issued its decision affirming the Commission's Orders of November 13, 1987, and February 17, 1988, in these dockets. Those Orders concluded, on the authority of Nantahala Power and Light Company v. Thornburg, 476 U.S. 953, 106 S.Ct. 2349 (1986), that the Commission was preempted by federal law from conducting further "roll-in" proceedings in these dockets in a manner that would use a different allocation factor than that approved by FERC.

On June 26, 1989, certain of the Intervenors, including the Counties of Cherokee, Graham, Jackson, and Swain; the Towns of Andrews, Bryson City, Dillsboro, Robbinsville, and Sylva; and Henry J. Truett, Howard Patton, Veronica Nicholas, O. W. Hooper, Jr., and Alvin E. Smith, filed a Motion for Partial Legal Fees. In such motion, these Intervenors moved the Commission to allow, as part of the legal fees of their joint counsel, Crisp, Davis, Schwentker, Page & Currin (Crisp Davis), of Raleigh, North Carolina, the amount of $400,000, and to cause such amount to be paid to that firm directly out of the monies that are presently before the Commission to be refunded in Docket No. E-13, Subs 29 and 35. A Memorandum of Law accompanied the Intervenors' Motion for Partial Legal Fees. By Amended Motion filed on August 18, 1989, the original Motion was changed to delete Swain County as one of the intervenors which adopted a formal resolution in support of the motion.

On June 29, 1989, Nantahala Power and Light Company (Nantahala) filed a Motion for Leave to File Proposed Schedule and Plan for Issuing Refund in Docket No. E-13, Subs 29 and 35. In its Motion, Nantahala alleged, inter alia, that it had filed restatements of certain schedules required by the Commission in its Order on Remand dated November 13, 1987; that the North Carolina Supreme Court, in its opinion of June 8, 1989, had affirmed the Commission's Order on Remand; and that in order to ". . .facilitate the expedient and orderly issuance of refunds in these proceedings, Nantahala would like to prepare and submit a schedule and plan for the issuance of refunds in accordance with the restatements of schedules previously submitted by Nantahala." Nantahala stated that it would be prepared, by August 1, 1989, to complete the formulation of its schedule and plan for issuing refunds.

On June 30, 1989, the Intervenors, including the Attorney General, the Public Staff, and the individual and governmental intervenors represented by Crisp Davis, filed a Motion Regarding Conditions of Refund Payments. In such motion, the Intervenors requested a variety of requirements concerning the payment of refunds and the accounting for such payment.

By Order issued on July 12, 1989, the Commission granted Nantahala leave to submit a proposed schedule and plan for issuing refunds and directed that such proposed schedule and plan should be filed on or before August 1, 1989. In that same Order, the other parties to these proceedings were given to and including August 21, 1989, to file comments regarding Nantahala's proposed refund schedule and plan. Further, the Commission stated that, in its consideration of Nantahala's proposed refund plan and the comments of the other parties, the Commission would also consider the Intervenors' Motion for Partial Legal Fees and the other Motion sponsored by the Intervenors regarding the conditions under which the refund payments should be made.

On or about August 1, 1989, Nantahala filed its proposed plan for making the retail refund. As a part of such proposed refund plan, Nantahala requested permission to deduct over $40,000 for consulting fees incurred by the Public Staff (and reimbursed by Nantahala) in these cases. On or about August 21, 1989, the Intervenors filed their Response to Nantahala's proposed refund plan. In such response, the Intervenors challenged Nantahala's proposed deduction of the $40,000 consulting fee from the refunds otherwise to be made, and questioned certain other particulars of the proposed refund plan sponsored by Nantahala.

By letter dated August 31, 1989, counsel for the Public Staff advised the Commission that representatives of Nantahala and the Intervenors would meet on September 11, 1989, in an attempt to resolve as many issues as possible relating to the refunds in Docket No. E-13, Subs 29 and 35. Subsequently, on October 3, 1989, Nantahala and the Intervenors filed a Stipulation with the Commission. In the Stipulation, the parties resolved most, but not all, of the outstanding differences between them. The Stipulation was, of course, subject to ultimate approval by the Commission. The Stipulation recited that the parties were unable to come to an agreement with regard to three issues which were reserved for ultimate hearing and determination by the Commission. Those issues were the following:

1. The request made by some of the Intervenors that $400,000 in "partial" or "merit" legal fees be deducted from the refunds and paid to the Crips-Davis law firm;

2. Nantahala's proposal to deduct from the refund over $40,000, including interest, for consulting fees incurred by the Public Staff and reimbursed by Nantahala in these cases; and

3. The level of interest payments which should be applied to the Sub 29 refunds amounts from and after June 1, 1981.

The parties requested that they be authorized to submit the last of the foregoing three issues to the Commission by way of legal memoranda. The parties stated that a hearing, or oral argument, should be scheduled to deal with the first two issues not resolved by the Stipulation. (The Commission notes that the third issue, concerning the level of interest which should apply to the Sub 29 refunds from and after June 1, 1981, has been resolved by the Order issued on November 3, 1989.)

On October 3, 1989, the Attorney General and the Public Staff filed their Statements in Support of the Motion for Partial Legal Fees. Oppositions to the

Motion for Partial Legal Fees were filed by Nantahala on August 16, 1989, and by Carolina Power & Light Company (CP&L), Duke Power Company (Duke), Virginia Electric and Power Company-North Carolina Power (N.C. Power), and Southern Bell Telephone and Telegraph Company (Southern Bell) on August 21, 1989. CP&L, Duke, N.C. Power, and Southern Bell were allowed to intervene as amici curiae in this proceeding.

By Order issued on October 6, 1989, the Commission scheduled oral argument on issues one (Intervenors' Motion for Partial Legal Fees) and two (Nantahala's Motion for Payment of Consultants' Fees) for Friday, October 20, 1989, at 10:00 a.m. In that same Order, the Commission granted the request of the parties that the third issue (the applicable interest rate on the Sub 29 refunds from and after June 1, 1981) should be decided on the basis of briefs filed by the parties in support of their respective positions. As noted above, the Commission issued an Order determining the interest rate issue relative to the Sub 29 refunds on November 3, 1989.

At the oral argument, the Commission heard argument from counsel for all parties whose appearances are noted above. By letter dated October 24, 1989, the Public Staff lodged certain additional information concerning the engineering and rate consultants' fees, which had been requested by Commissioner Cobb during the course of the oral argument. On November 7 and 8, 1989, certain of the parties filed proposed orders and briefs in response to the Commission's request.

On November 13, 1989, Nantahala filed a letter in Docket No. E-13, Subs 29 and 35, whereby the Commission was requested to enter a notice of decision as soon as possible indicating what the ultimate decisions on the two remaining contested issues will be. Nantahala set forth the following statements in support of its request:

> ". . . Although Nantahala has begun to make preparations to make the refunds by January 1, 1990, much work and effort still will be necessary that Nantahala cannot undertake until it knows what the Commission's ultimate disposition of the two remaining issues will be. The sooner Nantahala receives the Commission's decisions on these issues, the greater will be the likelihood that Nantahala can make the refunds in a timely manner without undue expense, effort and risk of mistake.

CONCLUSIONS

Based upon a careful consideration of the entire record in these dockets, The Commission finds good cause to grant Nantahala's request for a notice of decision. To that end, the parties are hereby notified that the Commission will soon enter an Order in these dockets setting forth detailed findings of fact, conclusions of law, and decretal paragraphs which will rule as follows:

1. That the Stipulation filed by Nantahala and the Intervenors on October 3, 1989, is reasonable and in the public interest and should be approved;

2. That the Intervenors' Motion for Partial Legal Fees should be denied; and

3. That Nantahala's request to be allowed to deduct approximately $40,000 in consultant's fees plus interest which it paid to or on behalf of the Public Staff pursuant to G.S. 62-15(h) from the pool of refund amounts should be denied.

The time for filing exceptions and notice of appeal pursuant to G.S. 62-90 regarding these matters will run from the date of entry of the final Order in these dockets and not from the date of entry of this notice of decision.

IT IS, THEREFORE, ORDERED as follows:

1. That the Stipulation filed by Nantahala and the Intervenors on October 3, 1989, is reasonable and in the public interest and should be approved.

2. That the Intervenors' Motion for Partial Legal Fees should be denied.

3. That Nantahala's request to be allowed to deduct approximately $40,000 in consultant's fees plus interest which it paid to or on behalf of the Public Staff pursuant to G.S. 62-15(h) from the pool of refund amounts should be denied.

4. That the time for filing exceptions and notice of appeal pursuant to G.S. 62-90 regarding these matters shall run from the date of entry of the final Order in these dockets and not from the date of entry of this notice of decision.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of November 1989.

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

DOCKET NO. E-13, SUB 29
DOCKET NO. E-13, SUB 35
DOCKET NO. E-13, SUB 44

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Applications of Nantahala Power and Light Company for Authority to Adjust and Increase Its Rates and Charges	)	ORDER APPROVING STIPULATION AND DENYING THE REQUESTS FOR THE PAYMENT OF LEGAL AND CONSULTING FEES

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Friday, October 20, 1989, at 10:00 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Ruth E. Cook, Julius A. Wright, Robert O. Wells, Charles H.

Hughes, and Laurence A. Cobb (By stipulation, the parties hereto agreed that Chairman William W. Redman, Jr., could read the record and participate in the decision.)

APPEARANCES:

For Nantahala Power and Light Company:

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

For the Amici Curiae Intervenors:

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

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

For the Counties of Cherokee, Graham, Jackson, and Swain; the Towns of Andrews, Bryson City, Dillsboro, Robbinsville, and Sylva; the Tribal Council of the Eastern Band of the Cherokee Indians; and Henry J. Truett, et al.:

William T. Crisp, Robert B. Schwentker, and Robert F. Page, Crisp, Davis, Schwentker, Page & Currin, Post Office Drawer 30489, Raleigh, North Carolina 27622

For the Public Staff:

James D. Little, Staff Attorney, Public Staff, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, 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 June 8, 1989, the North Carolina Supreme Court issued its decision affirming the Commission's Orders of November 13, 1987, and February 17, 1988, in these dockets. Those Orders concluded, on the authority of Nantahala Power and Light Company v. Thornburg, 476 U.S. 953, 106 S.Ct. 2349 (1986), that the Commission was preempted by federal law from conducting further "roll-in" proceedings in these dockets in a manner that would use a different allocation factor than that approved by FERC.

On June 26, 1989, certain of the Intervenors, including the Counties of Cherokee, Graham, Jackson, and Swain; the Towns of Andrews, Bryson City, Dillsboro, Robbinsville, and Sylva; and Henry J. Truett, Howard Patton, Veronica Nicholas, O. W. Hooper, Jr., and Alvin E. Smith, filed a Motion for Partial Legal Fees. In such motion, these Intervenors moved the Commission to allow, as part of the legal fees of their joint counsel, Crisp, Davis, Schwentker, Page & Currin (Crisp Davis), of Raleigh, North Carolina, the amount of $400,000, and to cause such amount to be paid to that firm directly out of the monies that are presently before the Commission to be refunded in Docket No. E-13, Subs 29 and 35. A Memorandum of Law accompanied the Intervenors' Motion for Partial Legal Fees. By Amended Motion filed on August 18, 1989, the original Motion was changed to delete Swain County as one of the intervenors which adopted a formal resolution in support of the motion.

On June 29, 1989, Nantahala Power and Light Company (Nantahala) filed a Motion for Leave to File Proposed Schedule and Plan for Issuing Refund in Docket No. E-13, Subs 29 and 35. In its Motion, Nantahala alleged, inter alia, that it had filed restatements of certain schedules required by the Commission in its Order on Remand dated November 13, 1987; that the North Carolina Supreme Court, in its opinion of June 8, 1989, had affirmed the Commission's Order on Remand; and that in order to ". . .facilitate the expedient and orderly issuance of refunds in these proceedings, Nantahala would like to prepare and submit a schedule and plan for the issuance of refunds in accordance with the restatements of schedules previously submitted by Nantahala." Nantahala stated that it would be prepared, by August 1, 1989, to complete the formulation of its schedule and plan for issuing refunds.

On June 30, 1989, the Intervenors, including the Attorney General, the Public Staff, and the individual and governmental intervenors represented by Crisp Davis, filed a Motion Regarding Conditions of Refund Payments. In such motion, the Intervenors requested a variety of requirements concerning the payment of refunds and the accounting for such payment.

By Order issued on July 12, 1989, the Commission granted Nantahala leave to submit a proposed schedule and plan for issuing refunds and directed that such proposed schedule and plan should be filed on or before August 1, 1989. In that same Order, the other parties to these proceedings were given to and including August 21, 1989, to file comments regarding Nantahala's proposed refund schedule and plan. Further, the Commission stated that, in its consideration of Nantahala's proposed refund plan and the comments of the other parties, the Commission would also consider the Intervenors' Motion for Partial Legal Fees and the other Motion sponsored by the Intervenors regarding the conditions under which the refund payments should be made.

On or about August 1, 1989, Nantahala filed its proposed plan for making the retail refund. As a part of such proposed refund plan, Nantahala requested permission to deduct over $40,000 for consulting fees incurred by the Public Staff (and reimbursed by Nantahala) in these cases. On or about August 21, 1989, the Intervenors filed their Response to Nantahala's proposed refund plan. In such response, the Intervenors challenged Nantahala's proposed deduction of the $40,000 consulting fee from the refunds otherwise to be made, and questioned certain other particulars of the proposed refund plan sponsored by Nantahala.

By letter dated August 31, 1989, counsel for the Public Staff advised the Commission that representatives of Nantahala and the Intervenors would meet on September 11, 1989, in an attempt to resolve as many issues as possible relating to the refunds in Docket No. E-13, Subs 29 and 35. Subsequently, on October 3, 1989, Nantahala and the Intervenors filed a Stipulation with the Commission. In the Stipulation, the parties resolved most, but not all, of the outstanding differences between them. The Stipulation was, of course, subject to ultimate approval by the Commission. The Stipulation recited that the parties were unable to come to an agreement with regard to three issues which were reserved for ultimate hearing and determination by the Commission. Those issues were the following:

1. The request made by some of the Intervenors that $400,000 in "partial" or "merit" legal fees be deducted from the refunds and paid to the Crisp-Davis law firm;

2. Nantahala's proposal to deduct from the refund over $40,000, including interest, for consulting fees incurred by the Public Staff and reimbursed by Nantahala in these cases; and

3. The level of interest payments which should be applied to the Sub 29 refunds amounts from and after June 1, 1981.

The parties requested that they be authorized to submit the last of the foregoing three issues to the Commission by way of legal memoranda. The parties stated that a hearing, or oral argument, should be scheduled to deal with the first two issues not resolved by the Stipulation. (The Commission notes that the third issue, concerning the level of interest which should apply to the Sub 29 refunds from and after June 1, 1981, has been resolved by the Order issued on November 3, 1989.)

On October 3, 1989, the Attorney General and the Public Staff filed their Statements in Support of the Motion for Partial Legal Fees. Oppositions to the Motion for Partial Legal Fees were filed by Nantahala on August 16, 1989, and by Carolina Power & Light Company (CP&L), Duke Power Company (Duke), Virginia Electric and Power Company-North Carolina Power (N.C. Power), and Southern Bell Telephone and Telegraph Company (Southern Bell) on August 21, 1989. CP&L, Duke, N.C. Power, and Southern Bell were allowed to intervene as amici curiae in this proceeding.

By Order issued on October 6, 1989, the Commission scheduled oral argument on issues one (Intervenors' Motion for Partial Legal Fees) and two (Nantahala's Motion for Payment of Consultants' Fees) for Friday, October 20, 1989, at 10:00 a.m. In that same Order, the Commission granted the request of the parties that the third issue (the applicable interest rate on the Sub 29 refunds from and after June 1, 1981) should be decided on the basis of briefs filed by the parties in support of their respective positions. As noted above, the Commission issued an Order determining the interest rate issue relative to the Sub 29 refunds on November 3, 1989.

At the oral argument, the Commission heard argument from counsel for all parties whose appearances are noted above. By letter dated October 24, 1989, the Public Staff lodged certain additional information concerning the engineering and rate consultants' fees, which had been requested by

Commissioner Cobb during the course of the oral argument. On November 7 and 8, 1989, certain of the parties filed proposed orders and briefs in response to the Commission's request.

On November 13, 1989, Nantahala filed a letter in Docket No. E-13, Subs 29 and 35, whereby the Commission was requested to enter a notice of decision as soon as possible indicating what the ultimate decisions on the two remaining contested issues will be. Nantahala set forth the following statements in support of its request:

> ". . . Although Nantahala has begun to make preparations to make the refunds by January 1, 1990, much work and effort still will be necessary that Nantahala cannot undertake until it knows what the Commission's ultimate disposition of the two remaining issues will be. The sooner Nantahala receives the Commission's decisions on these issues, the greater will be the likelihood that Nantahala can make the refunds in a timely manner without undue expense, effort and risk of mistake."

On November 20, 1989, the Commission issued Notice of Decision and Order, setting forth its decision in these dockets.

Based upon the foregoing, the motions and documents filed in support thereof, the statements made at oral argument, the proposed orders and briefs of the parties, and the official files and records relevant hereto, the Commission now makes the following

FINDINGS OF FACT

1. The Stipulation of the parties hereto, dated October 3, 1989, concerning the issues upon which agreement was reached, is reasonable, is in the public interest, and should be approved.

2. By original Motion filed June 26, 1989, and Amended Motion filed August 18, 1989, most of the individual and governmental clients being represented by the Crisp, Davis, Schwentker, Page & Currin law firm requested approval of the payment of a "partial" or "merit" legal fee of $400,000 to be taken "off the top" of the refund amounts now payable to Nantahala's retail ratepayers in Docket No. E-13, Subs 29 and 35. As a part of this filing, Crisp Davis attached copies of the Resolutions adopted by various of its clients and the semi-contingency fee agreement which it entered into with its clients in western North Carolina in late 1981.

3. An award of legal fees from the refunds ordered in Docket No. E-13, Subs 29 and 35, will reduce the funds that otherwise would inure to ratepayers.

4. In addition to the intervention of Crisp Davis in these proceedings on behalf of certain governmental and individual clients, the Attorney General and the Public Staff have also intervened and participated in these proceedings on behalf of the using and consuming public, the Attorney General since 1976 and the Public Staff since 1981. G.S. 62-15; G.S. 62-20.

5. The relief advocated by the Intervenors, and adopted by the Commission, in these proceedings, the roll-in mechanism, was ruled unlawful by

the United States Supreme Court in Nantahala Power and Light Company v. Thornburg, 476 U.S. 953, 106 S.Ct. 2349 (1986).

6. The refunds that Nantahala will make in Docket No. E-13, Subs 29 and 35, arise primarily from decisions of the Federal Energy Regulatory Commission (FERC).

7. The Intervenors, in their Motion for Partial Legal Fees, request the Commission to award attorneys' fees for work done by Crisp Davis in FERC consolidated Docket Nos. 76-828 and 78-18 and FERC Docket Nos. 82-774 et al. Crisp Davis did not appear on behalf of Nantahala's retail customers in these FERC dockets but appeared instead on behalf of certain wholesale customers.

8. In view of the above findings, the Commission does not need to discuss whether the "common fund doctrine" is applicable to these proceedings.

9. Assuming, however, for purposes of discussion herein, that the Commission has jurisdiction and discretion to award legal fees under the common fund doctrine, this Commission should not, in view of the above findings, exercise discretion to award the relief sought by Intervenors in the form of legal fees.

10. In its proposed August 1, 1989, refund plan, Nantahala requested permission to deduct from the refund amounts over $40,000 which it had been required to pay pursuant to G.S. 62-15(h) to or on behalf of the Public Staff, for the benefit of the Public Staff's outside engineering consultant, Southern Engineering Company of Atlanta, Georgia.

11. The Public Staff was authorized, under the provisions of G.S. 62-15(h) and by the authority of the State Budget Officer, to expend these funds for the purpose of obtaining outside consulting services in Docket No. E-13, Subs 29, 35, and 44, and was further authorized under the statute to charge the fees billed by Southern Engineering to Nantahala.

12. The expense incurred by Nantahala to reimburse the Public Staff for consulting fees paid to Southern Engineering should be treated, for ratemaking purposes, in a manner generally consistent with the manner in which the Commission treats rate case expenses incurred by utility companies, such as Nantahala, in preparing and presenting their rate cases.

13. Rate case expenses, being normal operating expenses of a utility, are subject to the same statutory provisions that govern the treatment of other operating expenses in ratemaking proceedings. The payment by Nantahala, for the benefit of Southern Engineering, was a current operating expense of Nantahala for the year 1988. It is inappropriate, as a matter of ratemaking law and policy, to retroactively adjust rates in order to change or add to an earlier estimate which was previously accepted for ratemaking purposes.

14. The expenses incurred by Nantahala to reimburse the Public Staff are, essentially, additional operating expenses related to Docket No. E-13, Subs 29, 35, and 44. The evidentiary record related to rate case expenses in each of those cases has long been closed. The Commission has already established retail rates in each of those cases. It would be inappropriate for the Commission to retroactively adjust Nantahala's rates to allow, in 1989, the

collection of additional rate case expenses when the proper level of ongoing annual rate case expenses has long been established.

15. Payment to Nantahala of this expense item, out of the present refund amounts, is not in the public interest.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The Commission has carefully reviewed the Stipulation of the parties, dated October 3, 1989, which has previously been filed in this matter. The Stipulation covers, among other things, the following topics: Nantahala's methodology for calculation of the refunds; the deduction of delinquent bills from any refund amounts due to a particular customer; reimbursement to Nantahala for the cost of writing refund checks to its current customers; other administrative costs incurred by Nantahala in making the refunds; the minimum net amount of refund to be paid by check on active and inactive accounts; the date on which interest on refund amounts will cease to accrue; the advertising and public notice program which Nantahala will undertake in order to properly notify its present and former customers of the availability of these refunds; placement of the unclaimed refunds in an interest-bearing account; termination of the refund program and transfer, as cost-free capital to Nantahala, of all unclaimed refund amounts; future conferences and proceedings to discuss the status of the refund program; and proper accounting reports necessary for periodic and final auditing of the refund program.

The Commission views the Stipulation as being the end-product of a process of negotiation. Nevertheless, the Commission finds and concludes that each of the individual stipulations are reasonable and, further, that the final Stipulation, as presented, is both reasonable and in the public interest. Accordingly, the Commission hereby approves the Stipulation as filed and directs Nantahala, except as the Company may be otherwise herein directed, to follow the Stipulation in publicizing, making and accounting for the refund amounts. The Commission retains ongoing jurisdiction over the process of making and accounting for the refunds such that, should the parties hereafter disagree concerning the exact meaning of any portion of the Stipulation, the Commission will be in a position to resolve those differences.

The Commission commends all parties for their input into the Stipulation, which does resolve a large number of potentially vexatious issues that otherwise would have fallen to the Commission to determine. As a result of the Stipulation, the Commission is left with only two remaining issues, upon which the parties were unable to stipulate, which must be resolved. Each of those issues concerns a proposed deduction from the amounts otherwise to be refunded to Nantahala's ratepayers. In the first issue, counsel for certain of the Intervenors have requested that they be awarded a "merit fee" or "partial fee" of $400,000 from the refund amounts. In the second issue, Nantahala argues that it should be allowed to deduct a sum slightly in excess of $40,000 from the refund amounts in recognition of a payment which the Company was required to make pursuant to G.S. 62-15(h) to an outside consultant retained by the Public Staff. The evidence and the Commission's conclusions regarding each of these matters is described hereafter.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

By Motion filed on June 26, 1989 (and Amended Motion filed on August 18, 1989) certain of the Intervenors--specifically, the Counties of Cherokee, Graham and Jackson; and the Towns of Andrews, Bryson City, Dillsboro, Robbinsville and Sylva--requested the Commission to allow a sum of $400,000 as part of the legal fees of their joint counsel, Crisp, Davis, Schwentker, Page & Currin ("Crisp Davis") of Raleigh, North Carolina. These Intervenors requested that the $400,000 partial legal fee be paid to the Crisp Davis firm directly out of the sums that otherwise would be refunded to Nantahala customers in Docket No. E-13, Subs 29 and 35.

In addition to the foregoing parties, whose written resolutions of support for the payment of legal fees to Crisp Davis have been filed with the Commission, William T. Crisp, lead counsel for the Crisp Davis firm, stated at the oral argument that he was authorized, by certain of the other Intervenors represented by his firm, to represent, on their behalf, that they supported the payment of these legal fees to the Crisp Davis firm and, further, that such clients did not object to such fees being paid "off the top" from the amounts otherwise to be refunded. These additional clients, who authorized oral statements to be made by Mr. Crisp on their behalf, included Swain County and the Chief of the Eastern Band of Cherokee Indians.

The Commission notes that no written or oral expression of support for the Crisp Davis Motion has been received from either Macon County (which Crisp Davis represented only in Docket No. E-13, Sub 44) or the Town of Franklin (which did not retain Crisp Davis in any of these proceedings). The Commission further notes, however, that no Protests or Motions for Leave to Intervene in Opposition to the Motion for Partial Legal Fees have been received from, or on behalf of, any individual customer, group of customers, or governmental agency in Nantahala's service territory. The Public Staff and the Attorney General have both registered, in writing and orally, their support for the Motion for Partial Legal Fees. The Motion is opposed by Nantahala and by the following amici curiae intervenors: Duke Power Company, Carolina Power & Light Company, Virginia Electric Power Company (N.C. Power) and Southern Bell Telephone and Telegraph Company.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3-9

The first contested issue which the Commission is required to resolve in this matter is the Motion of certain of the governmental and individual Intervenors that the Crisp Davis law firm be given a "partial" or "merit" fee of $400,000, to be paid "off the top" of the refund amounts.

Crisp Davis, supported by the great majority of the clients that it has represented in these cases, as well as by the Public Staff and the Attorney General, argues that the payment of these fees ought to be allowed by the Commission. In support of the Motion, Crisp Davis cited the Commission's powers when acting in its judicial capacity under G.S. 62-60, the "common fund" doctrine, and the Commission's broad, discretionary powers in ratemaking proceedings, including G.S. 62-30, 62-32, and 62-130, et seq.. The Public Staff and the Attorney General also supported the payment of these fees pursuant to the Commission's general powers and authority.

A. Arguments of the Intervenors

Specifically, Crisp Davis (supported by their clients, the Public Staff, and the Attorney General) argues, in substance, as follows: In late 1981, Crisp Davis entered into semi-contingency fee agreements with all of its governmental clients in Western North Carolina. These clients included four counties, five towns, and the Eastern Band of Cherokee Indians. The gravamen of these Agreements was one of "sharing the risk". The law firm agreed to accept a substantially reduced hourly rate for its future services (January 1, 1982, and thereafter) in return for agreement by the clients that, upon final conclusion of these matters, if substantial refunds or other valuable considerations had been achieved, the law firm would have the right to go back to the clients and ask for consideration of a "merit fee" based upon the results achieved, the difficulty of the litigation, and certain other matters. If nothing (or very little) of value was ultimately gained in this litigation, the Crisp Davis clients would have received the benefits of the law firm's representation at a very nominal rate plus expenses. On the other hand, if substantial refunds (or other things of value) were achieved, the clients, as well as the constituents of each of these governmental entities, would reap a great benefit from which the law firm would be entitled to request consideration of a "merit" fee.

The Intervenors further contend that throughout the entire course of this 13-year history of litigation the Crisp Davis firm served as the lead counsel, particularly in formulating the "roll-in" theory of retail ratemaking, as well as marshalling the evidence to demonstrate the fundamental unfairness to Nantahala of the 1971 Apportionment Agreement.

In documentary evidence presented to the Commission and audited by the Public Staff and the Attorney General, Crisp Davis indicated that, in the present and other related proceedings before this Commission and FERC, the firm expended almost 3600 hours of total lawyer time. The firm billed its clients slightly over $202,000 for these services. In addition, the firm incurred total expenses, during the 1982-89 time period, of approximately $73,000, the majority of which (approximately $54,400) was for expert witness fees. The firm was paid by its clients approximately $245,000, leaving a current outstanding and unpaid balance of approximately $30,000. The Intervenors contend that these are amounts which were unpaid even at the reduced rate which Crisp Davis was charging its clients under the semi-contingency fee arrangement; and secondly, that this unpaid amount fails to take into account the economic risk of ultimate non-payment which the Crisp Davis firm bore from 1982 to 1989.

B. Arguments of Nantahala and the Amici Curiae Intervenors

Nantahala and the amici curiae Intervenors have raised two fundamental objections to the award of the legal fees being sought by the Crisp Davis firm in this matter. The first objection is that the Commission has no legal authority to award the fees out of the refund amounts presently awaiting the final order for distribution. If, however, the Commission does have the legal authority to award the fees, the Commission, as a matter of sound regulatory policy, should exercise its discretion so as to deny the motion of the Intervenors for the award of the fees. Nantahala and the amici curiae Intervenors particularly point out that the Public Staff and the Attorney

General have also participated in these proceedings, the Attorney General since 1976 and the Public Staff since 1981. Both of these State entities, charged by law with representing the using and consuming public, were at least equally instrumental in obtaining the refunds under consideration. Further, the semi-contingency fee agreement between Crisp Davis and the Intervenors provided that the final bill was to be submitted to the Intervenors; there was no mention of recovering fees from the Commission or other administrative agency or court. Furthermore, it appeared that the positions of the Intervenors were rejected by FERC and the Courts, especially the United States Supreme Court; in fact, it was the position advocated by the FERC staff in FERC proceedings which resulted in the refunds under consideration herein.

C. Conclusion of the Commission on the "Legal Fees" Issue

The Commission concludes that the Intervenors' Motion for Partial Legal Fees in the amount of $400,000, to be paid to the Crisp Davis firm directly out of the refunds under consideration in these dockets, should be denied.

In so deciding, the Commission notes at the outset that it does not address the issue whether the Commission has jurisdiction under the "common fund" doctrine to award the legal fees, since the Commission is of the opinion that it is unnecessary to decide this issue in reaching its decision herein. We believe that the findings of fact made above, as supported by the record in this proceeding, are amply sufficient to enter this Order denying the Motion for legal fees without resort to a discussion of the common fund doctrine.

First, the award of legal fees from the refunds will reduce the amount of funds that will be available to Nantahala's ratepayers. These refunds rightfully belong to all of the ratepayers, and a reduction in the amount of dollars to which the ratepayers are entitled should not be undertaken lightly. The Intervenors' Motion needs to be scrutinized carefully by this Commission.

We note at the outset that the officials of the counties and towns who retained Crisp Davis as their counsel in these proceedings did not represent all of Nantahala's customers. (Macon County retained Crisp Davis only in Docket No. E-13, Sub 44; the Town of Franklin did not retain Crisp Davis in any of these proceedings.) Consequently, these officials were elected by some, but not all, of Nantahala's ratepayers. Nantahala's ratepayers should not be required to bear the burden of paying additional fees for attorneys retained by officials whom many of the ratepayers did not elect. Those customers not represented by Crisp Davis should not be required to have their refunds reduced to pay attorneys' fees for the Intervenors. If payment of additional fees is justified, the burden of paying the legal fees should be borne by the parties who decided to employ Crisp Davis and by those customers who actually elected the governmental officials. Further, we also note that neither Macon County nor the Town of Franklin has supported the Motion for Partial Legal Fees.

The legal work by Crisp Davis was performed under what is described as a semi-contingency fee arrangement, by which Crisp Davis billed (and presumably was paid) at the rate of $55 per hour. Under this arrangement entered in 1981, if Nantahala were required to make refunds, Crisp Davis would submit a final bill to the governmental Intervenors in addition to what had actually been paid. This final bill would reflect the value of Crisp Davis' services, but

would be subject to client approval. This final bill is described in an October 22, 1981 letter from Crisp Davis to these Intervenors as follows:

> "If and after refunds are actually realized from either or both of the two pending rate cases, whether in the form of checks to customers or credits on bills, this firm will propose and submit an additional merit value fee, taking into account what has been received via the substantially lowered hourly rate, and such proposed fee will be submitted to each of you on the same proration as is in effect now or as may be changed if additional governmental units or private entities retain our services for this work. Such proposed fee will be subject (in the case of each of you) to your approval and payment, to your discounting the same and payment of the reduced amount, or to your disapproval totally, with no payment whatever." (emphasis original.)

The "draft resolution" attached to the 1981 letter provides with respect to the final bills that:

> ". . . [I]f and after refunds are actually realized from either or both of the two pending Nantahala rate cases, Mr. Crisp will propose and submit, to this governmental unit, on the same pro rata basis that hourly charges have been theretofore billed, a final merit value fee, it being understood that we shall at that time have the discretionary right (1) to approve and pay the same in full, or (2) to approve and pay the same in part only, or (3) to disapprove the same entirely and pay none of it."

Crisp Davis filing of August 9, 1989, Attachments 1 and 2.

Intervenors have not indicated whether a final bill has been submitted and rejected. However, several matters are clear concerning the semi-contingency fee agreement. The final bill was to be submitted to the governmental Intervenors. There was no mention of seeking fees from the Commission or other administrative agency or court. Also, these Intervenors have the right under their agreement with Crisp Davis to refuse to pay any additional fee since payment is subject to their "disapproval totally, with no payment whatever." While it is not clear whether Crisp Davis' clients have refused to pay a "final merit value fee," it is clear that Intervenors and Crisp Davis now seek to have all of Nantahala's customers pay this "merit value fee." This was not contemplated by these Intervenors and Crisp Davis when their semi-contingency fees were agreed to. Payment for Crisp Davis' legal service was at that time--and remains--Intervenors' responsibility. Denial of the Motion for Partial Legal Fees does not prevent these Intervenors from paying a merit fee to Crisp Davis if they so choose.

Secondly, the interests of all of the ratepayers were represented throughout these proceedings by the Attorney General of North Carolina and, since August 21, 1981, by the Public Staff, both of whom appeared coequally with Crisp Davis. While the Commission recognizes the immense amount of labor performed by Crisp Davis in these proceedings, and its role in developing the roll-in methodology, it must also recognize the equally significant contributions of the Public Staff and the Attorney General, both of whom are authorized by law to intervene in rate cases on behalf of the using and

consuming public. G.S. 62-15; 62-20. The Commission cannot say that, "but for" the intervention of one party or another in these proceedings, a certain result would or would not have happened. This is a matter of speculation. Notwithstanding the modest disclaimers of the Public Staff and Attorney General, however, the intervention by these two State agencies provided substantial assistance to the efforts of the Crisp Davis firm throughout these proceedings. We especially call attention to the March 1977 hearings in Docket No. E-13, Sub 29, where Assistant Attorney General Richard L. Griffin almost single-handedly developed, through cross-examination, the roll-in theory for the record. Without Mr. Griffin's advocacy at that stage of the case, there very well may not have been a record on which the North Carolina Supreme Court could have entered its 1980 decision remanding the case to the Commission for consideration of the roll-in methodology. Transcript of Hearings Vols. I - IX.

Third, throughout Docket No. E-13, Subs 29 and 35, the parties represented by Crisp Davis have advocated the establishment of rates for Nantahala under a roll-in mechanism which would combine the operations of Nantahala and Tapoco for ratemaking purposes. The Commission adopted this roll-in theory in its Orders in Subs 29 and 35. The United States Supreme Court declared this Intervenor-sponsored roll-in unconstitutional and unlawful. The refund distribution approved by this Order flows from the reduction in wholesale power costs to retail ratepayers based upon FERC's reduction of these costs. Whatever role Intervenors played in Docket No. E-13, Subs 29 and 35, in advocating roll-in, the refunds under consideration herein arise from the FERC decisions and not from any decision of this Commission.

Fourth, the Commission should not authorize legal fees charged for work performed in other cases, some tried before FERC or other courts, where Crisp Davis represented clients other than Nantahala's retail customers. The Intervenors state that Crisp Davis has represented "these Intervenors" in "related Commission proceedings, Federal Court proceedings and appeals, State Court proceedings and appeals, and proceedings before the Federal Energy Regulatory Commission." In addition, the Intervenors' Motion incorporates by reference a synopsis of the proceedings in which Crisp Davis purportedly represented the Intervenors. The synopsis describes FERC proceedings in which:

> ". . . among other things, Nantahala's wholesale rates were established, FERC ruled upon new Nantahala-Tapoco-Alcoa contractual relationships with TVA and upon the question of requested sales from Tapoco to Nantahala as urged by us and as proposed by the North Carolina Utilities Commission. . . "

Exhibit A to Intervenors' Motion for Partial Legal Fees. Exhibit A goes on to state that Crisp Davis served as the lead counsel in these proceedings on behalf of "all of the retail consumers of the entire six-county area in which Nantahala operates." Id.

We find that Crisp Davis did not formally appear on behalf of any of Nantahala's retail customers in Nantahala's wholesale rate case filed before FERC. In FERC Docket No. 76-828, Nantahala filed for an increase in its wholesale rates. This rate case was subsequently consolidated with a complaint proceeding, Docket No. EL-78-18, (collectively referred to hereinafter as the wholesale rate case) filed by the Town of Highlands, North Carolina. Haywood Electric Membership Corporation (HEMC) and North Carolina Electric Membership

Corporation (NCEMC), wholesale customers of Nantahala, intervened in these FERC proceedings and were represented by Crisp Davis. The North Carolina Attorney General also intervened in the consolidated proceedings on behalf of the using and consuming public of North Carolina.

Throughout the wholesale rate case, the Town of Highlands and the wholesale intervenors represented by Crisp Davis attempted to persuade FERC to fix Nantahala's wholesale rates on a rolled-in cost of service basis. Although FERC found that the record before it did not support the fairness of the allocation of energy entitlements under the 1971 Apportionment Agreement, FERC refused to adopt the roll-in as advocated by the wholesale customers HEMC and NCEMC. Instead, FERC held that Nantahala should have received an additional 44 million kWh of entitlement power from TVA and set Nantahala's rates "as though" it had received these entitlements. FERC specifically required that Nantahala refund to its wholesale customers any excess amounts collected from and after October 1, 1976. FERC accepted the fairness of the New Fontana Agreement. FERC's remedy was based upon the position advocated by FERC's staff.

The vast majority of the filings made by NCEMC and HEMC in the wholesale rate case and the subsequent consolidated FERC cases (discussed infra) were joint filings with the Town of Highlands, which was represented by the law firm of Spiegel & McDiarmid. To the extent that Crisp Davis may have been entitled to attorneys' fees for its representation of wholesale customers in the wholesale rate case, Crisp Davis should be paid by the wholesale customers themselves.

The Commission must conclude that the flow-through of refunds to Nantahala's retail ratepayers ordered by this Commission as a result of FERC's reapportionment of energy entitlements in the wholesale rate case did not result from Crisp Davis' representation of the retail customers before FERC. FERC rejected the roll-in advanced by Crisp Davis in its representation of the wholesale customers. Clearly, it would be inappropriate for us to award legal fees for work that was performed by a law firm in another case before another agency on behalf of organizations who are not parties in the present proceedings before this Commission.

In their Motion for Partial Legal Fees, the Intervenors also mention the consolidated FERC cases, Docket Nos. 82-774 et. al., as proceedings in which they were represented by Crisp Davis and for which an award for legal fees is warranted in the present proceedings. In these consolidated FERC cases, Nantahala and Tapoco applied for approval to terminate their existing agreements with the Tennessee Valley Authority (TVA) and submitted new contracts with TVA for filing. Crisp Davis again represented intervening wholesale customers, HEMC and NCEMC, in the consolidated cases. The North Carolina Attorney General filed a complaint against Tapoco and Nantahala on behalf of the North Carolina using and consuming public which FERC subsequently consolidated with the Nantahala and Tapoco applications.

FERC, in Opinion Nos. 277 and 277-A, approved the new agreements submitted by Tapoco and Nantahala on condition that Tapoco either compensate Nantahala for increased costs under Nantahala's new agreement with TVA or sell a specified portion of its low-cost hydroelectric power to Nantahala until the time that Nantahala is able to obtain an adequate long-term power supply at a reasonable price. FERC adopted a remedy that differed from any remedy

advocated by any party to the docket. Tapoco, wholesale customers, this Commission, the North Carolina Attorney General and the State of Tennessee have all filed Petitions for Review of the FERC orders issued in the consolidated cases.

Given the nature of Crisp Davis' participation in the consolidated FERC cases, we find that the Intervenors' legal fees for Crisp Davis' participation in those proceedings should not be awarded. As in the wholesale rate case, Crisp Davis was not appearing on behalf of retail ratepayers before FERC in the consolidated cases but was appearing on behalf of two wholesale customers. Fees for work performed by Crisp Davis on behalf of HEMC and NCEMC should be paid by those two wholesale customers.

Consequently, in view of the above discussion, the Commission concludes that the Motion for Partial Legal Fees should be denied. We also state that, assuming for purposes of discussion herein that the Commission had jurisdiction to award legal fees under the common fund doctrine, the request for legal fees pursuant to this doctrine should be denied for the above-stated reasons.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-15

The last issue for determination by the Commission in this proceeding is the request by Nantahala to reduce the refund amount by over $40,000, plus interest, reflecting expenses incurred by Nantahala to reimburse the Public Staff for consulting fees paid to Southern Engineering Company. With regard to these expenses, the information provided by the parties in their arguments, and by the Public Staff subsequent thereto, makes it clear that the Public Staff was authorized to obtain the services of Southern Engineering Company as its consultant and to charge the cost of such services to Nantahala pursuant to G.S. 62-15(h). The question before the Commission, therefore, is whether or not it is appropriate to allow Nantahala to assess its customers for this specific cost, by deducting it from the refunds which are now lawfully due to those customers.

The costs in question were incurred by the Public Staff (and charged to Nantahala) in the course of pursuing the Intervenors' positions in Docket No. E-13, Subs 29, 35, and 44, following the remand of these matters from the United States Supreme Court and the North Carolina Supreme Court. Those costs were incurred for the purpose of preparing for additional hearings that the Intervenors believed would and should be scheduled in these cases, and for the purpose of preparing for settlement negotiations. The costs were charged to Nantahala under the provisions of G.S. 62-15(h), which states that costs incurred by the Public Staff in employing outside professional experts in Commission proceedings shall be paid by the utility participating in the proceedings.

G.S. 62-15(h) also instructs the Commission as to the appropriate ratemaking treatment of such costs. It states, "Such compensation and expenses shall be treated by the Commission, for rate-making purposes, in a manner generally consistent with its treatment of similar expenditures incurred by utilities in the presentation of their cases before the Commission." The phrase "similar expenditures incurred by utilities" refers to regulatory expenses associated with utility participation in Commission proceedings, most typically those related to rate cases. Thus, G.S. 62-15(h) instructs the

Commission to treat utility expenses incurred under the provisions of that statute in a manner generally consistent with the manner in which the Commission treats utility rate case expenses for ratemaking purposes.

When a utility files a rate case, it will typically include in its cost of service a portion of its rate case expenses. The amount included is often based on an estimate, since the precise level of rate case expenses may not be known prior to the closing of the evidentiary record. Only a portion of the rate case expenses is typically included in a utility's final rates, in recognition of the fact that the utility is not expected to file a rate case every year.

However, despite the fact that they are often estimated and amortized, rate case expenses are normal operating expenses of the utility. Being subject to estimation and amortization does not distinguish them, for ratemaking purposes, from any other operating expenses of the utility. Many utility test year operating expenses considered in a rate case must be estimated, adjusted, and/or amortized. Rate case expenses, being normal operating expenses of the utility, are subject to the same statutory provisions and Commission policies that govern the ratemaking treatment of other normal operating expenses.

One of the most important of these provisions and policies is that, after the evidentiary record is closed and rates are set based on the reasonable level of cost of service approved by the Commission, retroactive additions to the evidence and/or adjustments to the rates or approved cost of service cannot be allowed, even if the accepted cost of service was based partially on estimates. This rule is a fundamental principle of ratemaking in North Carolina: retroactive ratemaking is not allowable.

The Commission recently confronted the issue of retroactive adjustments to rate case expenses. In the 1989 general rate case of Carolina Water Service, Inc. (Docket No. W-354, Sub 69; Final Order dated February 7, 1989), the utility proposed that the difference between the actual and estimated rate case expense related to a prior rate case, Sub 39, be included as part of the cost of service established in Sub 69. The Commission rejected the utility's proposal, stating:

> The Public Staff takes the position that these costs are not valid test year expenses, and should not be allowed to be recovered retroactively. The Commission agrees with the Public Staff in this regard. These additional costs incurred by the Company relating to Docket W-354, Sub 39 are not valid test year costs for the 12-months ended December 31, 1987, and should not now be included in the cost of service. In Docket No. W-354, Sub 39, the Commission found a reasonable and representative level of rate case expense and included it in rates in that proceeding. (Final Order, Page 43).

As the cited quotation indicates, it is the Commission's position that retroactive adjustments to correct or refine prior estimates that have been accepted for the purpose of setting rates are not appropriate. Nor are they legal. Once the Commission has found a reasonable and representative level of rate case expenses in a ratemaking proceeding, that level cannot be retroactively changed, even if the actual level of rate case expenses exceeds or is less than the estimate adopted for ratemaking purposes.

The proposal by Nantahala in this proceeding to deduct over $40,000 of regulatory expenses from the refunds to its customers is precisely the type of retroactive adjustment to cost of service heretofore deemed inappropriate by the Commission. By virtue of G.S. 62-15(h), the Commission is instructed to treat these costs in a manner generally consistent with its treatment of rate case expenses. In fact, these costs are essentially additional rate case expenses related to Subs 29, 35, and 44. Consistency requires us to conclude that these costs, related as they are to Subs 29, 35, and 44, must be viewed as corrections or refinements to the rate case expenses included in the rates finally fixed and established by the Commission in these dockets. There is no legal way by which Nantahala can retroactively change its cost of service to collect these specific regulatory operating expenses, which were incurred years after the rates in Subs 29, 35, and 44, at least as to rate case expenses, were finally fixed and established.

Even if the Commission were to consider the consulting fees as expenses related to a proceeding separate from Subs 29, 35, and 44, the provisions of G.S. 62-15(h) still apply. The Commission is to treat such costs in a manner generally consistent with its treatment of rate case expenses. There is no appropriate mechanism for the ratemaking treatment of rate case expenses other than a general rate case. The Company incurs regulatory expenses periodically, just as it incurs other types of operating expenses. It would be totally inappropriate for the Commission to adopt a policy of allowing special assessments for periodic unexpected expenses. The recovery of such costs is more appropriately left to the normal ratemaking process. Whether these consulting fees are considered to be incurred as part of previous rate cases or as part of a new and current proceeding, the only appropriate method of ratemaking treatment for them is in the Commission's determination of a reasonable level of regulatory expenses as part of a general rate case.

Perhaps the most effective way to highlight the inappropriateness of the Company's proposal is to remove it from the context of the refunds. If, at the end of the appeal process, the Courts and the Commission had determined that no refunds were due to Nantahala's customers, it would have been patently obvious that any attempt by Nantahala to assess or surcharge its customers to recover these consulting fees would amount to retroactive ratemaking. The fact that a refund to Nantahala's customers is being made concurrently should not be allowed to obscure the fact that Nantahala's proposed reduction in the refund amounts is equivalent retroactive ratemaking.

The Commission does not believe that the latitude which we are allowed by the phrase "generally consistent," as used in G.S. 62-15(h), can be applied to this matter as Nantahala suggests. The Commission believes that the statute clearly indicates that utility expenses incurred under its provisions should be looked upon as regulatory expenses, just like other regulatory expenses, and should be treated equivalently for ratemaking purposes. Only in the most unusual circumstances should the Commission consider any other type of treatment. The circumstances presently under consideration do not justify special treatment of these expenses, notwithstanding the fact that they were made involuntarily and could not have been foreseen at the time Nantahala originally filed its cases in Subs 29, 35, and 44.

The Commission, therefore, concludes that the proposal by Nantahala to deduct over $40,000 plus interest from the refunds to be paid to its customers

is inappropriate and should be denied. The Commission does not accept the Company's assertion that denial of its proposal will force the stockholders to bear the cost of the consulting fees. It cannot be presumed that any specific unbudgeted costs incurred by the Company between rate cases are always borne by the stockholders. The Company's approved rates are designed to allow the Company to recover its reasonable operating expenses and offer the Company's stockholders an opportunity (not a guarantee) of earning a fair and reasonable return. It is not unusual, between rate cases, for certain expenses out of the total cost of service to increase. Nevertheless, any such increases may be offset by decreases in other cost of service items. If the Company feels that its rate of return is not adequate, it always has the option of filing a general rate case. Absent such a filing, there is no evidence to support an assertion that the stockholders, as opposed to the ratepayers, are bearing any particular cost. For these reasons, recovery by Nantahala of these consultant's fees from the present refund amounts is not in the public interest and should be denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the Stipulation filed in these dockets by Nantahala and the Intervenors on October 3, 1989, be, and the same is hereby, approved.

2. That the Intervenors' Motion for Partial Legal Fees be, and the same is hereby, denied.

3. That Nantahala's request to be allowed to deduct $40,000 in consultant's fees which it paid to or on behalf of the Public Staff pursuant to G.S. 62-15(h) from the pool of refund amounts be, and the same is hereby, denied.

4. That this matter shall remain open for such other and further action by the Commission as may be necessary pending the completion of the refund program and the final accounting therefor.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of November 1989.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 226

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Eaton Corporation, Post Office Box 1728, Kings Mountain, North Carolina 28086, Complainant	)	
v.	)	RECOMMENDED ORDER DISMISSING COMPLAINT
Public Service Company of North Carolina, Respondent	)	

HEARD: August 30, 1988, at 1:00 p.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Sammy R. Kirby, Hearing Examiner

APPEARANCES:

For the Complainant:

James C. Windham, Jr., Stott, Hollowell, Palmer & Windham, Attorneys at Law, Post Office Box 995, Gastonia, North Carolina 28053-0995

For the Respondent:

F. Kent Burns, Burns, Day & Presnell, P.A., Attorneys at Law, Box 2479, Raleigh, North Carolina 27602

For the Using and Consuming Public:

David T. Drooz and Robert B. Cauthen, Jr., Staff Attorneys, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE HEARING EXAMINER: This docket was opened on January 12, 1988, when the Commission issued its Order Serving Complaint. Attached to the Order were a December 29, 1987 letter from Charles F. Frothingham of Eaton Corporation and several other letters. The letters allege, in essence, that from September 31, 1980, through December 31, 1984, Public Service charged Eaton's plant at Kings Mountain on Rate Schedules 22 and 55 when it should have charged under Rate Schedules 23 and 60 and that a refund is due.

Public Service filed its Answer to Complaint on January 28, 1988. By its Answer, Public Service denies that any refund is due and, alternatively, asserts that if any refund is in order, the amount of the refund is limited by the statute of limitations. The Commission served this Answer on Complainant Eaton by Order of February 1, 1988.

Complainant filed a Response on February 18, 1988. Thereafter, by Orders of April 8, 1988, and July 8, 1988, the Commission scheduled a hearing on the complaint for the time and place indicated above.

The hearing on the complaint was held as scheduled. The Complainant presented Charles F. Frothingham, accounting manager for Eaton's plant near Kings Mountain. Respondent Public Service presented the testimony of C. Marshall Dickey, Senior Vice President of Gas Supply and Transportation. At the conclusion of the testimony, the Hearing Examiner requested proposed orders and briefs, and the hearing was adjourned. Subsequently, pursuant to a request made at the hearing, Public Service witness Dickey submitted a late-filed exhibit in the form of a letter dated September 8, 1988, and filed with the Commission's Chief Clerk on October 6, 1988.

By letter of February 6, 1989, the Hearing Examiner asked Public Service to file copies of all relevant rate schedules as a late-filed exhibit. Public Service submitted this late-filed exhibit by letter of February 15, 1989, which was filed with the Commission's Chief Clerk on February 16, 1989.

Based upon the pleadings, the testimony, the exhibits received into evidence and the record as a whole, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Eaton Corporation is engaged in the manufacturing of automobile and truck components. It operates a plant near Kings Mountain, North Carolina.

2. Public Service is a franchised public utility providing natural gas service in North Carolina. Public Service provides natural gas to the Eaton plant. Public Service is properly before the Commission pursuant to G.S. 62-73.

3. Public Service provides natural gas service to its customers in North Carolina under various rate schedules. The rate schedules relevant to this case are as follows:

As of August 1978 Public Service's rate schedule for small industrial service was Rate Schedule 22. This Rate Schedule was available to "commercial and small industrial customers who are engaged primarily in the sale of goods, services, or manufacturing . . . who qualify for Priorities 1.2 through 2.4 under the North Carolina Utilities Commission Rule R6-19.2."

Rate Schedule 22 was succeeded by Rate Schedule 55 as of January 1981. The availability language remained unchanged.

Rate Schedule 55 was in turn succeeded by Rate Schedule 17 as of November 1986. Again, the availability language remained essentially unchanged for purposes of this case.

As of August 1978 Public Service's rate schedule for industrial process service was Rate Schedule 23. This Rate Schedule was available to "industrial customers for process, feedstock, plant protection, direct fired and non-boiler uses with no alternate fuel capability qualifying for Priority 2.5 through 2.7 under the North Carolina Utilities Commission Rule R6-19.2." This Rate Schedule further provided that it was subject to the special terms and conditions on its reverse side. These special terms and conditions included, "The Customer agrees . . . to have and to maintain complete standby fuel and equipment available and agrees to use it whenever necessary . . ."

Rate Schedule 23 was succeeded by Rate Schedule 60 as of January 1981. The availability language and the special terms and conditions remained unchanged.

Rate Schedule 60 was in turn succeeded by Rate Schedule 20 as of November 1986. The availability language was changed. Rate Schedule 20 was made available to "large commercial and industrial customers who have no installed capability to burn an alternate fuel or who have the installed capability to burn propane as an alternate fuel and not qualifying for Priority 1.1 through 2.4 under the North Carolina Utilities Commission Rule R6-19.2" The special terms and conditions remained unchanged.

4. Commission Rule R6-19.2 deals with the priorities for curtailment of service in the event the total volume of natural gas available to a natural gas public utility such as Public Service is insufficient to supply the demands of all utility customers.

Priority 2.1 is for "industrial less than 50 Mcf/day."

Priority 2.5, which is a lower priority of service, is for "industrial process, feedstock, and plant protection between 50 and 300 Mcf/day, with no alternate fuel capability."

5. Section (f) of Commission Rule R6-19.2, as it was written at the time involved in this case, required natural gas public utilities such as Public Service to review each customer's consumption for the prior 12 months during July and August of each year and to automatically reclassify a customer to a lower priority as of September 1 if it found that the customer had increased its consumption to the point it would place him in a lower priority during any two months.

6. Public Service has always supplied natural gas to Eaton's plant. The plant was dedicated in May 1977. The plant's consumption of natural gas was originally less than 50 dekatherm per day. The plant was assigned to Rate Schedule 22 (subsequently Rate Schedule 55)[1] and curtailment priority 2.1.

7. The plant's consumption of natural gas increased. Its consumption exceeded an average of 50 dekatherms per day for four months during the 12-months ending June 30, 1980.

8. Eaton's plant has a propane storage tank on the premises; however, the propane tank is not connected to the plant.

9. Since January 1978 Public Service has had North Carolina industrial customers with no alternate or standby fuel capability who, nonetheless, have been billed on Rate Schedules 23, 60 and 20. As of September 1988 Public

---

1 Throughout this Recommended Order, rate schedules are cited by number according to the rate schedule in effect at the time involved. To understand, it is essential to remember that Rate Schedules 22, 55 and 17 succeeded each other and are related and that Rate Schedules 23, 60 and 20 succeeded each other and are related.

Service knew of twenty Rate Schedule 20 customers (14% of the total) with no alternate or standby fuel capability.

10. Effective January 1, 1985, Public Service changed Eaton's account from Rate Schedule 55 and priority 2.1 to Rate Schedule 60 and priority 2.5. As a result of Public Service's 1986 rate case, its rate classifications were revised and most customers on Rate Schedule 60, including Eaton, were transferred to new Rate Schedule 20.

11. Eaton's accounting manager, Mr. Frothingham, wrote to a letter to Public Service on December 2, 1986, asserting that Eaton's account should have been changed from "Rate 22/55" to "Rate 23/60" as of September 1, 1980, and that the account is due a refund based upon the difference between what had been paid from September 1, 1980, through December 31, 1984, and what would have been paid if properly billed for this period.

12. Mr. Frothingham wrote a letter to the Consumer Services Division of the Public Staff-North Carolina Utilities Commission on May 18, 1987, which was received on May 28, 1987, by which he again claimed a refund for the period. Subsequently, on December 29, 1987, Mr. Frothingham wrote a letter to the Utilities Commission asking that the matter be treated as a formal complaint.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The findings of fact are based upon the testimony and exhibits of witnesses Frothingham and Dickey and upon the Commission's own records. The essential facts are uncontroverted.

Eaton witness Frothingham testified that the Kings Mountain plant was dedicated in May 1977 and has always received natural gas service from Public Service. He testified that the plant maintains a 30,000 gallon propane storage tank, that the plant can use propane "barring unforeseen operational difficulties with the propane system," but that Eaton prefers to use natural gas. Frothingham testified that the plant should have been changed from Rate Schedule 22 and priority 2.1 to Rate Schedule 23 and priority 2.5 as of September 1, 1980, because the plant's consumption exceeded 50 Mcf per day on average for four months during the year ending June 30, 1980. Public Service in fact changed the plant's account to the rate and priority requested as of January 1, 1985. Eaton wrote a letter to Public Service in December 1986 claiming a refund for the period September 1, 1980, through December 31, 1984. Public Service responded in February 1987. Public Service conceded that the plant should have been billed on Rate Schedules 23 and 60 starting September 1, 1980, but refused to make a full refund. Public Service offered a partial refund based on a three-year statute of limitations running back from Eaton's December 1986 letter. Witness Frothingham testified that the statute of limitations should not bar a full refund, which he calculates as $15,724.73 plus interest.

Public Service witness Dickey cited this Commission's Order of January 3, 1978, in Docket No. G-100, Sub 21, and the language of the Public Service rate schedules to contend that customers on Rate Schedules 23, 60, and 20 and priority 2.5 must have standby fuel capability. He testified that Public Service's records indicated that Eaton had propane as a standby fuel and that Public Service therefore agreed to move the Eaton account to Rate Schedule 60

on January 1, 1985, and to make a partial refund. However, he testified that Public Service tried to curtail Eaton twice during the 1987-88 winter, that the plant could not accept curtailment either time and remained on gas, and that Public Service was told that the plant's propane storage tank had no propane in it and was not connected to the plant. Witness Dickey therefore questioned whether the plant ever had propane capability and whether Eaton was ever entitled to the rate schedules requested (Rate Schedules 23, 60 and now 20). Witness Dickey admitted that Public Service has always had customers on Rate Schedule 20 and its predecessors who do not have standby fuel capability. He testified that some had been "grandfathered" in 1978, that some had allowed their alternate fuel capability to deteriorate, and that he suspected some had misrepresented their alternative fuel capability. However, he testified that Public Service had no other rate schedule to put these customers on because Public Service did not have a rate schedule for industrial customers using between 50 and 300 Mcf per day with no alternate fuel capability.

Eaton is seeking a refund for the period September 1, 1980, through December 31, 1984. Eaton first presented its claim to the Commission by letter to the Consumer Services Division of the Public Staff dated May 18, 1987, and received on May 28, 1987. The Commission recently considered the statute of limitations applicable to a claim such as this in the Earl Dunn case, Docket No. G-9, Sub 272. In its January 26, 1989 Order Awarding Refund (which was subsequently upheld by the full Commission), the Commission held as follows:

> G.S. 62-132, on the other hand, speaks specifically of refunds to utility customers who have been charged rates which are "other than the rates established by the Commission" and which are "unjust, unreasonable, discriminatory or preferential." G.S. 62-132 is a part of G.S. Chapter 62, which deals specifically with the powers and procedures of the Utilities Commission. Furthermore, G.S. 1-15(a) provides that the limitations set forth in G.S. Chapter 1, Subchapter II, shall apply "except where in special cases a different limitation is prescribed by statute." See also G.S. 1-52(2). The Commission concludes that the provisions of G.S. 62-132 are applicable to this case. The Commission has already found that the charges collected by Piedmont were "other than the rates established by the Commission" for this Complainant's situation, see State ex rel. Utilities Commission v. Norfolk S. Ry., 249 N.C. 477 (1959), and that these charges were "unjust, unreasonable, discriminatory, or preferential." G.S. 62-132 therefore authorizes the Commission to award the difference between the charges collected and the charges that should have been collected "to the extent that such rates or charges were collected within two years prior to the filing of such petition." (Emphasis added)

The Commission went on to hold that a "petition" was filed for purposes of G.S. 62-132 when the Consumer Services Division of the Public Staff-North Carolina Utilities Commission received a letter from the Complainant stating the substance of his claim in detail and requesting relief.

In this case, Eaton wrote such a letter on May 18, 1987, and the letter was received by the Public Staff on May 28, 1987. The Hearing Examiner therefore concludes that under G.S. 62-132 Blue Ridge would only be entitled to a refund for the two-year period prior to May 28, 1987, i.e., a refund going

back to May 28, 1985. This is well past the period of time for which Eaton seeks a refund, and the Hearing Examiner must conclude that Eaton's claim is barred by the statute of limitations. Accordingly, Eaton's complaint must be dismissed.

IT IS, THEREFORE, ORDERED that the complaint of Eaton Corporation in this docket should be, and the same hereby is, dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of April 1989.

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

DOCKET NO. G-5, SUB 226

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Eaton Corporation, Post Office Box 1728, Kings Mountain, North Carolina 28086, Complainant	)	
v.	)	FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER
Public Service Company of North Carolina, Inc., Respondent	)	

BY THE COMMISSION: On April 12, 1989, Commission Hearing Examiner Sammy R. Kirby entered a Recommended Order in this docket dismissing the complaint filed by the Eaton Corporation (Complainant) against Public Service Company of North Carolina, Inc.

On April 19, 1989, and April 26, 1989, respectively, the Public Staff and the Complainant filed certain exceptions to the Recommended Order. The Public Staff and the Complainant waived oral argument on their exceptions.

In deciding this case, the Commission has given careful consideration to the Recommended Order entered in this docket on April 12, 1989, the exceptions thereto filed by the parties, and the entire record in this proceeding. On the basis thereof, the Commission finds and concludes that all of the findings of fact, conclusions, and decretal paragraphs contained in the Recommended Order of April 12, 1989, are fully supported by the record; that the Recommended Order dated April 12, 1989, 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 agrees with the Hearing Examiner that Eaton's claim is barred by the two-year statute of limitations set forth in G.S. 62-132.

The Public Staff and the Complainant assert that Public Service failed to plead G.S. 62-132 as an affirmative defense and that the Company's failure to do so should, as a matter of law, preclude dismissal of the complaint on the basis of G.S. 62-132. We disagree. The fact is that Public Service did plead the statute of limitations set forth in G.S. 1-52(1) as a defense in its answer to the complaint filed in this docket on January 28, 1988. Therefore, all

parties were clearly placed on notice that there would be a statute of limitations question in this case. The fact that Public Service did not specifically plead G.S. 62-132 should not, as a matter of law, preclude dismissal of the complaint for at least two reasons.

First, great liberality is indulged in pleadings in proceedings before the Commission, and the technical and strict rules of pleading applicable in ordinary court proceedings do not apply. Ordinarily, the procedure before the Commission is more or less informal and is not as strict as in superior court. Substance and not form is controlling. State ex rel. Utilities Commission v. Area Development, Inc., 257 N.C. 560, 126 S.E. 2d 325 (1962).

Second, Public Service did plead as an affirmative defense what it perceived to be the applicable statute of limitations. Following the position taken by the Public Staff and the Complainant to its logical extreme would require the Company to plead each and every possible statute of limitations in its pleadings in order to fully protect itself on appeal. Such a procedure would be entirely inconsistent with the less formal procedures followed by the Commission and would, in effect, place form over substance. The fact that Public Service raised the statute of limitations issue as an affirmative defense placed all parties on adequate notice that the statute of limitations question would be an issue in the case. In deciding this matter, the Commission had no choice but to apply G.S. 62-132, even though that particular statute was not raised by any party. The Commission cannot ignore a statute of limitations which clearly applies to a given case simply because none of the parties rely upon it.

Therefore, the Commission finds good cause to affirm the Recommended Order and to adopt that Order as the Final Order of the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That the "Recommended Order Dismissing Complaint" entered in this docket on April 12, 1989, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

2. That the exceptions to the Recommended Order filed by the Public Staff and the Eaton Corporation be, and the same are hereby, overruled and denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of June 1989.

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

Commissioner Ruth E. Cook dissents by separate opinion.

COMMISSIONER RUTH E. COOK, DISSENTING:

I dissent from the Final Order because I agree with the Public Staff that the full Commission has wrongly concluded that Eaton's claim is barred by the statute of limitations in G.S. 62-132, on the grounds that, as a matter of law, G.S. 62-132 is not relevant and has no application to the circumstances of this case.

G.S. 62-132 applies only to rates allowed to go into effect under any of the methods described in G.S. 62-134 and 62-135. Utilities Commission v. Edmisten, Attorney General, 291 N.C. 327 (1976). It does not apply to rates established by the Commission after full hearing. Id. The rates of Public Service that are involved in the present case were "established" by the Commission after full rate case hearings. They were not "allowed" to take effect under G.S. 62-134 or 62-135. Because Eaton is not claiming that it was wronged by rates unjustly "allowed" to take effect, G.S. 62-132 has no bearing on Eaton's claim.

The justness and reasonableness of the rates themselves are not at issue in this case. Eaton is simply claiming that Public Service mistakenly and wrongfully failed to reclassify their usage priority. The applicable statute of limitations for such a claim is G.S. 1-52(9). This being the case, I would allow the Complainant to recover the full amount of the overcharge for the period September 1, 1980, through December 31, 1984. This position is consistent with the dissents which I have recently written in two other gas refund cases decided by the Commission in Docket Nos. G-9, Sub 272 and G-5, Sub 226. I hereby incorporate those dissents by reference rather than again repeating all of the reasoning set forth therein.

Ruth E. Cook, Commissioner

DOCKET NO. G-5, SUB 227

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Blue Ridge Textile Printers, Inc., (James F. Gennusa, President) Post Office Box 5334, Statesville, North Carolina 28677, Complainant v. Public Service Company of North Carolina, Inc., Respondent	)	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, Monday, May 22, 1989, at 3:00 p.m.

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

APPEARANCES:

For Public Service Company of North Carolina, Inc:

F. Kent Burns, Burns, Day & Presnell, P. A., Attorneys at Law, Post Office Box 10867, Raleigh, North Carolina 27605

For the Public Staff and Blue Ridge Textile Printers, Inc:

Antoinette Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On April 12, 1989, Commission Hearing Examiner Sammy R. Kirby entered a "Recommended Order Awarding Refund" in this docket awarding a refund to Blue Ridge Textile Printers, Inc., the Complainant in this case. The Order required Public Service Company of North Carolina, Inc., to make a refund to the Complainant and provided for the Company to calculate the amount of the refund plus interest and to file the calculation with the Commission following confirmation of the calculation by the Public Staff. The refund was to be based upon the difference between the charges to Complainant's Account 7-0 under Rate Schedules 55 and 17 and the charges that would have been made under Rate Schedules 60 and 20 from May 7, 1985, until the account is reassigned, plus interest.

On April 19, 1989, and April 26, 1989, the Public Staff and the Complainant filed certain exceptions to the Recommended Order. The Public Staff and the Complainant waived oral argument on their exceptions.

On April 26, 1989, Public Service filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

By Order dated May 5, 1989, the Commission scheduled an oral argument for Monday, May 22, 1989, at 3:00 p.m. to consider all of the exceptions filed by the parties.

On May 19, 1989, the Complainant filed a pleading in this docket waiving its right to appear at the oral argument on exceptions and indicating that it "joins in and concurs with the oral argument to be made by the Public Staff."

Upon call of the matter for oral argument at the appointed time and place, the Public Staff and Public Service were represented by counsel who offered oral argument in support of their respective exceptions. At the conclusion of the oral argument, the Commission took the matter under advisement.

In deciding this case, the Commission has given careful consideration to the "Recommended Order Awarding Refund" entered in this docket on April 12, 1989, all of the exceptions filed by the parties, the oral arguments offered by the parties, and the entire record in this proceeding. On the basis thereof, the Commission finds and concludes that all of the findings, conclusions and ordering paragraphs contained in the Recommended Order of April 12, 1989, are fully supported by the record; that the Recommended Order dated April 12, 1989, should be affirmed and adopted as the Final Order of the Commission; and that each of the exceptions thereto should be overruled and denied.

One other matter was raised during the course of the oral argument which needs to be addressed. Counsel for Public Service stated that Blue Ridge has now been moved from Rate Schedule 17 to Rate Schedule 18, Large Industrial Service Without Standby Fuel. That rate schedule was initially filed with the Commission on October 28, 1988, and become effective on December 6, 1988. In

the cover letter which accompanied its tariff filing, Public Service stated that:

> "The purpose of this Rate Schedule is to fill a gap in the Company's present rate schedules. At present, customers on Rate No. 17 who increase their usage to more than 50 MCF per day but do not have the capability to switch to an alternate fuel are retained on Rate No. 17. Customers who both use more than 50 MCF per day and have installed propane alternative fuel so they can accept curtailment when imposed are transferred to Rate No. 20. This new Rate No. 18 will provide a separate rate between Rate No. 17 and Rate No. 20 for the larger customers on Rate No. 17 who do not have the ability to switch to an alternative fuel. Since Rate No. 18 is lower than Rate No. 17, customers who are transferred will receive a rate reduction. No existing Rate No. 20 customer will be changed so the only affected customers will receive a reduction in rates. Public Service does not propose any increase in rates to offset this loss of revenue." (First emphasis is original; second emphasis added).

In this case, the Commission has found that Blue Ridge should have been entitled to receive service from Rate Schedules 60 and 20 beginning on September 1, 1981, and that the Complainant is due a refund for its Account 7-0 from May 7, 1985, until the account is reassigned. This being the case, the Commission concludes that Blue Ridge should be treated as an existing Rate Schedule 20 customer and should remain on that rate schedule until the pending general rate case of Public Service in Docket No. G-5, Sub 246, is decided later this year at which time Blue Ridge may appropriately be assigned to Rate Schedule 18. This treatment is consistent with that portion of Public Service's above-quoted filing to the effect that the Company did not intend to change any of its existing Rate Schedule 20 customers to Rate Schedule 18 at the time it filed the latter rate schedule. Furthermore, it would not be appropriate to reassign any existing Rate Schedule 20 customers at this time in view of the fact that Public Service presently has a general rate case pending before the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That the "Recommended Order Awarding Refund" entered in this docket on April 12, 1989, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

2. That the exceptions to the Recommended Order filed by Public Service, the Public Staff, and Blue Ridge be, and the same are hereby, overruled and denied.

3. That Public Service shall place Blue Ridge on Rate Schedule 20 and shall not change the Complainant to Rate Schedule 18 prior to receiving a final decision from the Commission in the Company's pending general rate case, Docket No. G-5, Sub 246.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of June 1989.

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

Commissioner Ruth E. Cook concurs in part and dissents in part by separate opinion.

I concur in the findings and reasoning by which the Commission concludes that the Complainant was entitled to Rate Schedule 20 as of September 1, 1981, that denial of this Rate Schedule was unjust, and that Public Service should make an appropriate refund. The amount of that refund depends upon the applicable statute of limitations. The Final Order holds that the applicable statute is G.S. 62-132 and, by applying that statute, that the appropriate period for refund is May 7, 1985, until the account is reassigned. I dissent from this aspect of the Order.

I believe that the applicable statute of limitations is the three-year period provided in G.S. 1-52(2), which deals with a claim created by statute for which no other limitation period is provided in the statute creating the claim. See also G.S. 1-15(a). I also believe that G.S. 1-52(9), which provides that a claim based on mistake does not accrue until the claimant discovers the facts constituting the mistake, is applicable. Applying these two statutes, I conclude that the Complainant's claim accrued in November 1986, that it had three years thereafter within which to institute its action, that its action was timely, and that no part of the Complainant's claim is barred.[1] I would allow the Complainant to recover the full amount of the overcharge for the period beginning September 1, 1981.

I do not believe that G.S. 62-132 applies to this case by its own language. This case deals with established rates; G.S. 62-132 deals with "other than" established rates. The statute provides that

> if the Commission shall find the rates or charges collected to be other than rates established by the Commission, and to be unjust, unreasonable, discriminatory or preferential, the Commission may enter an order awarding such petitioner and all other persons in the same class a sum equal to the difference between such unjust, unreasonable, discriminatory or preferential rates or charges and the rates or charges found by the Commission to be just and reasonable, nondiscriminatory and nonpreferential, to the extent that such rates or charges were collected within two years prior to the filing of such petition. (Emphasis added.)

The statute, by its own language, applies to claims premised upon rates other than the rates "established" by the Commission. The statute is clearly dealing with the dichotomy between established rates and allowed rates as discussed by the Supreme Court in State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327 (1976). Justice Exum (now Chief Justice) wrote as follows:

---

1 Even if G.S. 1-52(9) is held inapplicable, the three-year statute of limitations in G.S. 1-52(2) would allow the Complainant to go back three years from its May 7, 1987, filing with the Public Staff. The appropriate period for refund would therefore begin on May 7, 1984, which is still preferable to the refund period in the Final Order.

> There is moreover in Article 7 a clear statutory dichotomy between rates which are made, fixed or established by the Commission on the one hand and those which are simply permitted or allowed to go into effect at the instance of the utility on the other. Rates which are established by the Commission, that is after a full hearing, findings, conclusions, and a formal order. . . "shall be deemed just and reasonable, and any rate charged by any public utility different from those so established shall be deemed unjust and unreasonable." G.S. 62-132. Rates which the Commission simply allows to go into effect by any of the three methods described [in G.S. 62-134 and G.S. 62-135] are subject to being challenged by interested parties or the Commission itself and after a "hearing thereon, if the Commission shall find the rates or charges collected to be other than the rates established by the Commission, and to be unjust, unreasonable, discriminatory or preferential, the Commission may" order refund pursuant to the provisions of G.S. 62-132.

Id. at 352. Thus, G.S. 62-132 is intended to apply where (1) allowed rates have been charged and (2) the allowed rates have been found to be unjust, unreasonable, discriminatory or preferential. Such is not the case here. The rates involved in this claim were established by the Commission in a general rate case. They are established rates, not allowed rates, and thus G.S. 62-132 by its own language does not apply to the Complainant's claim.

Second, I believe it is unfair to apply G.S. 62-132 to this case because it tends to reward the party who was at fault and to penalize the party who was not at fault. The Commission draws several conclusions as to why a refund is appropriate. It concludes that Public Service knew that the Complainant's plant did not fit on Rate Schedule 17, that it continued to charge the Complainant on Rate Schedule 17 despite this knowledge, and that it did not even contact the Complaint to discuss the matter. The Commission further concludes that Public Service did not consistently enforce the "Standby Fuel Capability" requirement of Rate Schedule 20 as to other customers. Finally, the Commission concludes that Public Service's rate schedules did not cover all of its customers. Public Service had customers who did not fit on any rate schedule. I agree with these conclusions. These conclusions all point to liability on the part of Public Service. The Commission has found no fault on the part of the Complainant. Yet the Commission goes on to apply a statute of limitations that gives the Complainant significantly less of the money to which it would otherwise be entitled. Public Service gets to keep the rest. Public Service who was responsible for the overcharge, is rewarded and the Complainant, who was not at fault, is penalized. Such an outcome is blatantly unfair.

Third, applying G.S. 62-132 to this case does not serve the public good that fostered statutes of limitations in the first place. The underlying purpose of a statute of limitations is to require claims to be brought promptly while the evidence is still fresh. Statutes of limitations "'promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. . .'" Burnett v. Railroad Co., 380 U.S. 424, 13 L.Ed. 2d 941, 85 S. Ct. 1050, 1054 (1965). In this case it is undisputed that the Complainant did not become aware of this claim until November 1986. Blue Ridge filed the claim with the Public Staff in May 1987 and with the Commission in January

1988. The Complainant has acted promptly. The policy underlying limitation of actions is not served by applying G.S. 62-132 herein.

The "Recommended Order Awarding Refund" cites State ex rel. Utilities Commission v. Railway Co., 249 N.C. 477 (1959) in support of its decision on the statute of limitations issue. That case did not deal with the same fact situation presented herein, and that case does not even discuss the distinction between established rates and allowed rates which I believe to be crucial in applying G.S. 62-132. I do not find the Railway Co. case determinative herein.

A statute of limitations should not be applied to a case not clearly within its provisions. Any doubt should be resolved in favor of the claimant. See Fishing Pier v. Town of Carolina Beach, 274 N.C. 362 (1968). I therefore dissent from the application of G.S. 62-132 to this case.

Ruth E. Cook, Commissioner

DOCKET NO. G-9, SUB 272

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Earl Dunn, Upholstery Prints, (a Division of Culp, Inc.) Post Office Box 1356, Burlington, North Carolina, Complainant v. Piedmont Natural Gas Company, Post Office Box 33068, Charlotte, North Carolina, Respondent	)	ORDER AWARDING REFUND

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 13, 1988

BEFORE: Commissioner Julius A. Wright, Presiding; Commissioners Edward B. Hipp and William W. Redman, Jr.

APPEARANCES:

For the Complainant:

A. Ward McKeithen, Robinson, Bradshaw & Hinson, P.A., 1900 Independence Center, Charlotte, North Carolina 28246

For the Respondent:

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

For the Public Staff:

Robert B. Cauthen, Jr. and David T. Drooz, Staff Attorneys, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: This docket was opened September 1, 1987, when the Commission issued its Order Serving Complaint. Attached to the Order were two letters from Earl Dunn of Upholstery Prints to Craig Stevens of the Consumer Services Division of the Public Staff-North Carolina Utilities Commission. The letters allege, in essence, that since September 1, 1982, Piedmont Natural Gas Company ("Piedmont") charged the Upholstery Prints plant at Burlington under its Rate Schedule 102 when it should have charged under Rate Schedule 103.

On September 28, 1987, the Commission issued its Order Serving Answer. Attached to this Order was the Answer filed by Piedmont on September 22, 1987. The Answer denies the material allegations of the complaint and alleges that the plant received service under the proper rate schedule.

On October 20, 1987, the Complainant filed a Response to Piedmont's Answer. The Complainant stated that although the Answer was not completely satisfactory, he did not request a public hearing at that time. He did request, however, that the Commission keep the docket open for six months so that he could monitor the matter. On October 28, 1987, the Commission issued its Order Keeping Docket Open for Six Months.

On March 17, 1988, the Complainant filed a Reply to Piedmont's Answer which contained a request for a public hearing. This Reply also contained certain discovery requests with respect to other customers served by Piedmont. On March 24, 1988, Piedmont filed its objections to the discovery requests. Among other things, Piedmont objected because the requests would require Piedmont to disclose customer names and other confidential information. On April 4, 1988, the Complainant filed a response to the Piedmont objections in which it offered to accept the information requested without the identification or disclosure of customer names. On May 19, 1988, the Commission entered its Order on Discovery Request, which ordered Piedmont to provide the information sought by the Complainant "provided, however, that in providing such information Piedmont shall be authorized to delete the names of the specific customers being serviced."

A public hearing on the complaint was scheduled by Commission Orders of July 19, 1988, and August 5, 1988.

On August 30, 1988, the Complainant prefiled the testimony of his two witnesses: P. Lee Hatcher, Jr., president of LH Utility & Transportation Services, Inc., and Franklin N. Saxon, vice-president of Culp, Inc. The Complainant also prefiled a list of nine exhibits with copies attached. On September 7, 1988, Piedmont prefiled the testimony of its witness: Ware F. Schiefer, Piedmont's senior vice-president for gas supply and transportation. At the same time, Piedmont prefiled its list of three exhibits with copies attached. On September 10, 1988, the parties filed a set of ten stipulations for use in this proceeding.

The hearing was held as scheduled on September 13, 1988. Witness Hatcher and Saxon testified for the Complainant. Ware Schiefer testified for Piedmont. Both parties submitted exhibits. At the conclusion of the hearing, the Commission ordered the parties to submit briefs and proposed orders and the hearing was adjourned.

On November 4, 1988, Complainant Dunn filed an affidavit in response to the argument in Piedmont's brief that the Commission should draw a negative inference from his failure to testify.

Based upon the pleadings, the testimony, the exhibits received into evidence at the hearing and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Culp, Inc., is a corporation engaged in the manufacturing and selling of upholstery fabrics and other textile products. It operates the Upholstery Prints plant in Burlington, North Carolina. The Complainant Earl Dunn is the plant manager of the Upholstery Prints plant.

2. Piedmont is a New York corporation doing business in North Carolina as a franchised public utility providing natural gas service. Piedmont provides natural gas public utility service to the Complainant. Piedmont is properly before this Commission pursuant to G.S. 62-73.

3. Piedmont provides natural gas service to its customers in North Carolina under four basic rate schedules.

Rate Schedule 102 is available for service as follows:

> to commercial users (including churches regularly used for religious worship) classified by the Company in North Carolina Utilities Commission's curtailment priorities 1 through 2.4 and to industrial users with peak day requirements less than 50 dekatherms per day classified in Priority 2. Although prolonged interruption or curtailment of service is not anticipated, it may be required by the Company when supply of gas to higher priority customers is threatened.

Rate Schedule 103 is available for service as follows:

> to all industrial customers using gas in excess of 50 dekatherms per day classified by the Company in North Carolina Utilities Commission priority 2 when such gas is used for industrial process, feedstock or plant protection as defined by the North Carolina Utilities Commission in Rule R1-19.2. Service may be interrupted or curtailed on one hour's notice when the supply of gas to higher priority customers is threatened. . . . . Customers receiving service under this rate schedule shall have complete standby fuel and equipment available or give a written statement to the Company that gas curtailment, interruption or discontinuance will not cause undue hardship.

4. Commission Rule R6-19.2 deals with the priorities for curtailment of service in the event the total volume of natural gas available to a natural gas public utility such as Piedmont is insufficient to supply the demands of all utility customers.

Priority 2.1 is for "industrial less than 50 Mcf/day."

Priority 2.5, which is a lower priority of service, is for "industrial process, feedstock and plant protection between 50 and 300 Mcf/day, with no alternate fuel capability."

5. Section (f) of Commission Rule R6-19.2, as it was written at the time involved in this case, required natural gas public utilities such as Piedmont to review each customer's consumption for the prior 12 months during July and August of each year and to automatically reclassify a customer to a lower priority as of September 1 if it found that the customer had increased his consumption to the point it would place him in a lower priority during any two months.

Piedmont conducted the annual review of customers' consumption as required by Commission Rule R6-19.2(f).

6. The Upholstery Prints plant uses natural gas in its industrial process to dry printed fabric. Piedmont began supplying natural gas to the Upholstery Prints plant in June, 1980. At that time, Upholstery Prints' consumption of natural gas was less than 50 dekatherms per day. Upholstery Prints was assigned to Rate Schedule 102 and curtailment priority 2.1.

7. Upholstery Prints' consumption of natural gas increased. From and after March 1982, its consumption exceeded an average of 50 dekatherms per day.

8. The Upholstery Prints plant does not have standby fuel or standby fuel equipment and does not have alternate fuel capability. Plant personnel have never given Piedmont a written statement, as provided in Rate Schedule 103, to the effect that curtailment, interruption, or discontinuance of natural gas will not cause undue hardship.

9. Before and after September 1982, Piedmont had a number of North Carolina industrial customers using gas for industrial process purposes with consumptions in excess of 50 dekatherms per day who had no standby fuel or equipment and who had not provided a written statement to the effect that gas curtailment, interruption, or discontinuance would not cause undue hardship but who, nonetheless, were billed on Rate Schedule 103. Piedmont has no record of any industrial customer on Rate Schedule 103 having ever provided it with a written "no undue hardship" statement regarding curtailment.

10. Effective November 30, 1986, Piedmont changed the Upholstery Prints' account from Rate Schedule 102 to Rate Schedule 103.

11. Complainant Earl Dunn wrote a letter to Craig Stevens of the Consumer Services Division of the Public Staff-North Carolina Utilities Commission that was received by the Consumer Services Division on April 8, 1987. By this letter, the Complainant asserted that the Upholstery Prints' account should have been changed from Rate Schedule 102 to Rate Schedule 103 as of September

1, 1982, and that Upholstery Prints was due a refund based upon the difference between what it had paid since that date on Rate Schedule 102 and what it would have paid if billed on Rate Schedule 103. The Complainant wrote this letter "to register our complaint with Piedmont Natural Gas Company and to solicit your help in obtaining a proper settlement for our Upholstery Prints plant . . ."

12. Further letters were written by the Complainants, Piedmont, and Mr. Stevens of the Consumer Services Division. When it appeared that no settlement could be reached, the Complainant wrote a letter to Mr. Stevens asking that the matter be treated as a formal complaint. This letter was filed with the Commission's Chief Clerk on September 1, 1987.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The findings of fact are based upon the testimony of witnesses Hatcher, Saxon, and Schiefer, upon the stipulations filed by the parties on the day of the hearing, and upon the Commission's own records. The essential facts are uncontroverted.

Witness Hatcher, an independent consultant, testified that he had studied the gas usage of the Upholstery Prints plant and that in his opinion Piedmont overcharged the plant's account from September 1982 through November 1986 "because all during that time Upholstery Prints was entitled to the lower 103 rate based on its usage, the Piedmont rate schedules, the Commission's Rule R6-19.2, and Piedmont's treatment in the charging of other similar customers." He testified that Piedmont had charged other industrial customers on Rate Schedule 103 even though these customers did not have standby fuel capability and had not provided "no undue hardship" statements and that he knew this based upon his own knowledge of some of these customers and based upon Piedmont's answers to interrogatories. He testified that Piedmont had not discussed Rate Schedule 103 or the situation of other Rate Schedule 103 industrial customers with the Complainant but "that in the spring of 1986 Piedmont's propane division did try to sell Upholstery Prints a standby propane system . . ." He testified that Complainant first discovered the overcharge in late November or December 1986.

Witness Saxon testified that to the best of his knowledge Piedmont had never advised that the plant could get a lower rate if it provided a "no undue hardship" statement and Piedmont never advised that other industrial customers in the same posture as this plant were being charged the lower Rate Schedule 103. Witness Saxon testified that if gas service to the plant were curtailed, the finishing process (which employs about 40 of the 250 people at the plant) could be done at other plants and that he hoped there would be no loss of revenue. He testified on cross-examination that he was under the impression that the plant was getting the lowest possible rate because "a utility is someone you trust to tell you--you think they are operating in your best interest . . . --Culp is in the textile business and we are not able to have a staff of utility experts to be sure we are being charged the correct rates." He testified that Piedmont had never assisted the plant in selecting the most economical rate, that Piedmont had changed the plant from Rate Schedule 102 to Rate Schedule 103 in November 1986 without any notice, and that the plant discovered the rate change on its own after noticing that the monthly bill was "a couple thousand dollars less."

Complainant Dunn's affidavit was to the effect that his testimony would have been completely supportive and that he did not testify because of his work at the plant.

Piedmont Witness Schiefer conceded that the plant did not fit Rate Schedule 102 after March 1982, but he stated that it didn't fit Rate Schedule 103 either. He testified that there has never been a direct correlation between Piedmont's rate schedules and the Commission's curtailment priorities, that Piedmont tried to make the "best fit" in assigning new customers to rate schedules and priorities, but that it could not ensure that the best fit was maintained. With respect to the Rate Schedule 103 industrial customers who do not have standby fuel and have not given "no undue hardship" statements, he explained that there were 18 such customers as early as 1979 and that they were "grandfathered" onto Rate Schedule 103. He stated that others may have once had standby fuel capability but have taken it out or allowed it to deteriorate. He testified that prior to 1984 Piedmont put one large new industrial customer on Rate Schedule 103 at the urging of the Governor even though the customer did not qualify for that rate schedule. He conceded that as of June 1988 Piedmont had 34 North Carolina customers on Rate Schedule 103 that did not have standby fuel and had not given "no undue hardship" statements. He testified that Piedmont reviewed the consumption of the Upholstery Prints plant annually but that it did not reassign the plant's priority or change the plant's rate schedule because "the standby fuel requirement was not satisfied." He testified that he decided to change the plant to Rate Schedule 103 in 1986 because he estimated that the Company had sufficient supply to avoid curtailing the plant. He did not know whether Piedmont had notified the plant of the change at that time. With respect to notifying customers of the best rate schedule for them, witness Schiefer cited the notice given by Piedmont in connection with rate cases, and Piedmont's counsel argued that such notice would put customers "on notice that there was more than one rate schedule in existence and if they had some question or inquiry about whether it was a proper one for them to be on or not, they could have made it."

The Complainant essentially contends that the Upholstery Prints plant has not fitted on Rate Schedule 102 since March 1982 since its consumption of natural gas has exceeded the maximum level cited in that rate schedule and that Piedmont, pursuant to its annual review of customers' consumption levels under Commission Rule R6-19.2, should have assigned it to Rate Schedule 103 as of September 1, 1982. Complainant concedes that Rate Schedule 103 provides for customers receiving service thereunder to have complete standby fuel and equipment available or to give a written "no undue hardship" statement concerning curtailment and Complainant concedes that the plant does not have such standby fuel and equipment and has not given such a statement. Nonetheless, the Complainant argues that Piedmont has simply not enforced this provision of Rate Schedule 103 as to other customers and that Piedmont cannot use this provision as grounds for denying Rate Schedule 103 to the Complainant's plant. The Complainant contends that a refund is due for the entire period of time from September 1, 1982, until November 30, 1986, when Piedmont in fact changed the Complainant's account to Rate Schedule 103.

Piedmont, on the other hand, contends that it was not obligated to assign the Complainant to Rate Schedule 103 because the Complainant did not meet all of the requirements of that rate schedule. Piedmont argues that it has always made diligent and reasonable efforts to assign each customer to the most

appropriate rate schedule and that it has not discriminated in its application of Rate Schedule 103. Alternatively, should the Commission find the Complainant entitled to some refund, Piedmont argues that the applicable statute of limitations bars much of the claim.

The parties agree that Complainant was properly assigned to Rate Schedule 102 when service began in 1980. Rate Schedule 102 is for service "to industrial users with peak day requirements less than 50 dekatherms per day classified in Priority 2." However, by 1982 the Complainant's consumption exceeded an average of 50 dekatherms per day. Piedmont can clearly be charged with knowledge of the Complainant's increased consumption since Rule R6-19.2(f) required it to review each customer's consumption during the summer of each year and to reclassify the priority of customers who had increased consumption to the point of placing them in a lower priority. The priorities, like the rate schedules, cite daily usage as one of their criteria. Although we agree with Piedmont that this Rule did not by its own terms require reassignment of customers to appropriate rate schedules in 1982,[1] the true significance of this Rule is in the fact that it required Piedmont to review the Complainant's consumption, that Piedmont did so, and that the Complainant's level of consumption was above the maximum level cited in Rate Schedule 102.[2] Thus, by the summer of 1982, Piedmont can be charged with knowledge that Complainant's plant no longer fitted the criteria of Rate Schedule 102. Witness Schiefer conceded that the plant did not fit Rate Schedule 102.

Despite this knowledge, Piedmont kept Complainant's account on Rate Schedule 102 and did not contact the Complainant to advise it of the situation or discuss the appropriate rate schedule. Had Piedmont done so, the Complainant could have considered at that time whether it wished to install standby fuel and equipment or to give the "no undue hardship" statement required by Rate

---

1 Rule R6-19.2 has recently been rewritten to require gas utilities to reassign customers to the appropriate rate schedule if a change is justified by the review of consumption, but the Rule referred only to reclassification of curtailment priorities and did not refer to reassignment of rate schedules as it was written at the time involved herein.

2 Although the Rule required reclassification of the priority of customers who had increased consumption to the point of placing them in a lower priority, Piedmont did not reclassify the Upholstery Prints plant from priority 2.1 to priority 2.5, as the plant's increased consumption indicated in 1982. Witness Schiefer testified that priority 2.5 requires alternate fuel capability, citing this Commission's Order of January 3, 1978, in Docket No. G-100, Sub 21. Although the Commission is primarily concerned with whether the Complainant's rate schedule should have been changed, we note that priority 2.5, as defined in Commission Rule R6-19.2, is for customers with "no alternate fuel capability." The 1978 Order cited by witness Schiefer deals with connection of new customers, not to reclassification of existing customers' priorities; the Order was issued to deal with a severe gas shortage, a situation that does not exist today and has not for some time; and, in any event, Complainant's Exhibit 5 reveals numerous customers in priority 2.5 who, to Piedmont's knowledge, do not have alternate fuel capability.

Schedule 103. We cannot know what the Complainant would have done at that time, but the important point is that the Complainant trusted Piedmont and that Piedmont decided to keep the account on Rate Schedule 102 without even contacting the Complainant. Piedmont cannot excuse itself by citing the notices given to customers in connection with general rate cases since these notices address proposed rate changes and are not intended to apprise customers of the details of the various rate schedules' applicability provisions.

Without either standby fuel or a "no undue hardship" statement from the Complainant, Piedmont argues that the "best fit" for the Complainant's plant was Rate Schedule 102. We cannot agree. The Complainant's plant clearly did not come within the scope of the "Applicability and Character of Service" section of Rate Schedule 102. It clearly did come within the applicability section of Rate Schedule 103 since it was an industrial customer "using gas in excess of 50 dekatherms per day classified by the Company in North Carolina Utilities Commission priority 2 when such gas is used for industrial process, feedstock or plant protection. . . " Although the plant did not meet the separate "Standby Fuel Capability" section of Rate Schedule 103, the Commission does not believe that this justifies Piedmont's action. It is clear from the testimony and exhibits that for many years a substantial percentage of Piedmont's Rate Schedule 103 customers have not had standby fuel and have not given "no undue hardship" statements. Witness Schiefer did not have any record of any customer having ever provided a "no undue hardship" statement. As to standby fuel, the Complainant's Exhibit 5, which is data provided by Piedmont, reveals 34 Rate Schedule 103 customers without standby fuel based upon Piedmont's knowledge of its customers at the time the Exhibt was prepared. Schiefer testified that 18 of these had been "grandfathered" and that one had been given this rate schedule at the urging of the Governor. As to the others, Schiefer explained that they may have once had standby fuel but have taken it out or allowed it to deteriorate, in which event "we considered them not having alternate fuel anymore." Yet, even with knowledge that these customers did not meet the "Standby Fuel Capability" section of Rate Schedule 103 (the very reason Piedmont denied Rate Schedule 103 to the Complainant), Piedmont charged these customers on Rate Schedule 103. The evidence therefore shows that Piedmont has not consistently enforced the "Standby Fuel Capability" section of Rate Schedule 103. This conclusion is further bolstered by the fact that Piedmont changed the Complainant to Rate Schedule 103 in November 1986 without any change on the Complainant's part as to the "Standby Fuel Capability" requirements. The Complainant's plant no more met these requirements in November 1986, when Piedmont changed the account to Rate Schedule 103, than it did in September 1982, when Piedmont found these requirements sufficient to deny Rate Schedule 103 to the Complainant.

It was testified that there has never been a perfect fit between the Commission's curtailment priorities and Piedmont's rate schedules with respect to standby fuel capability. However, more to the point of this case, there was not at the time involved herein a perfect fit between Piedmont's four basic rate schedules, taken as a whole, and Piedmont's customers. Witness Schiefer conceded that the Complainant's plant did not fit on any of Piedmont's rate schedules. He testified that certain non-qualifying customers were

"grandfathered" onto Rate Schedule 103 because Piedmont "had no other place to put them." [3]

Since Piedmont did not even discuss the provisions of Rate Schedule 103 with the Complainant, since Piedmont has not consistently enforced the "Standby Fuel Capability" requirements as to all other Rate Schedule 103 customers, since there has never been a perfect fit between curtailment priorities and rate schedules with respect to standby fuel capability, and since Piedmont's four rate schedules, strictly applied, did not cover all of its customers, the Commission concludes that the Complainant herein is entitled to relief. The Commission concludes that even without standby fuel or a "no undue hardship" statement, the "best fit" for the Complainant's plant was on Rate Schedule 103 as of September 1, 1982, that denial of this rate schedule was unjust, and that an appropriate refund should be made.

The amount of refund depends upon the parties' arguments as to the appropriate statute of limitations. Piedmont did not specifically plead the statute of limitations as a defense, as required in civil actions by G.S. 1A-1, Rule 8(c). However, procedure before the Utilities Commission is less formal. Great liberality is indulged in pleadings, and the technical and strict rules of pleading applicable in ordinary court proceedings do not apply. State ex rel. Utilities Commission v. Carolinas Committee for Industrial Power Rates and Area Development, Inc., 257 N.C. 560 (1962); Commission Rule R1-5(e). Substance, not form, is controlling. Id. The Complainant argues that the applicable statute is G.S. 1-52(9); Piedmont contends that the applicable statute is G.S. 62-132. G.S. 1-52(9) deals with claims based upon fraud or mistake. It is a part of G.S. Chapter 1, Subchapter II, which deals with limitations for civil actions. G.S. 62-132, on the other hand, speaks specifically of refunds to utility customers who have been charged rates which are "other than the rates established by the Commission" and which are "unjust, unreasonable, discriminatory or preferential." G.S. 62-132 is a part of G.S. Chapter 62, which deals specifically with the powers and procedures of the Utilities Commission. Furthermore, G.S. 1-15(a) provides that the limitations set forth in G.S. Chapter 1, Subchapter II, shall apply "except where in special cases a different limitation is prescribed by statute." See also G.S. 1-52(2). The Commission concludes that the provisions of G.S. 62-132 are applicable to this case. The Commission has already found that the charges collected by Piedmont were "other than the rates established by the Commission" for this Complainant's situation, see State ex rel. Utilities Commission v. Norfolk S. Ry., 249 N.C. 477 (1959), and that these charges were "unjust, unreasonable, discriminatory, or preferential." G.S. 62-132 therefore authorizes the Commission to award the difference between the charges collected and the charges that should have been collected "to the extent that such rates or charges were collected within two years prior to the filing of such

---

3 The Commission notes that this situation has improved with the recent deletion of the "Standby Fuel Capability" section from Rate Schedule 103. See the Commission's Recommended Order of December 5, 1988, in Docket No. G-9, Sub 278. Rate Schedule 103 is still subject to curtailment; the customer must decide whether it is worthwhile to install standby fuel capability.

petition." (Emphasis added). We must therefore consider when the "petition" herein was filed.

As found above, the Complainant Earl Dunn wrote a letter to Craig Stevens of the Consumer Services Division of the Public Staff-North Carolina Utilities Commission that was received on April 8, 1987. By this letter, the Complainant stated the substance of his complaint in detail and requested as relief a refund based upon the difference between Rate Schedules 102 and 103 for the time period involved. The Consumer Services Division, as is their practice, contacted both the Complainant and the utility in an effort to resolve the dispute informally. When it appeared that no settlement could be reached, the Complainant filed a letter with the Commission's Chief Clerk on September 1, 1987, asking that the matter be treated as a formal complaint. The Commission concludes that the letter of April 8, 1987, was in sufficient detail to constitute a complaint and that for purposes of applying G.S. 62-132, the "petition" should be regarded as having been filed on April 8, 1987. Use of the September date would deny the Complainant the benefit of a refund related to the five-month period from April to September during which he had registered his complaint with the Consumer Services Division of the Public Staff and the Consumer Services Division was trying to resolve the dispute. It would be unfair to this Complainant to deny him the benefit of that time period, and future complainants seeking a refund would be discouraged from working with the Consumer Services Division at all. The Commission recognizes the valuable services provided to the using and consuming public, to the utilities and to the Commission itself by the Consumer Services Division. It is often able to resolve disputes without the time or expense or inconvenience of formal proceedings. The Commission does not wish to discourage consumers for availing themselves of this informal approach. The Commission therefore concludes that the Complainant is entitled under G.S. 62-132 to a refund as hereinabove described for the two-year period prior to April 8, 1987. Since the Complainant's plant was in fact assigned to Rate Schedule 103 on November 30, 1986, the applicable period for refund is April 8, 1985, until November 30, 1986.

The refund for this time period can be approximated from Schiefer Exhibit 3. The Complainant has asked, and the Commission finds it appropriate to order, that the refund be subject to interest at the annual rate of 10% pursuant to the provisions of G.S. 62-130(e). The Commission will direct Piedmont to calculate the amount of refund and interest required by this Order, and the Commission will request the Public Staff to review and confirm the calculation.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont should be, and hereby is, required to make a refund to the Complainant's Upholstery Prints plant based upon the difference between the charges to the plant under Rate Schedule 102 and the charges that would have been made under Rate Schedule 103 from April 8, 1985, until November 30, 1986, plus interest as hereinabove provided; and

2. That Piedmont shall calculate the amount of the refund and interest, shall serve its calculation on the Complainant and the Public Staff within one week from the effective date of this Order, and shall file its calculation with the Commission following confirmation of the calculation by the Public Staff.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of January 1989.

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

DOCKET NO. G-9, SUB 272

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Earl Dunn, Upholstery Prints (a Division of Culp, Inc.), Post Office Box 1356, Burlington, North Carolina, Complainant v. Piedmont Natural Gas Company, Post Office Box 33068, Charlotte, North Carolina, Respondent	)	ORDER DENYING RECONSIDERATION, OVERRULING EXCEPTIONS AND APPROVING CALCULATION OF REFUND

HEARD ON: Monday, March 6, 1989, at 2:00 p.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chairman Robert O. Wells, Presiding; and Commissioners Edward B. Hipp, Ruth E. Cook, Julius A. Wright, and William W. Redman

APPEARANCES:

For the Complainant:

A. Ward McKeithen, Robinson, Bradshaw & Hinson, P.A., 1900 Independence Center, Charlotte, North Carolina 28246

For the Respondent:

Jerry W. Amos and Reid L. Phillips, Brooks, Pierce, McLendon, Humphrey & Leonard, Post Office Drawer U, Greensboro, North Carolina 27402

For the Using and Consuming Public:

David Drooz, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On January 26, 1989, the Commission Panel consisting of Commissioners Wright, Hipp, and Redman entered its Order Awarding Refund in the above-captioned complaint proceeding. The Order required Piedmont to make a refund to the Complainant and provided for Piedmont to calculate the amount of the refund and interest and to file the calculation with the Commission following confirmation of the calculation by the Public Staff. The refund was to be based upon the difference between the charges to the Complainant under Rate Schedule 102 and the charges that would have been made under Rate Schedule 103 from April 8, 1985, until November 30, 1986, plus interest.

On February 8, 1989, the Public Staff filed its Motion for Reconsideration asking the Commission to reconsider its decision with respect to the statute of limitations issue.

On February 14, 1989, Piedmont filed its initial calculation of the refund and interest due under the Commission's Order.

On February 14, 1989, Complainant filed its Motion for Reconsideration also asking the Commission to reconsider its decision with respect to the applicable statute of limitations. On that same date, the Complainant filed a Response dealing with Piedmont's calculation of the refund and interest.

On February 17, 1989, Piedmont filed its Opposition to the Public Staff's Motion for Reconsideration, and on February 20, 1989, Piedmont filed its Opposition to the Complainant's Motion for Reconsideration. Further, on February 20, 1989, Piedmont filed Exceptions and Motions, by which Piedmont took exception to various aspects of the Commission's Order and moved the Commission to (1) suspend the Order, (2) schedule a re-hearing or argument before the Full Commission, and (3) extend the time for notice of appeal. Finally, on February 20, 1989, Piedmont filed its final calculation of the refund and interest due under the Commission's Order.

On the basis of the filings, the Commission entered an Order on February 22, 1989, scheduling oral argument before the Full Commission to consider the Motions for Reconsideration filed by the Public Staff and the Complainant, the Exceptions filed by Piedmont and the appropriate calculation of the refund and interest. The Commission's Order also granted a 30-day extension of time for the filing of notices of appeal and stayed the Commission's Order Awarding Refund pending further Order.

The oral argument was held as scheduled before the Full Commission at the time and place indicated above. The Complainant, the Respondent, and the Public Staff each appeared through counsel and presented oral argument. The Commission took the matter under advisement.

The Commission has considered the Order Awarding Refund issued by the Commission Panel on January 26, 1989, the oral argument of all parties, and the entire record in this proceeding. On the basis thereof, the Commission finds and concludes that the Order Awarding Refund should be reaffirmed in all respects. Reconsideration should be, and hereby is, denied and the Exceptions filed by Piedmont should be, and hereby are, overruled.

One additional issue has been presented for consideration, the appropriate calculation of the refund and interest required by the Order Awarding Refund.

Piedmont was required to calculate the amount of refund and interest, to serve its calculation on the Complainant and the Public Staff, and to file its calculation with the Commission following confirmation of it by the Public Staff. Piedmont's initial calculation indicated a refund of $39,325.82 and interest of an additional $7,891.10. The Public Staff did not agree with this calculation. The Public Staff confirmed a lower amount of refund and a higher amount of interest, which Piedmont accepted and filed with the Commission on February 20, 1989. This filing provides for a refund of $29,680.11 and interest of an additional $8,992.42. These total $38,672.53, as shown by the correction of the total filed by Piedmont on February 22, 1989. At the oral argument, Complainant noted that Piedmont had earlier stipulated that the difference between charges calculated on Rate Schedule 102 and on Rate Schedule 103 was $37,599.22, excluding interest, for the period of April 1, 1985, through November 30, 1986, which is almost the same period for which the Commission ordered a refund. Piedmont took the position that its stipulation had been based on an incorrect calculation and that the $29,680.11 principal and the $8,992.42 interest are based on the correct calculation and should be adopted by the Commission. Complainant asked the Commission to do what is fair regarding the stipulation.

It appears undisputed that the calculation of principal and interest filed with the Commission on February 20, 1989, which correctly totals $38,672.53, is correct. Although Piedmont had earlier entered a stipulation which provided for a higher amount of principal based on approximately the same refund period ordered by the Commission, that stipulation was based upon an incorrect calculation. The Commission finds goods cause to excuse Piedmont from its stipulation and to order an award of principal and interest[1] based upon the correct calculation as filed with the Commission on February 20, 1989.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motions for Reconsideration filed by the Public Staff and the Complainant should be, and hereby are, denied and the Exceptions filed by Piedmont should be, and hereby are, overruled; and

2. That the calculation of refund principal and interest filed with the Commission on February 20, 1989, should be, and hereby is, approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of March 1989.

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

Commissioner Sarah Lindsay Tate did not participate in this decision.
Commissioner Ruth E. Cook concurs in part and dissents in part by separate opinion.

---

1 All of the calculations of interest cited herein are through February 1989. Interest pursuant to G.S. 62-130(e) continues to accrue.

COMMISSIONER RUTH E. COOK, CONCURRING IN PART AND DISSENTING IN PART:

I concur in the findings and reasoning by which the Commission concludes that the Complainant's plant was entitled to Rate Schedule 103 as of September 1982, that denial of this Rate Schedule was unjust, and that Piedmont should make an appropriate refund. The amount of that refund depends upon the applicable statute of limitations. The Order Awarding Refund holds that the applicable statute is G. S. 62-132 and, by applying that statute, that the appropriate period for refund is April 8, 1985, until November 30, 1986. I dissent from this aspect of the Order.

I believe that the applicable statute of limitations is the three-year period provided in G.S. 1-52(2), which deals with a claim created by statute for which no other limitation period is provided in the statute creating the claim. See also G.S. 1-15(a). I also believe that G.S. 1-52(9), which provides that a claim based on mistake does not accrue until the claimant discovers the facts constituting the mistake, is applicable. Applying these two statutes, I conclude that the Complainant's claim accrued in November or December 1986, that he had three years thereafter within which to institute his action, that his action was timely, and that no part of the Complainant's claim is barred.[2] I would allow the Complainant to recover the full amount of the overcharge for the period from September 1, 1982, until November 30, 1986.

I do not believe that G.S. 62-132 applies to this case by its own language. This case deals with established rates; G.S. 62-132 deals with "other than" established rates. The statute provides that

> if the Commission shall find the rates or charges collected to be other than the rates established by the Commission, and to be unjust, unreasonable, discriminatory or preferential, the Commission may enter an order awarding such petitioner and all other persons in the same class a sum equal to the difference between such unjust, unreasonable, discriminatory or preferential rates or charges and the rates or charges found by the Commission to be just and reasonable, nondiscriminatory and nonpreferential, to the extent that such rates or charges were collected within two years prior to the filing of such petition. (Emphasis added.)

The statute, by its own language, applies to claims premised upon rates other than the rates "established" by the Commission. The statute is clearly dealing with the dichotomy between established rates and allowed rates as discussed by the Supreme Court in State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327 (1976). Justice Exum (now Chief Justice) wrote as follows:

---

2 Even if G.S. 1-52(9) is held inapplicable, the three-year statute of limitations in G.S. 1-52(2) would allow the Complainant to go back three years from his April 1987 filing with the Public Staff. The appropriate period for refund would therefore be April 8, 1984, until November 30, 1986, which is still preferable to the refund period in the Order Awarding Refund.

> There is moreover in Article 7 a clear statutory dichotomy between rates which are made, fixed or established by the Commission on the one hand and those which are simply permitted or allowed to go into effect at the instance of the utility on the other. Rates which are established by the Commission, that is after a full hearing, findings, conclusions, and a formal order. . . "shall be deemed just and reasonable, and any rate charged by any public utility different from those so established shall be deemed unjust and unreasonable." G.S. 62-132. Rates which the Commission simply allows to go into effect by any of the three methods described [in G.S. 62-134 and G.S. 62-135] are subject to being challenged by interested parties or the Commission itself and after a "hearing thereon, if the Commission shall find the rates or charges collected to be other than the rates established by the Commission, and to be unjust, unreasonable, discriminatory or preferential, the Commission may" order refund pursuant to the provisions of G.S. 62-132.

Id. at 352. Thus, G.S. 62-132 is intended to apply where (1) allowed rates have been charged and (2) the allowed rates have been found to be unjust, unreasonable, discriminatory or preferential. Such is not the case here. The rates involved in this claim were established by the Commission in Piedmont's last preceding general rate case. They are established rates, not allowed rates, and thus G.S. 62-132 by its own language does not apply to the Complainant's claim.

Second, I believe it is unfair to apply G.S. 62-132 to this case because it tends to reward the party who was at fault and to penalize the party who was not at fault. The Commission draws several conclusions as to why a refund is appropriate. It concludes that Piedmont knew that the Complainant's plant did not fit on Rate Schedule 102, that it continued to charge the Complainant on Rate Schedule 102 despite this knowledge, and that it did not even contact the Complainant to discuss the matter. The Commission further concludes that Piedmont did not consistently enforce the "Standby Fuel Capability" requirement of Rate Schedule 103 either as to the Complainant or as to other customers. Finally, the Commission concludes that Piedmont's rate schedules did not cover all of its customers. Piedmont had customers who did not fit on any rate schedule. I agree with these conclusions. These conclusions all point to liability on the part of Piedmont. The Commission has found no fault on the part of the Complainant. Yet the Commission goes on to apply a statute of limitations that gives Complainant's plant less than half of the money to which it would otherwise be entitled. Piedmont gets to keep the rest. Piedmont, who was responsible for the overcharge, is rewarded and the Complainant, who was not at fault, is penalized. Such an outcome is blatantly unfair.

Third, applying G.S. 62-132 to this case does not serve the public good that fostered statutes of limitations in the first place. The underlying purpose of a statute of limitations is to require claims to be brought promptly while the evidence is still fresh. Statutes of limitations "'promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. . .'" Burnett v. Railroad Co., 380 U.S. 424, 13 L.Ed. 2d 941, 85 S. Ct. 1050, 1054 (1965). In this case it is undisputed that the Complainant did not become aware of this claim until November or December 1986. He filed the claim with the Public Staff in April 1987 and with the Commission in

September 1987. The Complainant has acted promptly. The policy underlying limitation of actions is not served by applying G.S. 62-132 herein.

The Order Awarding Refund cites State ex rel. Utilities Commission v. Railway Co., 249 N.C. 477 (1959) in support of its decision on the statute of limitations issue. That case did not deal with the same fact situation presented herein, and that case does not even discuss the distinction between established rates and allowed rates which I believe to be crucial in applying G.S. 62-132. I do not find the Railways Co. case determinative herein.

A statute of limitations should not be applied to a case not clearly within its provisions. Any doubt should be resolved in favor of the claimant. See Fishing Pier v. Town of Carolina Beach, 274 N.C. 362 (1968). I therefore dissent from the application of G.S. 62-132 to this case.

Ruth E. Cook, Commissioner

DOCKET NO. G-5, SUB 246
DOCKET NO. G-5, SUB 247

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Public Service Company of North Carolina, Inc., for an Adjustment of Its Rates and Charges	))))	ORDER GRANTING INCREASE IN RATES AND CHARGES

HEARD IN: Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina on Monday, July 10, 1989, at 7 p.m.

Council Chambers, City Hall, South Street and Franklin Blvd., Gastonia, North Carolina on Tuesday, July 11, 1989, at 7 p.m.

City Office Building, South Center Street and East Front Street, Statesville, North Carolina on Wednesday, July 12, 1989, at 7 p.m.

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Tuesday, September 5, 1989, at 2 p.m.

BEFORE: Chairman William W. Redman, Jr., Presiding, and Commissioners Ruth E. Cook and Charles H. Hughes

APPEARANCES:

For Public Service Company of North Carolina, Inc.:

F. Kent Burns and James M. Day, Burns, Day & Presnell, Attorneys at Law, Post Office Box 10867, Raleigh, North Carolina 27605

For Carolina Utility Customers Association, Inc.:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605-2547

For the City of Durham:

W. I. Thornton, Jr., City Attorney, City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701

For the Public Staff:

David T. Drooz and Gisele L. Rankin, 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:

Lorinzo L. Joyner 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

BY THE COMMISSION: On April 5, 1989, Public Service Company of North Carolina, Inc. (Public Service or the Company), filed an Application with the North Carolina Utilities Commission (NCUC or Commission) in Docket No. G-5, Sub 246, seeking authority to adjust and increase its rates and charges for natural gas service to its retail customers.

On April 26, 1989, an Order was issued setting this matter for investigation and public hearings to be held in Asheville, Gastonia, Statesville, and Raleigh.

On May 23, 1989, the City of Durham filed a Petition to Intervene. On May 25, 1989, the Commission issued an Order allowing the City of Durham's intervention.

On May 24, 1989, the Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene. On May 26, 1989, the Commission issued an Order allowing CUCA's intervention.

By Order issued August 22, 1989, the Commission ordered that the Company's petition in Docket No. G-5, Sub 247, seeking to adopt an AFUDC rate calculation that is gross-of-tax and to revise the AFUDC rate formula be consolidated with the general rate case for investigation and hearing.

On August 28, 1989, the Attorney General filed Notice of Intervention pursuant to G.S. 62-20 on behalf of the using and consuming public.

Public hearings were held for the specific purpose of receiving testimony from public witnesses as follows:

Asheville: No public witnesses appeared.

Gastonia: Leonel Brunnemer appeared and offered testimony.

Statesville: No public witnesses appeared.

Raleigh: No public witnesses appeared.

The case in chief came on for hearing on September 5, 1989.

Public Service offered the testimony and exhibits of the following witnesses: Charles E. Zeigler, Sr., President, Chief Executive Officer and Chairman of the Board of Directors of the Company; Charles E. Zeigler, Jr., Executive Vice President, Chief Operating Officer and Chief Financial Officer; C. Marshall Dickey, Senior Vice President, Gas Supply and Transportation; Allen J. Schock, Vice President-Regulatory Affairs and Assistant Secretary; Michiel C. McCarty, Managing Director of Dillon, Read & Co., Inc.; Robert S. Jackson;

Senior Vice President of Stone & Webster Management Consultants; and Robert D. Voigt, Vice President-Controller and Assistant Treasurer.

The Public Staff offered the testimony and exhibits of the following witnesses: Kevin W. O'Donnell, Financial Analyst with the Economic Research Division; Jeffrey L. Davis, Public Utilities Engineer with the Natural Gas Division; and Lafayette K. Morgan, Jr., Staff Accountant with the Accounting Division.

Following the hearings, the parties submitted proposed orders and briefs. On October 23, 1989, the Public Staff filed a Response to Misrepresentations arguing that certain misstatements were made in Public Service's proposed order and brief. Public Service responded with a Motion to Strike denying misstatements that was filed on October 27, 1989. The Commission has considered both the Response and the Motion to Strike in the nature of reply briefs.

Based on the foregoing, the verified application, the testimony and exhibits received into evidence at the hearings, the proposed orders submitted by the parties and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Public Service Company of North Carolina, Inc., is a corporation organized under the laws of, and authorized to do business in, the State of North Carolina; it is a franchised public utility providing natural gas service to customers in North Carolina. The Company is properly before the Commission in this proceeding, pursuant to Chapter 62 of the General Statutes of North Carolina, for a determination of the justness and reasonableness of its proposed rates and charges.

2. The test period for purposes of this general rate case is the 12 months ended December 31, 1988.

3. Public Service is providing good natural gas service to its existing customers.

4. The additional gross revenues sought by Public Service under the rates and volumes originally proposed herein by the Company were $8,214,203. On August 31, 1989, the Company updated its rate increase for events occurring subsequent to the test year reflecting changes in its cost of service. The updated request as a result of these changes was for an annual increase of $8,240,760. At the hearing, the Company made further adjustments reducing its requested annual revenue increase to $7,305,057.

5. The proper allowance for working capital is $10,640,103.

6. Public Service's original cost rate base used and useful in providing service to its customers is $203,233,214. This rate base consists of plant-in-service of $319,994,893, plus a working capital allowance of $10,640,103, less accumulated depreciation of $93,657,036, accumulated deferred income taxes of $31,279,107, and cost-free capital of $2,465,639.

7. The reasonable level of annual volumes which Public Service can be expected to deliver in North Carolina under normal weather conditions is 48,131,233 dekatherms.

8. Public Service's operating revenues after appropriate accounting and pro forma adjustments under present rates are $250,416,200.

9. The test period level of Public Service's operating revenue deductions under present rates after accounting and pro forma adjustments is $230,371,484, which includes the amount of $9,777,771, for actual investment currently consumed through reasonable actual depreciation.

10. It is proper to adjust the common equity component of the Company's capital structure in order to remove the effect of net-of-taxes Transcontinental Gas Pipe Line Corporation (Transco) refunds included in the Company's retained earnings.

11. The capital structure which is proper for use in this proceeding is the following:

Item	Percent
Long-term debt	46.42%
Short-term debt	1.25%
Preferred stock	1.62%
Common equity	50.71%
Total	100.00%

12. The proper cost rates for short-term debt, long-term debt, and preferred stock are 9.10%, 9.76%, and 6.02%, respectively. The reasonable rate of return for Public Service to be allowed to earn on common equity is 13.20%. The weighted average cost of capital derived from the reasonable and fair capital structure and cost rates is 11.44%. This rate, when applied to the Company's original cost rate base, will enable Public Service, by sound management, to produce a fair return for its stockholders, to maintain its facilities and service in accordance with customer requirements, and to compete in the capital markets for funds on terms which are fair to customers and existing investors.

13. The Allowance for Funds Used During Construction (AFUDC) rate to be used prospectively by Public Service for purposes of capitalizing the cost of capital associated with its investment in Construction Work in Progress (CWIP) shall be developed in a manner consistent with the methodology set forth herein.

14. Based upon the foregoing, Public Service should increase its annual level of gross revenues under present rates by $5,412,068. The annual revenue requirement approved herein is $255,828,268, which will allow Public Service a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable. The revenue requirement approved herein is based upon the original cost of Public Service's property used and useful in providing service to its customers and its reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

15. A decision on the proper treatment to be accorded excess accumulated deferred income taxes (ADIT) will be deferred pending the receipt of reports to be filed by the Public Staff and/or the Company. The accounting procedures proposed by the Company are approved subject to further consideration by the Commission after receipt of the reports to be submitted by the parties. The reports should be filed on or before June 30, 1990.

16. The Rider D mechanism as employed by the Company is reasonable and should be continued.

17. Equalized rates of return for all rate classes would be unreasonable for this proceeding and would not adequately reflect consideration of value of service, priority of interruptions, and availability of alternative fuels.

18. The rates and rate revisions proposed by the Company are reasonable and appropriate for purposes of this proceeding except as modified herein. The base rates set forth in Appendix A attached hereto are just and reasonable and will generate the level of revenues necessary to provide a reasonable opportunity to achieve the overall rate of return allowed herein. Said base rates approved herein should be adjusted for any Purchased Gas Adjustment (PGA) changes and for any temporary increments or decrements currently in effect.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, AND 4

The evidence for these findings of fact is contained in the verified application, in the Commission's records, the Order Setting Hearing, and the testimony and exhibits of Company witnesses Zeigler, Sr., Dickey, and Schock. These findings of fact are essentially informational, procedural, and jurisdictional in nature, and are generally uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is found in the testimony and exhibits of Public Service witness Schock and Public Staff witness Morgan. The following chart summarizes the working capital allowance presented by both parties:

Item	Company	Public Staff	Difference
Investor supplied working capital	$ 840,902	$ 840,902	$ -
Average materials and supplies	12,813,896	12,071,319	(742,577)
Average customer deposits	(1,595,403)	(1,595,403)	-
Sales tax accruals	(676,715)	(676,715)	-
Cost-free capital	(2,465,639)	(2,465,639)	-
Total working capital allowance	$ 8,917,041	$ 8,174,464	$(742,577)

As shown on the chart above, there is only one area of difference between the parties regarding the proper level of working capital allowance. This difference concerns one part of working capital -- the value of natural gas inventory, which is one component of average materials and supplies. The following chart summarizes the natural gas inventory balances presented by the parties:

Item	Company	Public Staff	Difference
GSS	$3,421,717	$2,679,140	$(742,577)
WSS	281,095	281,095	-
LNG	1,414,999	1,414,999	-
DGS	2,586,104	2,586,104	-
Total	$7,703,915	$6,961,338	$(742,577)

In the Company's initial testimony, the value of gas inventory for General Storage Service (GSS), Washington Storage Service (WSS), and Liquefied Natural Gas Storage Service (LNG) was calculated by applying the February 1, 1989, Transco CD-2 rate of $3.4524 per dekatherm to the average test year volumes in the GSS, WSS, and LNG storage facilities. The Public Staff removed the Company's adjustment which would result in gas inventory being stated at the average actual cost for the test year.

Public Service witness Schock conceded on cross-examination that he agreed with the Public Staff's adjustment as it applied to natural gas stored in facilities other than GSS. However, he indicated that with regard to gas stored in GSS, the CD-2 rate would still be appropriate because, depending on Transco, the Company could be required to inject CD-2 gas into that facility. Witness Schock also indicated that Public Service was pricing all gas injected into GSS at the CD-2 rate, but when asked what it was actually costing Public Service he testified,

> "... it depends on Transco's mood. If they say we can buy gas from somewhere else and put cheaper gas in, we would do it. But we would still put it in inventory at the three forty-five [CD-2 rate]."

Thus, Public Service's position was that they would price GSS gas at the CD-2 rate even if it cost them less.

Public Staff witness Morgan, in his supplemental testimony, stated that valuing inventory at Transco's CD-2 rate had some validity when the volumes injected into storage had to be purchased from Transco. According to witness Morgan, that restriction no longer exists. He also stated that the Company is now purchasing the gas injected into storage on the spot market and that such practice should continue in the future. Witness Morgan testified that his adjustment effectively stated the inventory value at the average cost for the test year.

On cross-examination, witness Morgan stated that in the future gas injected into storage would be at a cost less than the CD-2 rate; therefore, it would be inappropriate to value the GSS inventory at the CD-2 rate. He also indicated that despite the fact that Transco has tariffs for injections, the operating realities would allow the Company to inject spot gas into GSS. Also, current restrictions by Transco are temporary. For example, he stated that the Company could inject spot gas in August and that the CD-2 gas which was injected in September was subject to a clause whereby Transco would refund the difference between the CD-2 rate and a floating rate of $2.50.

The Commission recognizes that the proper value of natural gas inventory must be determined in order for the Company to earn a fair return on its investment. The issue at hand is to consider first what the Company has invested and second, what the Company is going to have to invest in the future. As evidenced by the Company's G-1 minimum filing requirements, natural gas stored in inventory for the test year had an average cost of $2.61/dt, which is $.8424 less than the February 1, 1989, Transco CD-2 rate. The evidence in this proceeding shows that future gas supplies will be purchased on the spot market. The Commission takes judicial notice that the Federal Energy Regulatory Commission (FERC) has recently approved the Transco petition in RP 88-68-000, et al. One result of this approval, which was anticipated by Public Staff witness Morgan, is to allow Public Service to inject third-party gas, which costs less than CD-2 gas, into its storage services, including GSS. Therefore, it is clear that in the future spot gas will continue to be injected into all storage services, including GSS.

The traditional ratemaking practice allows companies to include in working capital the average balances for materials and supplies during the test year. It is proper to do so because the funds which are used to purchase the materials and supplies represent an average level of investment. Consequently, companies are allowed to earn a return on these funds.

In the past, natural gas utilities have been allowed to modify the average materials and supplies balances by restating test year natural gas inventory balances at the end-of-period rate at which gas was being purchased. This modification was justified by three main factors. First, Transco would be the sole supplier of gas. Second, the Transco rate would be the actual rate at which cash would be expended. Finally, the companies were operating in a period in which the price of gas was constantly increasing.

These factors are no longer applicable. The Company is purchasing gas from various suppliers/producers at various rates. With regard to the third factor, the cost per dekatherm fluctuates rather than constantly increases. The fluctuating nature of the price of gas provides credence that average investment during the test year is appropriate. Keeping these factors in mind, no one can predict the cost of future natural gas purchases with any more accuracy than the future cost of other materials and supplies, which has always been valued at average test year cost.

It is, therefore, improper to value the inventory stored in GSS at the CD-2 rate because the Company has not invested in inventory at that level, and the factors which will allow the Company to value inventory at that level do not exist. Additionally, valuing the inventory at the CD-2 rate would cause the Company to earn a return on an amount higher than its investment.

The Commission notes that valuing the inventory at the actual average cost for the test year will not prevent the Company from recovering the cost of gas. It is important to note that this valuation provides the amount on which the Company is allowed to earn a return. With respect to the recovery of the cost of gas, the Commission notes that in Finding of Fact No. 9 the commodity cost of gas was set at the Transco CD-2 cost of $3.4524/dt; thus enabling the Company to recover its costs and return to customers any savings due to spot market purchases.

Based upon the foregoing, the Commission concludes the appropriate value of natural gas inventory to be included in materials and supplies in this proceeding is $6,961,338. The total amount for average materials and supplies is therefore $12,071,319.

Both the Company and the Public Staff present cost-free capital of $2,465,639 as a component of working capital; however, the Commission believes that cost-free capital should be presented as a separate component in the determination of rate base. Accordingly, the following chart is a summary of the allowance for working capital:

Item	Amount
Investor supplied working capital	$ 840,902
Average materials and supplies	12,071,319
Average customer deposits	(1,595,403)
Sales tax accruals	(676,715)
Working capital allowance	$10,640,103

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is found in the testimony and exhibits of Public Service witness Schock and Public Staff witness Morgan. The chart below presents the positions of both parties with regard to the level of rate base.

Item	Company	Public Staff	Difference
Plant in service	$320,534,656	$319,686,967	$(847,689)
Accumulated depreciation	(94,497,335)	(93,649,646)	847,689
Working capital allowance	8,917,041	8,174,464	(742,577)
Deferred income taxes	(31,277,502)	(31,277,502)	-
Original cost rate base	$203,676,860	$202,934,283	$(742,577)

The difference in plant in service and accumulated depreciation arises due to each party's method of allocation of non-utility plant. The Company's adjustment to allocate plant in service to non-utility operations applies the various non-utility allocation percentages to the plant in service balance net of accumulated depreciation; whereas, the Public Staff's adjustment allocates plant in service and accumulated depreciation separately. The net effect on rate base is zero and the Commission elects to utilize the method of allocation proposed by the Public Staff.

The remaining difference relates to the value of inventory included in the working capital allowance. The Commission found in Finding of Fact No. 5 that $10,640,103 is the proper level of working capital allowance. Also in the same finding of fact, the Commission concluded that cost-free capital of $2,465,639 should be presented as a separate component in the determination of rate base.

As set forth and discussed in the Evidence and Conclusions for Finding of Fact No. 9, the Commission concludes that certain other rate base adjustments are appropriate concerning the capitalization of the salaries of the "bare mains" employees. In accordance with such adjustments, plant in service,

accumulated depreciation, and accumulated deferred income taxes are increased by $307,926, $7,390, and $1,605 respectively.

Based upon the foregoing, the Commission finds the level of rate base to be $203,233,214 as presented below.

Item	Amount
Utility plant in service	$319,994,893
Accumulated depreciation	(93,657,036)
Working capital allowance	10,640,103
Accumulated deferred income taxes	(31,279,107)
Cost-free capital	(2,465,639)
Original cost rate base	$203,233,214

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is found in the testimony and exhibits of Company witness Dickey and Public Staff witness Davis. The evidence for this finding of fact is uncontested as a result of an agreement entered into by the Public Staff and Public Service in the course of the hearings.

Initially, the Company had supported an annual sales volume of 47,485,132 dekatherms in prefiled testimony. In the determination of this level of sales, the Company provided for no growth in the industrial customer class.

Public Staff witness Davis observed a significant amount of growth for industrial customers that was apparent for the 12 months ending May 31, 1989. Witness Davis updated for this growth from the 12 months ending December 31, 1988 (test year) through the 12 months ending May 31, 1989, to coincide with the latest information available, and determined that the going level of volume increase was 2,300,825 dekatherms above the amount determined by Public Service. This increase in volumes was derived by taking the updated growth and adjusting for nonrecurring sales to the Chapel Hill Power Plant.

During the course of the rate case hearings, the Company and the Public Staff negotiated the two positions and agreed to recognize 950,000 dekatherms of industrial growth instead of the Public Staff's original position of 2,300,825 dekatherms of growth. In addition, the Company accepted the Public Staff's growth calculation for high priority customers, as discussed in the Evidence and Conclusions for Finding of Fact No. 8. Therefore, with these agreements, the reasonable level of annual volumes which Public Service can be expected to deliver to North Carolina under normal weather conditions is 48,131,233 dekatherms.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The Evidence for Finding of Fact No. 8 is found in the testimony and exhibits of Company witnesses Schock and Dickey, and Public Staff witnesses Morgan and Davis.

The Company and the Public Staff initially disagreed on growth in two areas. First, the Company and the Public Staff disagreed on the calculation of growth for the high-priority market, namely residential and small commercial customers. Witness Dickey applied the growth calculation to the class of customer, rather than the rate schedule. This meant that he combined heat-only customers with year-round customers to arrive at his growth percentage.

Public Staff witness Davis testified that each rate schedule has individual characteristics that may be distorted by the type of grouping done by the Company. Witness Davis stated that his method of determining growth in Rate Schedules 10, 12, 15, and 17 individually attributes growth to each rate schedule in the actual manner in which it occurred.

In rebuttal testimony and during the proceedings, Company witness Dickey stated that he did not object to the Public Staff method. The Commission therefore finds the Public Staff method to be reasonable and appropriate for use in this proceeding.

The second area of disagreement was in industrial growth. As found in the Evidence and Conclusions for Finding of Fact No. 7, an agreement was reached on industrial growth; therefore, the Commission finds that the proper level of volumes for determining the end-of-period revenue level is 48,131,233 dekatherms, and the associated end-of-period revenue level is found to be $250,416,200 as calculated on Davis Revised Exhibit B, Page 2 of 2. These revenues were calculated using adjusted tariff rates which means that temporary decrements relating to stored gas inventories, deferred gas costs, and Rider D have been excluded. Further, these adjusted rates are based on Transco's CD-2 commodity rate effective February 1, 1989, of $3.4524/dt.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact is found in the testimony and exhibits of Public Service witnesses Zeigler, Sr., and Schock, and Public Staff witnesses Morgan, Davis, and O'Donnell.

The following chart presents the differences between the parties regarding the level of operating revenue deductions:

Item	Company	Public Staff	Difference
Purchased gas	$169,014,158	$169,014,158	$ -
Operation and maintenance	34,288,711	33,856,686	(432,025)
Depreciation	9,770,381	9,770,381	-
General taxes	11,822,350	11,793,536	(28,814)
State income taxes	1,087,200	1,165,630	78,430
Federal income taxes	4,911,036	5,265,315	354,279
Amortization of ITC	(500,536)	(500,536)	-
Total	$230,393,300	$230,365,170	$ (28,130)

The Company and the Public Staff both used Transco's CD-2 commodity rate effective February 1, 1989, of $3.4524 per dekatherm in calculating the cost of gas for purposes of this proceeding. The only difference between the Company

and the Public Staff concerning the cost of gas was due to the initially different levels of end-of-period volumes used by the two parties.

After negotiations between the Company and the Public Staff, end-of-period volume levels were agreed upon and subsequently the cost of gas was agreed to be $169,014,158 by both parties.

The parties are also in agreement that the proper level for the amortization of investment tax credits (ITC) is $500,536. There being no evidence to the contrary, the Commission finds that the parties proposed levels for the cost of gas and the amortization of ITC are appropriate.

The operation and maintenance expenses difference of $432,025 is composed of the following items:

Item	Amount
Adjustment to payroll expense	$(383,670)
Adjustment to gasoline tax	(19,396)
Adjustment to rate case expense	(23,285)
Adjustment to regulatory fee	(5,674)
Total	$(432,025)

The first area of difference between the parties consists of $383,670 in the level of payroll expense relating to the Company's bare mains project. The bare mains project will ensure that pipe is cathodically protected. The pipe is wrapped and sealed and other steps are taken to ensure that the installation of the equipment will result in a life that far exceeds the depreciation rates assigned to it. The Company included in operation and maintenance expenses 60.28% of the payroll costs of 34 employees hired after the close of the test year. These employees were hired to replace bare mains. The 60.28% allocation factor was based upon actual test-year percentages of how employee time was spent. According to the testimony of witness Schock the time being spent on the bare mains project was not reflected in the 60.28% factor. Public Service witness Schock stated on cross-examination that these costs should be included in operation and maintenance expenses because even though these employees were hired primarily for the construction department, they would be called upon to do maintenance and repairs. However, on cross-examination, witness Schock also agreed that a rough estimate of these employees' time would have 90% being charged to construction rather than 60.28% being charged to operations and maintenance expenses.

During cross-examination on the bare mains project, witness Schock was asked various questions and provided responses thereto as follows:

"Q. But 90% as you have said, their time is estimated to be spent on capital projects. In your allocation, you have allocated 60% of their time to O&M expense and only 26[%] to capital projects. Is that correct?

A. In my adjustment, we allocated 60% to O&M for everyone. Okay. All new employees that were going to be added. We added a total of 126 new employees since the test year, 55 were removed. We have a pretty big turnover as you can see in some areas. So

that's a net of 71 employees. There were 41 that we say are in this construction area. There are 30 other employees that's going to cost the Company $647,000. Now, in my estimate--when I estimated, I applied the 60% figure to the new employees for construction and the other group, the other 30, that six hundred thousand, six hundred and forty-seven thousand rather, I applied 60% to that. So if we want to follow what you're saying or what I think you are suggesting, that those new employees--we should be allowed to recover only 10% through O&M, we can accept that, provided then that the 60% we use for those other employees whose payroll will be charged--approximately 90% of their payroll will be charged to O&M. So I think that's a fair swap. And we will agree with either one. But we do think that in the past--we have always done it this way. We look at history, test year history. We know that 60% of everybody's salary goes to O&M. A certain percentage goes to construction, a lot of it goes--some of it goes to merchandise and jobbing. So we merely apply the 60% to the total salary increase, plus the 60% is applied to the cost of new employees.

Q. This allocation you are discussing, the 60% to O&M, the 26% to construction, that was based on the Company's operations during the test year, wasn't it?

A. Yes, sir.

Q. And since then you have begun this new capital project at the Bare Mains?

A. I think it was started last year, but I think we got into it full swing early this year.

Q. Did you consider all of the time that is being spent on that when you devised your allocation?

A. No, sir. We based it on history.

Q. And since then you've added thirty-four new employees after the test year who Mr. Morgan has treated as if they were working on the Bare Mains project and capitalized the cost of their salaries?

A. That is what I had in my original filing. [emphasis added] We have actually added forty-one construction type employees at a cost of $549,000. We have added 30 other employees at a cost of $647,000. So we have added more cost to O&M from the others than we will for the new construction people.

Q. And these new construction people that--the thirty-four that Mr. Morgan capitalized rather than allocated to expenses, you have stated they spend perhaps 90% of their time on construction, capital projects?

A. Well, I accepted--you asked me if I thought 90% was reasonable.

Q. Is that a fair estimate?

A. Yes, I think it's a fair estimate."

Company witness Zeigler, Sr., indicated that the Company had a five-year plan to eliminate bare mains, and had "set up crews whose specific job is to make sure that this does take place." According to witness Zeigler, Sr., the amount of bare pipe is less than 4% of their pipe in the ground.

On cross-examination relating to the issue of the proper treatment of post-test year employees, witness Morgan pointed out that only the cost of 42 post-test year employees had been included in the Company's filings, not the 71 that Company witness Schock mentioned for the first time during his live testimony. As to the costs of the 42 new employees that were included by the Company in its prefiled testimony, Public Staff witness Morgan testified that 34 employees were involved in the bare mains project, and their costs should be capitalized rather than included in O&M expenses because their salary costs related to a capital project. He stated that the Company had employees during the test year that performed maintenance and repairs and those employees would continue to be available. Of the remaining eight out of the 42 new employees, witness Morgan stated that he accepted the Company's adjustment. These eight employees were hired for various positions such as a new financial officer, gas supply analyst, engineer, and secretary. He indicated that if he had specifically allocated each of the eight employees' time, the amount of the Company's adjustment would not have changed significantly.

Public Service contends that when the total number of employees (71) hired since the end of the test year is considered, then the original adjustment for the 34 employees as presented in the G-1 minimum filing requirements is reasonable. This original adjustment relating to the 34 bare mains employees and the 8 other new employees was never revised by the Company, instead it was apparently adopted as the proxy for the Company's new position which was revealed during the hearing in the testimony of witness Schock on cross-examination. However, the Commission finds that if the Company's payroll expense adjustment for the 34 employees is accepted based upon witness Schock's reasoning on the fact that the Company had actually hired 71 new employees rather than the 42 (34 bare mains and 8 other) new employees he had included in his recommended level of payroll expense, then it would have the effect of looking at that expense in a vacuum. For instance, more O&M expense (payroll expense of 71 employees would exceed payroll expense of 42 employees) could well mean that more customers are being served, but Public Service offered no evidence on the matching of these post-test year adjustments to O&M expense with a post-test year adjustment to growth in volumes and revenues.

In addition, the allocation of Public Service employees' time between capital projects and O&M expenses was based on test year history which, according to witness Schock, did not account for employee time spent on the bare mains capital project. If the post-test year employees' time is to be allocated on the basis of overall Company percentages spent on capital projects and O&M expense, as Public Service advocates, then the overall percentages would have to be revised to account for post-test year time spent on capital projects like bare mains, which Public Service has not done. The test year allocation should be applied to test year employees, but not to post-test year employees who are primarily dedicated to capital projects.

The Commission notes that the Public Staff is not opposed to Public Service's program of replacing bare mains. The Public Staff, however, is concerned with the Company's pro forma adjustment of expensing the costs associated with the project. Public Service's adjustment reflected in its G-1 minimum filing requirements assigns 60.28% of the 34 employees' costs in question to O&M expenses, not capital projects. Public Service witness Zeigler, Sr., stated that crews had been set up with the specific job of working on the bare mains project. This is a capital project. The Commission has very carefully reviewed the evidence in this regard and concludes that it would be entirely inappropriate to disallow these costs in this proceeding. The Commission is very concerned about the safety aspects of the Company and encourages the Company to work diligently to eliminate the bare mains problem. It is the Commission's understanding that the bare mains hazard has not caused severe problems but these bare pipes do contribute to a certain amount of leakage on the system. Based upon the acceptance by witness Schock that 90% of these bare mains employees' salaries are construction related and that some of their time will be spent on maintenance, the Commission finds it appropriate to allocate 10% of the bare mains employees payroll expense to operation and maintenance expense; additionally, the Commission finds it appropriate to capitalize one-half of the 90% of these salaries which the Company and the Public Staff agree are capital expenditures. Therefore, the Commission would allow $63,648 to be included as payroll salary expense and $4,780 would be included for the associated payroll taxes. In regard to the capitalization of one-half of the 90% of the bare mains employees' salaries, the Commission has determined that the inclusion of 100% of the 90% as capital expenditures would be improper since in all likelihood such treatment would result in an inclusion in rate base of funds which had not actually been spent up through the close of hearings in this docket. Further, the record is unclear as to the date these employees were actually hired, but the Company's adjustment for these salaries was calculated on a memorandum dated February 20, 1989, and was included in its G-1 minimum filing requirements. Having recognized these problems, the Commission believes that it is fair and reasonable to only include one-half of the 90% in rate base. Therefore, the Commission would allow $307,926 of these bare mains salaries and associated payroll taxes to be capitalized and included in rate base. Further, the Commission believes that it is reasonable to conclude that these capital expenditures would be subject to the same depreciation rates used by the parties for distribution mains. Therefore, the Commission finds it appropriate to increase the Company's depreciation expense and accumulated depreciation by $7,390 and to increase accumulated deferred income taxes by $1,605.

The next area of difference in operation and maintenance expenses is the Company's adjustment of $19,396 to reflect the recently enacted increase in the gasoline tax of $.0525 per gallon.

On cross-examination, Public Service witness Schock stated that gasoline prices have decreased because of the price of oil. However, he indicated that the current decrease is temporary. He indicated that the gasoline tax increase is a fixed component of the cost of gasoline which would be reflected in what the Company pays for gasoline.

Public Staff witness Morgan testified that even though there has been an increase in the gasoline tax, the price of gasoline has remained stable; consequently, no adjustment is necessary.

The Commission recognizes that the State of North Carolina recently enacted legislation which increased the tax on gasoline by $.0525 per gallon. Also, the Commission acknowledges that the price of gasoline fluctuates over time due to the price of oil. There is no evidence in the record to indicate whether future gasoline prices will increase or decrease. However, the Commission concludes that the $.0525 increase in the gasoline tax is a known and measurable change and that whatever the level of gasoline prices may be, they will be $.0525 per gallon higher than they would have otherwise been because of the increase in the tax on gasoline. Accordingly, the Commission concludes that the adjustment proposed by the Company is appropriate in determining a reasonable level of operation and maintenance expense to include in the Company's cost of service.

The next area of difference between the parties in the level of operation and maintenance expenses concerns the Public Staff's adjustment decreasing rate case expenses by $23,285. The two primary items of dispute are the level of legal fees and the fee associated with Public Service witness McCarty.

Public Service witness Schock testified that he estimated the legal fees of $60,000 by applying a 15% increase to the amount of legal expenses incurred in the Company's last general rate case. Although he did not know the amount of legal time spent, witness Schock indicated that a lot of time is spent with legal counsel.

Public Staff witness Morgan testified that he included legal fees of $52,046, the level included in the last rate case, instead of the estimate of $60,000 included by the Company. Witness Morgan stated that the amount of $52,046 represents a reasonable level, based on the number of hours available at an estimated hourly rate of $150 that turned out to be greater than the actual hourly rate of $115 charged to Public Service. Witness Morgan also noted that his recommended level of rate case legal expenses for Public Service was higher than the level set for Piedmont Natural Gas Company in its last general rate case proceeding. On cross-examination he stated if the Company paid more than the $52,046, it would be appropriate for the shareholders to absorb the excess because the legal counsel represents shareholders' interests.

The Company, in support of its proposed level of legal fees of $60,000, indicated that this amount is an estimate based upon applying a known percentage increase in the hourly rate charged by its attorneys since its last rate case, three years ago, to the amount of legal expenses incurred in its last rate case proceeding. Public Staff witness Morgan testified that his proposed amount of legal fees of $52,046 is a reasonable level in that it would allow over 11 weeks of legal time based upon the hourly rate of $115 which is actually charged to Public Service.

Based upon the evidence presented regarding this matter, the Commission is mindful of its obligation to establish a reasonable and representative level of expenses, including legal fees, to include in the Company's cost of service. To that end, the Commission finds that the most representative level of legal fees is the level proposed by the Company which is based upon the level of expense incurred and approved in the Company's last rate case, and then adjusted for the actual increase, over the last three years, in the hourly rate charged by its attorneys. Therefore, the Commission concludes that $60,000 of legal fees is reasonable and appropriate for inclusion in this proceeding.

Two other items of rate case expense between the parties are in dispute. The Company has proposed an amount of $18,000 for newspaper advertising whereas the Public Staff proposes $13,500, a difference of $4,500. Also, the Company has included in its adjustment an amount for binders, paper, tabs, etc., in the amount of $3,500 whereas the Public Staff includes $3,600, a difference of $100. Neither party offered any testimony in support of or in opposition to these amounts. Consequently, the Commission finds the amounts proposed by the Company to be reasonable and will include same in its level of rate case expense.

The final area of dispute involves witness McCarty's fees. In preparing its filing in this case, Public Service employed the services of Mr. Michiel C. McCarty. According to his prefiled testimony, Mr. McCarty's purpose in this proceeding was to offer testimony "...concerning Public Service's financial standing (historical, present and prospective), its ability to attract debt and equity capital under current market conditions, risk profile to investors, and the level of earnings required to enable it to attract capital in the near future." Public Staff witness O'Donnell did not object to witness McCarty appearing in this case on behalf of Public Service but did object to ratepayers paying witness McCarty's fees of $57,000. Witness O'Donnell contended that stockholders and not ratepayers should pay witness McCarty's fees since, in his opinion, witness McCarty's testimony was unnecessary and repetitious.

The Commission has carefully reviewed all witnesses' testimony in this case and concludes that witness McCarty's fees should not be recovered as rate case expense. We have considered each of witness McCarty's stated reasons for offering testimony in this case and found each issue to be covered by either witnesses Jackson or Zeigler, Jr. Below we have outlined the repetition of witness McCarty's testimony.

Witness McCarty's stated nature of his testimony was to discuss the following:

(1) Public Service's financial standing. Company witness Zeigler, Jr., is the Company's Chief Financial Officer and Chief Operating Officer. The Commission believes that witness Zeigler, Jr.'s, position with the Company indicates his ability to discuss the financial position of the Company. During cross-examination, witness Zeigler, Jr., acknowledged his ability to discuss the Company's financial position. The following is an excerpt from that cross-examination:

"Q. Is it fair to say that based on your past experience and present position that you were qualified to discuss the Company's financial position?

A. Yes.

Q. And condition?

A. Yes"

(2) The Company's ability to attract debt and equity capital under current market conditions. In his direct testimony, witness Zeigler, Jr., stated that prior to his employment with Public Service he worked in positions

where he was responsible for raising large issues of public market debt and equity, as well as the private placement of debt for corporate clients. He noted that many of his firm's clients were utilities and that he had been involved in various financial rating agencies' presentations. Also, in his direct testimony, witness Zeigler, Jr., discussed the Company's recent debt and equity placements. During cross examination, witness Zeigler, Jr., acknowledged his discussion of these issues in the following excerpt:

"Q. In fact, in your testimony, you also speak of recent Company equity and debt replacements. Correct?

A. Right.

Q. You also speak of recent debt refundings.

A. That's correct."

(3) The Company's risk profile to investors. The Commission notes that Company witnesses Zeigler, Jr., and Jackson both fully discuss Public Service's risk profile in their respective testimonies. During cross-examination, witness Jackson specifically stated he had analyzed the risk profile of Public Service to investors and he was capable of discussing that risk profile at the hearing.

(4) The level of earnings required to enable the Company to attract capital in the near future. As stated above, prior to his employment with Public Service, witness Zeigler Jr., placed large issues of debt and equity for several corporations. During cross-examination, witness Zeigler Jr., acknowledged that as Chief Financial Officer one of his responsibilities is to know what earnings are required for the Company to attract capital in the future. The Commission also notes that in his direct testimony and cross-examination witness Zeigler, Jr., extensively discussed his opinion of the financial performance required of the Company in order to raise capital for its construction activities.

The Commission, after having carefully considered the foregoing and the entire evidence of record, finds and concludes that witness McCarty's testimony is unnecessary, repetitious of other testimony, and his fees should not be included as reasonable rate case expenses in this proceeding.

At the hearing, the Company accepted the Public Staff's position that rate case expenses should be amortized over three years.

A further matter relating to rate case expenses which must be addressed concerns an error by the Company in making an adjustment to its per books amounts.

Schedule 11, attached to Schock Supplemental Direct Testimony, reflects an amount for rate case expense of $186,000 which, when amortized over two years, results in an amount of $93,000. The Company compared this $93,000 to the per books amount of $72,594, which resulted in a pro forma adjustment of $20,406. On September 14, 1989, the Company filed a late-filed Schedule 12, page 3 of 4, wherein it made an adjustment to amortize its proposed rate case expenses of

$186,000 over three years rather than two years. In making this adjustment, the Company compared the three years amortization amount of $62,000 ($186,000 divided by 3) to the per books amount of $72,594 and made a pro forma adjustment to reduce rate case expenses by $10,594.

The effect of these two separate adjustments is that the Company has failed to reverse its original adjustment on Schedule 11, thereby overstating the annual amount of rate case expense by $20,406. Accordingly, the Commission will reduce operation and maintenance expenses by a like amount.

Based upon the foregoing the Commission concludes that the reasonable level of annual rate case expenses to include in this proceeding is $43,000.

The final area of difference between the Company and the Public Staff for operation and maintenance expenses concerns the appropriate level of the regulatory fee recently enacted under G.S. 62-302. The regulatory fee is 0.12% of operating revenues less uncollectibles. Public Staff witness Morgan reduced the amount of the regulatory fee included by Company witness Schock by $5,674. This difference results from the different levels of operating revenues and uncollectibles recommended by each witness. Company witness Schock multiplied the 0.12% regulatory fee by an estimated level of proposed revenues of $254,000,000, resulting in a regulatory fee of $304,800. Public Staff witness Morgan multiplied the regulatory fee of 0.12% by the difference between the Public Staff's recommended level of operating revenues of $250,416,200 and uncollectibles of $1,144,402, resulting in a regulatory fee of $299,126. The difference between witness Schock's regulatory fee of $304,800 and witness Morgan's regulatory fee of $299,126 is $5,674.

Under the Evidence and Conclusions for Finding of Fact No. 8, the Commission concluded that the end-of-period level of operating revenues under present rates is $250,416,200. Therefore, the Commission concludes that the appropriate level of the regulatory fee under present rates is $299,126.

The remaining differences in operating revenue deductions relate to general taxes and State and Federal income taxes. The entire $28,814 difference in general taxes is the result of the payroll tax effect of the Public Staff's adjustment to payroll expense. Based upon the Commission's decision regarding the payroll expense adjustment discussed elsewhere herein, the Commission concludes that the appropriate amount of general taxes is $11,798,316. The differences in the State and Federal income taxes are the income tax effects of the adjustments made to rate base and operating expenses.

The following chart summarizes the Commission conclusions relating to the appropriate level of operating revenue deductions:

Item	Amount
Purchased gas	$169,014,158
Operation and maintenance	33,923,609
Depreciation	9,777,771
General taxes	11,798,316
State income taxes	1,152,438
Federal income taxes	5,205,728
Amortization of ITC	(500,536)
Total operating revenue deductions	$230,371,484

Since the amount of the regulatory fee is dependent upon the level of operating revenues and uncollectibles, an additional amount of the regulatory fee has been provided to reflect the effects of the increase in revenues granted by the Commission in this Order. The Commission has approved an increase in operating revenues in the amount of $5,412,068. Based on this additional increase, an uncollectibles rate of 0.457%, and the regulatory fee of 0.12%, an additional $6,465 increase in the regulatory fee is included in the $5,412,068 approved increase. The total regulatory fee after the increase in operating revenues approved by the Commission in this Order is $305,591 ($299,126 + $6,465).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding of fact is found in the testimony and exhibits of Public Service witness Schock, and Public Staff witnesses Morgan and O'Donnell.

Public Staff witness O'Donnell testified that, in accordance with the Commission Order in Docket No. G-5, Sub 207, the Company's last general rate case, he reduced the common equity component of his recommended capital structure by $258,000 relating to a Transco refund received by the Company from its supplier of natural gas. Further, in recognition of this Transco refund, witness Morgan removed this cost-free capital from rate base.

In this regard, the Commission provides an excerpt from its November 20, 1988, Order in Docket No. G-5, Sub 200, which details the historical facts of this Transco refund as follows:

> "Transco received these monies from producer-suppliers as a result of orders of the Federal Energy Regulatory Commission. Transco, in turn, flowed the refunds through to its customers, including the North Carolina natural gas distribution companies. At the time the companies received the refunds, the Public Staff contended that the refunds should be flowed through to their North Carolina retail customers. The companies claimed that refunds were not required and that they should be permitted to retain these monies. Docket No. G-100, Sub 37, was established to determine the proper disposition of these Transco refunds. As a result of proceedings in that docket, the Commission ordered Public Service and

certain of the other companies to refund these monies to their customers.

Public Service and one other company appealed this decision to the North Carolina Court of Appeals. The Court of Appeals reversed the Commission on the grounds that G.S. § 62-136(c) required that it must be practicable to make the refunds to the customers who paid the charges and such a refund would be impracticable in this case. This reversal was upheld by the North Carolina Supreme Court. State ex rel. Utilities Commission v. Public Service Company, 56 N.C. App. 448, 289 S.E. 2d 82 (1982); aff'd 307 N.C. 474, 299 S.E. 2d 425 (1983). As a result of this decision, Public Service will permanently retain this capital."

In the exhibits filed by Company witness Schock, rate base was reduced by this Transco refund. However, the common equity component of the capital structure was not reduced by the Company as ordered by the Commission in the Company's last general rate case proceeding. The Company believes that when the rate base is reduced and capitalization ratios are applied to this reduced rate base, the reduction is spread to all types of capital which results in a proper recognition of the Transco refund. Thus, in the Company's opinion, witness O'Donnell's adjustment to the common equity component of the capital structure will result in a "double whammy on these funds".

On cross-examination, witness O'Donnell stated that his treatment did not "double dip" the Company.

In Docket No. G-5, Subs 200 and 207, the Commission dealt with the proper treatment of this Transco refund. In Docket No. G-5, Sub 200, the Commission found it proper to deduct the net-of-tax Transco refunds from rate base because they were a source of cost-free capital.

In Docket No. G-5, Sub 207, the Commission Order, again, dealt with the treatment of the refunds. According to the Order, "[Public Staff] [w]itness Salengo testified that the retained earnings, which are a part of shareholders' equity, are overstated by $258,000 and proposed deducting this amount from the common equity component of the Company's capital structure in order to prevent ratepayers from paying a return on capital that they provided to the Company." Again the Commission concluded that the Transco refunds were cost-free capital, and stated that "[i]n order to prevent ratepayers from paying any return on this cost-free capital, the Commission finds that it is proper to reduce rate base by the net-of-tax refunds of $258,000 and also to remove refunds from the common equity component of the capital structure."

Based upon the evidence presented and taking judicial notice of prior Commission Orders in Docket No. G-5, Subs 200 and 207, the Commission once again concludes that it is appropriate to reduce rate base by the net-of-tax refund of $258,000 and also to remove this refund from the common equity component of the capital structure. This treatment is also consistent with the Commission's conclusions in its North Carolina Natural Gas Company general rate case Order in Docket No. G-21, Sub 235.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is contained in the testimony and exhibits of Company witness Zeigler, Jr., and Public Staff witness O'Donnell.

In this proceeding, Public Service requested that the Commission employ the Company's December 31, 1988, end-of-period capital structure, including a portion of its yearly average balance of short-term debt. Short-term debt was adjusted by witness Zeigler, Jr., by multiplying the yearly average balance of short-term debt by the ratio of average gas inventory to the sum of average gas inventory and average construction work in progress (CWIP). The Public Staff recommended a 12 month average capital structure, including the full yearly average balance of short-term debt ending June 30, 1989. The capital structures and associated embedded cost rates proposed by the Company and the Public Staff are as follows:

COMPANY

Item	Capitalization Ratio (%)	Cost Rate %
Long-term debt	48.93%	9.68%
Short-term debt	1.60%	10.50%
Preferred stock	1.58%	6.47%
Common equity	47.89%	-
Total	100.00%	

PUBLIC STAFF

Item	Capitalization Ratio (%)	Cost Rate (%)
Long-term debt	45.91%	9.55%
Short-term debt	2.34%	9.10%
Preferred stock	1.60%	5.93%
Common equity	50.15%	-
Total	100.00%	

Public Service witness Zeigler, Jr., testified that the Company anticipates its common equity ratio to possibly fall to the low 40% range following the Company's anticipated $25 million long-term debt issuance which possibly may occur in December 1989. However, during the hearings, witness Zeigler, Jr., revised the expected issuance date to the spring or summer of 1990. Witness Zeigler, Jr., also stated that the Company's top management believes that the common equity ratio should average in the 45% to 50% range over time to help ensure the availability of fixed rate long-term debt at favorable interest rates. According to witness Zeigler, Jr., an average equity/total capitalization ratio in this range makes the Company consistent with the natural gas distribution industry and makes attracting new equity much easier and at more favorable share pricing and issuance costs. The Company plans to sell additional common stock in a public offering about mid-1990, if equity market conditions are favorable at that time. According to witness Zeigler, Jr., the size of the offering will probably be in the $15 million to $20 million range.

The Company disagrees with witness O'Donnell's capitalization ratios for four reasons. First, the Company believes that the use of average capitalization is wrong as a matter of law and fact since G.S. 62-133(c) requires the determination of the rate base at the end of the test year rather than on the basis of test year averages. Second, the Company objects since the use of average ratios can result in including a cost for capital that has been retired. Third, in regard to the amount of short-term debt that should be included in determining the capitalization ratio, the Company stated that its determination of the amount of short-term debt to be included was computed in accordance with the Commission Order in Docket No. G-5, Sub 207, the Company's last general rate case. The Order stated that "In determining the appropriate amount of short-term debt to be included in the capital structure, the Commission has reduced the actual average amount of short-term debt outstanding during the test-year as updated by an amount equal to the average balance of CWIP maintained during the test year as updated." Fourth, the Company disagrees with the Public Staff's adjustment to remove from the common equity component of the capital structure the Transco refund. The Transco refund is the refund issue previously discussed in the Evidence and Conclusions for Finding of Fact No. 10, wherein the Commission finds that it is appropriate to reduce the common equity capitalization for the cost-free capital related to the Transco refund.

Public Staff witness O'Donnell testified that, in his opinion, there were two reasons why the Company's proposed capital structure was inappropriate for ratemaking purposes. The first reason was that the Company's proposal to include only a portion of its yearly average balance of short-term debt in its requested capital structure did not accurately reflect the financing of its proposed rate base. He stated, "To subtract the average CWIP balance from the daily average short-term debt balance implies that short-term debt is more closely correlated with CWIP than gas inventory." Witness O'Donnell testified that this implication was incorrect. Based upon his review of the Company's short-term debt, gas inventory, and CWIP balances from January 1978 through April 1989, witness O'Donnell concluded that short-term debt is much more closely correlated to gas inventory than CWIP.

The second reason witness O'Donnell believed the Company's proposed end-of-period capital structure was inappropriate for ratemaking purposes was that it ignored the seasonality of the gas business. 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. To 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 June 1989. 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 also noted that during some years short-term debt comprises more than 10% of the Company's total capitalization.

During cross-examination witness O'Donnell was asked several questions concerning the matching of his recommended capital structure and the Public Staff's recommended rate base. Witness O'Donnell stated that he was not recommending specific dollars of debt or equity in his proposed capital

structure, but was instead recommending capital structure ratios. He testified that these ratios provide the best representation of the Company's actual financing of its rate base investment. Further, witness O'Donnell noted that, to account for known and actual changes, both the Company's and Public Staff's proposed rate bases were updated beyond the end of the test year.

The weight of the evidence in this case clearly indicates that, in recent years, short-term debt is one of the permanent methods of financing used 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 allowance for funds used during construction (AFUDC), it is assumed that short-term debt is used exclusively to finance investment in CWIP. Thus, in electric utility rate cases, short-term debt is not included in the capitalization ratios adopted for ratemaking purposes. This assumption, while being inherently reasonable, also provides an exceedingly efficient and effective means of allocating the costs 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. This phenomenon is typically not true in the gas utility industry. According to the evidence presented by witness O'Donnell in this case, the Company's short-term debt on average over a period from January 1978 through April 1989 exceeds the Company's average investment in CWIP. Therefore, the Commission finds it reasonable to conclude that Public Service's short-term debt is used to finance a segment of its operations other than its construction program. In view of the foregoing and given the correlation which exists between the levels of short-term debt and the levels of gas inventory and CWIP, the Commission finds it is reasonable and appropriate to conclude that short-term debt is used to finance the Company's investment in rate base, specifically, gas inventory and to finance its CWIP. Therefore, the Commission concludes that it is proper to include a reasonable and representative amount of short-term debt in the Company's capital structure for purposes of this proceeding. The Commission believes that a methodology similar to that proposed by the Company in this proceeding would fairly reflect a reasonable level of short-term debt to be included in the capital structure when applied to the yearly average balance of short-term debt ending June 30, 1989. Using the ratio of average gas inventory to the sum of average gas inventory and average CWIP for the 12 months ended June 30, 1989, and then applying this ratio to the average short-term debt balance over the same period of time, the Commission finds that $2,532,096 is the appropriate amount of short-term debt for use in developing the Company's reasonable capital structure for purposes of this proceeding. The Commission finds that this allocation properly reflects the ongoing financing of the Company's rate base investment by recognizing that short-term debt is used to finance both the Company's investment in CWIP and its investment in gas inventory.

With respect to the common equity, preferred stock, and long-term debt components of the capital structure proposed for use herein, it is the belief of the Commission that the capitalization ratios should reflect the seasonality

of the gas business and also the financing of the Company's rate base investment. Therefore, the Commission concludes that the average common equity, preferred stock, and long-term debt balances for the 12 months ended June 30, 1989, would be reasonable and appropriate for use in this proceeding. Furthermore, this treatment is consistent with the Commission decision in the Company's last general rate case proceeding in Docket No. G-5, Sub 207. The Commission also believes that the deduction of the $258,000 Transco refund from the common equity component of the capital structure is proper as previously discussed in the Evidence and Conclusions for Finding of Fact No. 10. 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 Public Service 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
Long-term debt	46.42%
Short-term debt	1.25%
Preferred stock	1.62%
Common equity	50.71%
Total	100.00%

With respect to the prospective capitalization of AFUDC, said capitalization is to be accomplished in a manner consistent with the findings set forth in the Evidence and Conclusions for Finding of Fact No. 13.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witnesses Jackson, Zeigler, Sr., Zeigler, Jr., and Public Staff witness O'Donnell.

As stated in Finding of Fact No. 11, the Company recommended its end-of-period capital structure, including a portion of its yearly average balance of short-term debt, as of December 31, 1988. Along with its proposed capital structure Public Service proposed to use end-of-period cost rates as of December 31, 1988, resulting in an embedded cost rate for preferred stock of 6.47% and an embedded cost rate of 9.68% for long-term debt.

The Public Staff proposed to employ the Company's long-term debt and preferred stock embedded cost rates as of June 30, 1989. These cost rates were associated with the recommended 12-month average capital structure ending June 30, 1989. Witness O'Donnell presented these embedded cost rates as being 9.55% for long-term debt and 5.93% for preferred stock. During cross-examination of witness O'Donnell, the Company raised questions about these rates being the average coupon rates rather than the embedded costs which would be the cost rate to maturity. Witness O'Donnell testified that he had used what the Company had provided as the June 30, 1989 embedded costs, and that if these costs were only coupon rates, then this would be improper. The Public Staff filed a response on October 23, 1989, stating that witness O'Donnell had used

the cost rates provided by the Company and that since these were apparently incorrect, the Public Staff recommended that the Commission request the Company to file corrected June 30, 1989 cost rates to maturity. The Public Staff's response also included a discussion of several matters which it believed to have been misstated in the Company's brief and proposed order. On October 27, 1989, Public Service filed a Motion to Strike the Public Staff's response and provided an exhibit setting forth the end-of-period embedded cost rates at June 30, 1989, for long-term debt at 9.76% and preferred stock at 6.02%. The Commission accepts these updated embedded cost rates as being accurate and notes that the Public Staff made no filing disputing these revised cost rates.

In accordance with Finding of Fact No. 11, the Commission finds and concludes that the appropriate cost rates to be applied to long-term debt and preferred stock are their respective June 30, 1989, embedded costs. For long-term debt the associated embedded cost rate is 9.76%, and for preferred stock the embedded cost rate is 6.02%.

For short-term debt the Company proposed to employ a rate of 10.50% which was the prime rate at the time of the hearing. Witness O'Donnell proposed a short-term debt cost rate of 9.10%, which was 140 basis points below the 10.50% prime rate. Witness O'Donnell made this adjustment based on the Company's response to a data request in which Public Service was requested to provide the spread for its latest short-term debt borrowing and the spread it could normally borrow short-term debt under its seasonal and regular lines of credit. The Company indicated that these spreads were 140 basis points, however, the Company also responded that it has no assurance that it will be able to borrow at this rate in the future.

In view of the Company's response in this regard, the Commission finds that, since the Company is financing short-term debt at 140 basis points below the prime rate, a reasonable cost rate for short-term debt is 9.10% which is 140 basis points below the current prime rate of 10.50%.

With respect to the cost of common equity, the Company and the Public Staff disagreed as to the appropriate cost to be included in this proceeding. Company witness Jackson performed several studies to make a determination of the cost of common equity. These studies included a Discounted Cash Flow (DCF) analysis, a risk premium analysis, an internal rate of return study, a comparable earnings analysis, a payout test, and an adjusted DCF analysis. The studies were applied, when possible, specifically to Public Service and then to a group of 12 gas distribution utilities that were reasonably comparable to Public Service. Based on the results of these methods, witness Jackson recommended that the Commission grant a 14.50% return on common equity.

In his DCF analysis witness Jackson did not use the traditional market-based dividend yield. Instead of using current stock market prices in the dividend yield calculation, witness Jackson used adjusted current yields, which were determined on the average high-low monthly market prices for the 12 months ended December 1988 for the Company and the comparable group and then adjusted those current yields by a market to book ratio adjustment to determine the book dividend yield. The market to book ratios were based on the average market to book ratios for a five year period 1984 through 1988. For Public Service, witness Jackson calculated an 11.09% book yield and for the comparable group his calculated book yield was 9.40%. Witness Jackson then calculated

estimated growth rates, determined by taking the average of several different growth rates determined based upon the following analysis: (1) compound annual growth rates in dividends per share for ten, five, and three year periods, all ended 1988, (2) returns earned on equity and the dividend payout ratios were used to calculate retention or internal growth for five years ended 1988, and (3) growth rates for the annual compound rate of estimated future dividends in relation to the current (1988) estimates over the period 1988 through 1992. The resulting growth rates were 4.55% for Public Service and 5.47% for the comparable group. The results produced by combining the book dividend yield and the growth rate resulted in a 15.64% return on equity for Public Service and 14.87% for the comparable group.

Witness Jackson also performed an adjusted DCF analysis for Public Service to allow for the inclusion of common stock issuance costs in his return on common equity. The results of this adjusted DCF analysis produced a common equity cost of 16.02%.

During cross-examination, witness Jackson noted that if he had performed a traditional DCF analysis based on a market dividend yield his results would have been 11.88% for Public Service and 12.63% for the comparable group. Witness Jackson also admitted on cross-examination that if he had used the same methodology in his DCF analysis in this case that he used in the Company's 1985 rate case the results would have been 12.69% for Public Service and 13.43% for the comparable group.

In his risk premium analysis witness Jackson employed the Capital Asset Pricing Model (CAPM). For the risk-free rate, witness Jackson used the current rate on long-term U.S. Government Bonds which at the time of the Company's filing date was 9.35%, but this was updated during the hearings to 8.3%. The risk premium to be added to the risk-free rate was estimated from the long-term analysis prepared by Ibbotson Associates comparing the spread in common stock returns and long-term U.S. Government Bond returns from 1925 to the end of 1987. The results presented by witness Jackson were arithmetic growth rates of 12.01% for common stocks and 4.58% on long-term U.S. Government Bonds. The resulting spread of 7.43% was then multiplied by a beta of .69 (average beta of his comparable group) yielding a risk premium of 5.13%. By combining the risk-free rate of 8.3% and the risk premium of 5.13%, a rate of 13.43% resulted for the comparable group.

The Company's Chief Financial Officer, Mr. Zeigler, Jr., testified during the hearing that Public Service's beta value was .19. Under cross-examination by the Public Staff, witness Jackson stated that if he had used a beta of 0.19 in the CAPM, his result with this method for Public Service would have been 9.71%. Further, on cross-examination witness Jackson testified that if he had used the geometric mean in his risk premium calculation the result would have been 13.214% based on his original risk-free rate of 9.35%. Mathematically this 13.214% would go down to 12.164% reflecting an update in the risk-free rate down to 8.3% and if the beta of .19 for Public Service were substituted for the comparable companies average beta of .69 the result would be 9.364%.

In his internal rate of return study witness Jackson calculated the expected stock market appreciation of each company in his comparable group. Witness Jackson relied exclusively on Value Line projections in this analysis. Based on the Value Line estimation technique which projects what an investment

in common stock at the average monthly high-low market price in 1988 would produce in estimated dividends in each of the years 1989-1992. Based on the assumed sale of the stock in 1992, the overall return on investment can be calculated. Witness Jackson concluded that if the comparable group grows as Value Line projects, then the average return on equity for the comparable group is 15.55%.

With respect to his comparable earnings analysis, witness Jackson presented historical data showing that, during the period 1984 through 1988, Public Service earned an average return on common equity of 13.7% while the comparable companies earned average returns of 13.3%.

The final test used by witness Jackson was the payout test. In that test, the current per share dividend is divided by the current payout ratio. That result is divided by the book value per share producing a return on equity. The tests resulted in an equity cost of 14.5% for the group of comparable companies and 15.6% for Public Service.

The simple average of all these studies for the group of comparable companies was 14.54% and for Public Service it was 15.24%. The median value for the group of comparable companies was 14.50% and for Public Service it was 15.62%. Witness Jackson determined the cost of equity for Public Service to be 14.50% based on the median average of his studies of the comparable companies. These percentage cost rates were based upon witness Jackson's original pre-filed testimony. If witness Jackson's updated risk premium calculation is reflected (13.43%) and if his DCF analysis is changed to recognize his current market yield calculations rather than book yields the resulting median is 13.43%. Further, if witness Jackson's updated risk premium calculation is changed to incorporate the use of a geometric mean, as proposed by the Attorney General, and if his DCF analysis is changed to recognize his current market yield calculations rather than book yields the resulting median is 13.30%.

During cross-examination, witness Jackson stated that this Commission did not have any direct control over the stock price of Public Service. He did note, however, the regulatory actions of the Commission did have an indirect effect on the Company's stock price.

Public Staff witness O'Donnell relied upon the Discounted Cash Flow (DCF) model to determine the cost of common equity to the Company and checked his recommendation by a comparable earnings study. His analysis found the cost of common equity to the Company to be 12.25%.

In his pre-filed testimony witness O'Donnell performed a DCF analysis on Public Service, as well as on a group of 22 gas distribution companies which are similar in risk to Public Service. 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 January 16, 1989, to July 10, 1989. These calculations resulted in a dividend yield of 7.0% for Public Service 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 the use of the Value Line forecasted and historical (five and ten 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 5.0% for the comparable group which, when combined with the group's 7.1% dividend yield, produced an investor return requirement of 12.1%. Since Value Line does not cover Public Service, witness O'Donnell did not use a plowback growth rate or a Value Line forecasted growth rate in his Public Service -- specific DCF analysis. The remaining Public Service growth rates averaged 5.4%, which when combined with the dividend yield of 7.0%, produced an investor return requirement of 12.4%.

Based on the results of his DCF study, witness O'Donnell concluded that the cost of common equity to Public Service was in the range of 12.0% to 12.5% and found the investor return requirement on the Company's common equity to be 12.25%.

Based on an examination of Public Service's known and actual financing costs attributable to the public issuances of common stock over the past 20 years, witness O'Donnell calculated a factor of 0.15% which he testified would allow the Company to recover its known financing costs when added to the investor return requirement. This 0.15% financing cost added to witness O'Donnell's DCF investor return requirements produced a range of 12.15% to 12.65% and resulted in witness O'Donnell's final recommendation of 12.40%.

To check the results of his DCF analysis, witness O'Donnell compared his recommended 12.40% return on equity to the comparable group's historical earned return on equity. Witness O'Donnell stated that his recommendation was the same as the average return on equity earned by the comparable group in 1988. He also noted that his recommendation was higher than the group's average earned return on equity in 1987 and 1986 but lower than the group's average in 1985 and 1984. From this comparison, witness O'Donnell concluded that his DCF results were a good indication of what return on equity the stock market currently expects gas utilities such as Public Service to earn.

During cross-examination, witness O'Donnell was questioned extensively on his use of the DCF model. In the Company's opinion, when virtually all stocks are selling at market prices above book value, the classic DCF methodology is particularly lethal when used as the sole way to determine rate of return. According to witness Jackson, under such conditions in order for the DCF calculation to provide reasonable results one should incorporate book dividend yield rather than current market yield. Witness O'Donnell noted that the traditional DCF which he employs is the most common method used to determine the cost of equity. He also stated that he strongly disagreed with witness Jackson's use of a book yield in his DCF analysis. Witness O'Donnell stated that witness Jackson's book yield DCF analysis was illogical since investors pay the current market value and not the book value when buying or selling the Company's common stock.

Witness O'Donnell was also questioned about the adequacy of his recommendations. The Company attempted to show that adoption of witness O'Donnell's recommendation would result in a high payout ratio for the Company. Public Service's hypothetical scenario was based on a forecasted earnings per share that was calculated by multiplying witness O'Donnell's recommended return on equity by the Company's current book value. The Company's current dividend

was then divided by the calculated forecasted earnings per share to develop a hypothetical 79% payout ratio. Witness O'Donnell strongly objected to the Company's hypothetical scenario stating that his recommended overall rate of return was to be applied to the rate base and not book value. Witness O'Donnell noted that the Company's rate base was approximately $15 million greater than its book value. As a result, his recommendations would result in higher earnings than the Company's hypothetical scenario. Witness O'Donnell further stated that the Public Staff was recommending a revenue increase of approximately $3.5 million in this case. He noted that the rate increase would enhance the Company's ability to earn its allowed rate of return. Witness O'Donnell also provided a late-filed exhibit showing that the Value Line 1989 forecasted average payout ratio for his comparable group was 77%.

Witness O'Donnell also answered several questions regarding Public Service's need to attract new capital to finance the Company's construction plans. Witness O'Donnell noted that based on Public Staff witness Morgan's reconciliation, the difference in revenue requirements for the Company's requested 14.50% return on equity and his 12.40% investor return requirement was approximately $3 million. He cited the Company's anticipated $25 million long-term debt issuance in the early 1990's and stated that the return granted by the Commission in this case would have little chance of displacing any new financing issue.

The Attorney General and the intervenor City of Durham filed a joint brief in this proceeding which set forth their concurrence in the Public Staff's 12.40% recommendation as the appropriate common equity return. These parties are of the opinion that any common equity return higher than 12.40% risks the intergenerational inequity of funding expansion for future customers from present ratepayers. Further the Attorney General and the City of Durham argued that the Company's proposed 14.50% is not supported by commonly used measures of the cost of equity capital and is not justified on the basis of the overall riskiness of providing service to its North Carolina market.

The determination of the fair rate of return for the Company is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers. In the final analysis, the determination of a fair rate of return must be made by this Commission, using its own impartial judgment and guided by the testimony of expert witnesses and other evidence of record. Whatever return is allowed must balance the interests of the ratepayers and investors and meet the test set forth in G.S 62-133(b)(4):

> "to enable the public utility by sound management to produce a fair profit for its stockholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are fair to its existing investors."

The return allowed must not burden ratepayers any more than is necessary for the utility to continue to provide adequate service. The North Carolina Supreme Court has stated that the history of G.S. 62-133(b):

"supports the inference that the Legislature intended for the Commission to fix rates as low as may be reasonably consistent with the requirements of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States..." State ex rel. Utilities Commission v. Duke Power Company, 285 N.C. 277, 206 S.E. 2d 269 (1974).

The Commission has considered carefully all of the relevant evidence presented in this case. The Commission believes that the Company's requested return on equity of 14.50% is excessive while the rate of return on common equity of 12.40% recommended by the Public Staff is too conservative. The Company's rate of return witness Jackson used several methods which were shown under cross-examination to have overestimated the Company's investor return requirement. Furthermore, the Commission recognizes that witness Jackson's testimony in this case is quite different from his testimony in the Company's 1985 general rate case (Docket No. G-5, Sub 200), which was the last general rate case in which he testified. The Commission notes that if witness Jackson had performed the same analysis he performed in the 1985 case, then his cost of equity analysis would have produced a median value of 13.43% rather than his recommended 14.50%.

The Commission is aware that the Company estimates that it will spend approximately $127 million in the years 1989 through 1991 to add new plant to better serve existing and future customers. During this time period the Company expects to add 40,000 new customers. The Commission must properly balance its responsibility to the Company, its stockholders, and its customers to provide the Company sufficient opportunities to grow while not burdening ratepayers with excessive rates. Since the Company's last general rate case proceeding in 1986 (Docket No. G-5, Sub 207) Public Service has issued $50 million in long-term debt, but its equity ratio has risen from 40.57% granted in the Company's 1986 general rate case to 50.71% as granted in this final Order. In 1988 (the test year) the Company had capital expenditures of approximately $37 million and added 12,422 new customers. During the last three years the Company has added a total of 30,000 new customers and made capital investments of approximately $86 million. Further, in 1988 the Company experienced a 6% growth in customers as compared to the 2% national average for gas distribution companies. According to witness Zeigler, Sr., most of the Company's increased investment over the last 10 years has been incurred to serve residential customers.

The Commission is very interested in the Company's expansion programs and so is the North Carolina General Assembly which recently enacted G.S. 62-36A to provide for greater surveillance by the Commission of expansion by the gas distribution companies into unserved areas. The Commission, the Public Staff, and other governmental agencies have conducted discussions with interested parties in order to monitor and assist in the securing of additional cost effective sources of new gas supplies.

According to witness Zeigler, Sr., the major challenges and risks facing the Company are stated as follows:

"(1) There is great uncertainty in FERC regulations and pronouncements that have directly influenced, and will do so in the future, the effectiveness of the Company decision-making process. One particular area of great concern is bypass by industries of the Company's historical sales and transportation services and the job and economic losses to the communities we serve that are distant from the Transco interstate pipeline. Some end users and new gas using industries may try to settle only alongside the interstate pipelines to avoid sharing in the cost of providing gas utility services with our residential and commercial customers and present industrial customers of the Company.

(2) Competition with other unregulated fuels--switchable load loss at customer's option.

(3) Evidence of inflation heating up again after remaining in the range of 5 percent during several years of relative price stability.

(4) Higher cost of capital and interest rates. Prime rate up from 8.5 percent to 11.5 percent [updated to 10.5 percent] since May 1988.

(5) Costs that cannot be controlled; e.g. hospital insurance and growing litigation in everyday activities.

(6) The need for flexible regulations to meet in a timely manner these sometimes dramatic changes in a very market-sensitive environment."

The Commission recognizes these risks and acknowledges that the natural gas industry is undergoing a major change. The Commission is concerned about what the future holds in an environment where FERC has abandoned much of its former prudence oversight of the interstate movement and pricing of gas. Further, the Commission notes that the Company is at risk to a very competitive alternate energy environment. Most of the Company's gas is sold to customers who can use other fuels or buy gas themselves.

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 cost of common equity capital to be allowed Public Service is 13.20%. This return on common equity includes an allowance of 0.15% for the issuance costs of common stock which is based upon the Commission having adopted the reasoning offered by witness O'Donnell in this regard. This allowed return is 55 basis points lower than the Company's last

approved rate of return on common equity of 13.75%. Combining the 13.20% allowed return on common equity with the appropriate capital structure, and the cost of preferred stock, short-term debt, and long-term debt heretofore determined, yields an overall rate of return of 11.44% to be applied to the Company's rate base. Such rate of return will enable Public Service, 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 total revenue increase of $5,412,068 granted in this case should enable the Company to further enhance its growth opportunities without placing an undue burden on ratepayers.

It is well-settled law in this State that it is for the administrative body, in an adjudicatory proceeding, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts and to appraise conflicting evidence. Commissioner of Insurance v. Rate Bureau, 300 N.C. 381, 269 S.E. 2d 547 (1980). State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E. 2d 786 (1982). The Commission has followed these principles in good faith in exercising its 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 Company, 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 based on the evidence presented (and the weight and credibility thereof) in each case.

The Commission cannot guarantee that Public Service will, in fact, achieve the levels of return on rate base and common equity herein found to be just and reasonable. Indeed, the Commission would not guarantee the authorized rate 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 and economical service to its ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact is found in the testimony and exhibits of Public Staff witnesses O'Donnell and Morgan and Public Service witness Voigt.

Public Staff witness O'Donnell testified that the allowance for funds used during construction (AFUDC) rate should be the overall rate of return based on an average annual capital structure including the yearly average balance of short-term debt.

Public Service witness Voigt testified that continued use of an AFUDC rate based on an overall rate of return concept would require that the Commission modify the methodology that it has previously required Public Service to follow. This change is required in order for the Company to comply with certain accounting conventions recently promulgated by the Financial Accounting Standards Board (FASB). Parenthetically, it is noted that the FASB is the primary rulemaking body of the accounting profession. Specifically, witness Voigt testified that the AFUDC rate should be developed consistent with the provisions of the FASB's Statement of Financial Accounting Standards (SFAS) No. 96, Accounting for Income Taxes. Essentially, SFAS No. 96 requires that AFUDC be recorded on the Company's books gross-of-tax.

Public Staff witness Morgan testified that use of the same capital structure to calculate the AFUDC rate and the cost of service would provide the Company the opportunity to recover the cost of its capital used to finance rate base and CWIP. Witness Morgan indicated that the Public Staff's recommendation would meet the requirements of SFAS No. 96 and agreed that the rate should be calculated on a gross-of-tax basis.

In determining the appropriate capital structure for use herein, the Commission has specifically allocated a portion of short-term debt to the Company's investment in rate base. As previously discussed, the Commission accomplished this allocation of short-term debt by multiplying a percentage factor, derived by dividing average gas inventory by the sum of average gas inventory plus average construction work in progress (CWIP), times the average balance of short-term debt outstanding. Averages were based on the 12-month period ended June 30, 1989.

The Commission has previously stated its reasons for adopting the foregoing allocation methodology and such reasons need not be repeated here. Therefore, suffice it to say that consistency and equity require that on a prospective basis Public Service should be required to develop its AFUDC rate by first assuming that investment in CWIP is supported by short-term debt. The amount of short-term debt to be identified with CWIP for purposes of calculating the AFUDC rate should be determined by multiplying a percentage factor, derived by dividing average construction work in progress by the sum of average gas inventory plus average construction work in progress, times average short-term debt outstanding. Averages should be based on the most current 12-month period available. If the average balance of short-term debt allocated to CWIP exceeds the average investment in CWIP, the proper AFUDC rate is the then current short-term debt cost rate. To the extent that the most current actual, annual average of short-term debt outstanding allocated to CWIP is less than the most current actual, annual average of investment in CWIP, it should be assumed that this residual balance is financed by capital with a cost rate equal to the overall rate of return last found fair by this Commission adjusted to exclude the effect of short-term debt capital included in the Commission's calculation of said overall rate of return. This exclusion of short-term debt is required in order to avoid reallocation of a portion of the short-term debt assigned to utility operations to the Company's investment in CWIP.

Finally, the Commission concludes that the AFUDC rate determined in a manner consistent with the foregoing should be modified as required so as to reflect a gross-of-tax rate consistent with the provisions of SFAS No. 96.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which Public Service Company should be given the opportunity to earn.

The following schedules summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve based on the rates approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein approved by the Commission.

SCHEDULE I
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
Docket No. G-5, Sub 246
STATEMENT OF OPERATING INCOME
For the Test Year Ended December 31, 1988

Item	Present Rates	Increase Approved	Approved Rates
Operating revenues:			
Gas sales including transportation revenues	$249,649,443	$5,412,068	$255,061,511
Other operating revenues	766,757	-	766,757
Total operating revenues	250,416,200	5,412,068	255,828,268
Operating expenses:			
Purchased gas	169,014,158	-	169,014,158
Operation and maintenance	33,923,609	31,198	33,954,807
Depreciation	9,777,771	-	9,777,771
General taxes	11,798,316	173,472	11,971,788
State income taxes	1,152,438	364,518	1,516,956
Federal income taxes	4,705,192	1,646,583	6,351,775
Total operating expenses	230,371,484	2,215,771	232,587,255
Net operating income for return	$ 20,044,716	$3,196,297	$ 23,241,013

SCHEDULE II
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
Docket No. G-5, Sub 246
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended December 31, 1988

Item	Amount
Utility plant in service	$319,994,893
Accumulated depreciation	(93,657,036)
Working capital allowance	10,640,103
Accumulated deferred income taxes	(31,279,107)
Cost-free capital	(2,465,639)
Original cost rate base	$203,233,214
Rates of Return	
Present rates	9.86%
Approved rates	11.44%

SCHEDULE III
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
Docket No. G-5, Sub 246
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended December 31, 1988

Item	Capitalization Ratios	Original Cost Rate Base	Embedded Costs	Net Operating Income
		Present Rates - Original Cost Rate Base		
Long-term debt	46.42%	$ 94,349,596	9.76%	$ 9,208,521
Short-term debt	1.25%	2,532,096	9.10%	230,421
Preferred stock	1.62%	3,291,498	6.02%	198,148
Common equity	50.71%	103,060,024	10.10%	10,407,626
Total	100.00%	$203,233,214		$20,044,716
		Approved Rates - Original Cost Rate Base		
Long-term debt	46.42%	$ 94,349,596	9.76%	$ 9,208,521
Short-term debt	1.25%	2,532,096	9.10%	230,421
Preferred stock	1.62%	3,291,498	6.02%	198,148
Common equity	50.71%	103,060,024	13.20%	13,603,923
Total	100.00%	$203,233,214		$23,241,013

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence for this finding of fact is found in the testimony of Public Service witness Voigt and the testimony and exhibits of Public Staff witness Morgan.

Public Staff witness Morgan testified that both the Company and the Public Staff have been discussing the excess accumulated deferred income tax (ADIT) issue, as well as the tax effects of previously "flowed through" items which may be due the Company. He further indicated that both parties have agreed that additional time is needed to appropriately evaluate the flowback of the

excess ADIT due to the voluminous workpapers supporting the amount. He stated that both parties have agreed to defer the flowback of the excess ADIT and that either party or both will report to the Commission by June 30, 1990.

Public Service witness Voigt testified that calculations have been completed with regard to the excess ADIT. However, he indicated that neither the Company, its independent auditors, nor the Public Staff have had the time to adequately review and check the calculations. Witness Voigt presented a document, prepared jointly by the Public Staff and Public Service, which outlines the accounting methodology for the Company to follow to insure that the flowback amount is tracked and ultimately reflected in rates.

The Commission notes the following from the jointly prepared "STATEMENT OF POSITION ON EXCESS DEFERRED INCOME TAXES OF PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC. AND THE PUBLIC STAFF". The accounting procedures the Company will follow include:

1. Remove the excess amounts it has quantified from the ADIT accounts.

2. Establish two new accounts and record the excess credits in one account and the excess debits in the other.

3. Establish a third "true-up" account for the other two new accounts.

4. Begin amortizing the two new accounts October 1, 1989, using amortization rates it deems appropriate. The offsetting entry will be made to the "true-up" account.

5. Flow any amounts specifically included in utility rates through the income tax provision (expense) with the offsetting charge or credit made to the "true-up" account.

6. For ratemaking purposes Public Service proposes that the balances in the three new accounts be treated as accumulated deferred income taxes and deducted from or added to rate base; consequently, no interest will be calculated on these accounts.

Based on the foregoing, the Commission concludes that a decision on the proper treatment to be accorded excess ADIT will be deferred pending the receipt of reports to be filed by the Company and/or the Public Staff on or before June 30, 1990. The accounting procedures proposed by the Company are approved subject to further consideration by the Commission after receiving the reports.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence for this finding of fact is found in the testimony of Company witnesses Zeigler, Sr., and Dickey and Public Staff witness Davis. The continuation of Rider D as established in the Company's last general rate case, Docket No. G-5, Sub 207, was not a contested issue. The Rider D has performed

well over the past two years in which it has been in effect. Not only has it provided the Company a means to potentially meet the negotiated sales losses that have occurred due to the volatility of alternate fuels, but it has also inspired the Company to obtain lower cost spot gas, which benefits all sales customers.

Company witness Zeigler, Sr., testified that the Rider D enabled the Company to achieve $28,315,792 of savings, of which $17,428,950 were used to offset negotiated sales losses. The net savings of $11,680,963, including interest, were available for refund to all sales customers who did not negotiate.

The Commission is of the opinion that the "Rider D" Mechanism is functioning well in providing the Company a means to meet the competitive conditions in the market place, as well as benefiting all customers with gas cost savings, and therefore concurs with its continuance.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence for this finding of fact is found in the testimony of Company witness Dickey and Public Staff witness Davis.

Company witness Dickey presented a cost-of-service study in support of his proposed rate design. Witness Dickey stated that he had used the Seaboard Method in his analysis. He also stated that he was attempting to design the Company's rates so as to move the customer class rates of return closer to the system average rate of return, although he did not consider equalization of customer rates of return ever achievable or even reasonable. Witness Dickey testified that the most important principle to be considered in designing rates is to develop rates which will recover the revenue requirement allowed by the Commission. He also listed other principles which should be considered: (1) cost of service; (2) value of service or competitive conditions existing in the market place; (3) historical rate structures and relationships between various rates; (4) consumption characteristics of different classes of customers; (5) future prospects of maintaining sales levels to the various classes of customers; (6) the need for conservation; (7) national and state energy policies; and (8) ease of administration.

Witness Dickey testified that no cost-of-service study should be used exclusively to design rates because of the number of judgments that must be made in the preparation of such studies.

Public Staff witness Davis presented two cost-of-service studies based on two different methodologies, the United Method and the Seaboard Method, both utilizing a one-day peak scenario. Each of the studies was based on adjustments to revenues, expenses, and rate base as proposed by the Public Staff, and each produced different results based on the method utilized. Witness Davis noted that the returns for large commercial and industrial customers are overstated in these studies because they are based on the assumption that all sales to this class of customers will be made at tariff rates, neglecting the fact that such customers have the option of negotiating their rates downward, thereby reducing their actual rates of return.

CUCA did not sponsor an expert witness, but has generally contended that rates should be cost based and that the class rates of return should be equalized to the system average. CUCA contended that the Seaboard methodology should be used in this proceeding. The Commission notes that the United methodology tends to favor the residential class of customers more than the Seaboard methodology, and conversely that the Seaboard methodology tends to favor the industrial class of customers more than the United methodology.

The Commission is of the opinion that the cost-of-service studies presented by the parties are an important and relevant factor to be considered in designing rates in this proceeding. They are, however, only one of several considerations in rate design. Setting rates solely on the basis of equalized rates of return for all rate classes would clearly be unreasonable and inconsistent with the evidence presented. Rates of return for customers who have no alternate fuels readily available, such as residential customers, should not be directly compared to rates of return for those customers who do have alternate fuels readily available, such as boiler fuel customers. Rates of return for customers who cannot negotiate their rates with the Company or who cannot obtain supplies of cheaper gas under transportation rates should not be compared directly to rates of return for those customers who can, and indeed do, negotiate rates or obtain cheaper gas supplies under transportation rates. In short, the services provided to the different rate classes are not directly comparable, so the respective rates of return are not directly comparable either. In these circumstances, equalized class returns would not be fair even if a single cost-of-service methodology proved to be the most accurate, which is not the case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence regarding rate design issues is found in the testimony and exhibits of Company witnesses Dickey and Schock and Public Staff witness Davis.

Rate Classifications

The Company proposed a major revision of its rate classifications for its large commercial and industrial customers based on usage characteristics instead of alternate fuel categorization as in the past. The proposed new rate classifications are as follows:

105 Residential Service - Year Round This rate schedule is designed to clarify the definition of a year round customer and to remove all references to the NCUC priority system.

110 Residential Service - Seasonal This rate schedule is designed to clarify the definition of a seasonal customer and to remove all references to the NCUC priority system.

120 Outdoor Lighting Service This is only a change in Rate Schedule Number and it remains identical to present Rate Schedule No. 35. This schedule shall remain a closed schedule available only to those customers presently being served on it.

125 Small General Service - Year Round This rate schedule is designed to clarify the definition of a year round customer and to remove all references to the NCUC priority system.

130 Small General Service - Seasonal This rate schedule is designed to clarify the definition of a seasonal customer and to remove all references to the NCUC priority system.

145 Large General Service The title of the rate has been changed and the applicability paragraph has been rewritten to apply to all firm sales to any commercial or industrial user with requirements greater than an average of 500 therms per day. Extended curtailment is not anticipated under this rate schedule, and therefore, the rate does not require the installed capability to burn an alternate fuel, although it is strongly encouraged by the Company. This rate will have a summer/winter differential and a block structure. There will be no references to the NCUC priority system.

150 Large Interruptible Commercial and Industrial Service This rate is created to provide service for all interruptible sales to customers using in excess of 500 therms per day. This rate will have a summer/winter differential and a declining block structure. It will also require the installation and use of an alternate fuel (which can include propane) so that curtailment can be accepted on two hours notice. There will be no reference to the NCUC priority system.

160 Special Services Rate This rate is basically only a change in Rate Schedule Number and is the same as present Rate Schedule No. 40 other than to remove the references to the NCUC priority system.

175 Interruptible Transportation Service for Customers Qualifying for Service on Rate Schedule No. 145 This is a new rate created for the interruptible transportation of customer-owned gas. Qualifications will be the same as for Rate 145. It will be a full margin rate and will have the same block structure as Rate 145. There will be no provision for collection of sales tax on this rate.

180 Interruptible Transportation Service for Customers Qualifying for Service on Rate Schedule No. 150 This is a new rate created for the interruptible transportation of customer-owned gas. Qualifications will be the same as for Rate 150. It will be a full margin rate and will have the same block structure as Rate 150. There will be no provision for collection of sales tax on this rate.

RA Emergency Service - Rider A The only changes to this schedule are to remove the references to the NCUC priority system.

RB Compressed Natural Gas - Rider B The only changes to this schedule are to remove the references to the NCUC priority system.

RD Purchased Gas Adjustment Procedures - Rider D The only changes are editorial in nature to correct the references to various rate schedules.

The Public Staff supported the Company's proposals in this regard, and no other party opposed the proposed restructuring. The Commission concludes that the proposed reclassification and the restructuring of the rate schedules are reasonable.

Declining Block Rate Structure

A declining block rate structure is proposed for all industrial and transportation rate schedules by the Company. The combination of the restructured rate classifications and the new declining block rate structure will result in significant rate increases for some industrial customers (generally those with smaller usage) and significant rate decreases for other industrial customers (generally those with larger usage) even if the overall revenues for the industrial class are unchanged. The declining block rate structure is unopposed by any party.

The Commission notes that the amount of discussion in the record regarding the declining block rate structure proposed herein is surprisingly brief in view of the significant impact the proposal has on some customers. Based on the evidence in the record and the lack of opposition from the parties, the Commission concludes that the declining block rate structure should be adopted for this proceeding.

Summer/Winter Differentials

Company witness Dickey proposed to revise the present summer/winter differentials in the Company's rates. Witness Dickey maintained that the proposed summer/winter differentials recognized the impact of storage used during the winter.

Public Staff witness Davis recommended lower summer/winter differentials than the Company. He divided the costs relating to storage in the cost of gas calculation by the winter sales volume for residential and small commercial customers and concluded that the year around customer's summer/winter differential should be no more than 25¢ per dekatherm. He also added that since seasonal or heat only customers added to the peaking responsibility, their rates should reflect a higher summer/winter differential, but no more than 40¢ per dekatherm.

In rebuttal testimony, Company witness Dickey stated that while he did not agree with the theoretical basis for Mr. Davis' calculation of the differentials, the Company would not contest Mr. Davis' proposals. No other party opposed the differentials proposed by the Public Staff.

The Commission concludes that the summer/winter differentials as proposed by the Public Staff are just and reasonable, and should be used for purposes of this general rate case.

Revenue Increase for Each Customer Class

The proposed increase for each major customer class presented by the Public Staff differs from the proposed increase presented by the Company as follows:

	Public Service	Public Staff
Residential	4.43%	1.41%
Small General Service	5.93%	1.41%
Large General Service	(0.82)%	1.41%
Total	2.93%	1.41%

Public Staff witness Davis pointed out that margins for the Company's residential customers have increased over time, while margins for the Company's industrial customers have decreased over time. He recommended that residential rates not be increased so drastically as they have in the past.

Company witness Dickey testified that he was attempting to design rates so as to move the customer class rates of return closer to the system average rate of return. He also testified that the price of various grades of fuel oil and propane have tended to come closer together, so that the type of alternate fuel is not so important now as a measure of the value of service.

The Commission notes that the results of the cost-of-service studies utilizing the United methodology indicate that the residential and industrial class rates of return are already fairly equal, while the results utilizing the Seaboard methodology indicate that the industrial class rate of return is significantly higher than the residential rate of return. The Commission has already concluded elsewhere herein that equalized rates of return are not necessarily a reasonable objective.

The Commission further notes that the restructured rate classifications and the declining block rate structure adopted herein will significantly impact the amount of increase or decrease received by individual customers within the industrial class. In view of the significant differences in the impact of the rate reclassifications and rate designs adopted herein on individual customers, the Commission is of the opinion that an across the board revenue increase as illustrated by the Public Staff's proposal would be the fairest way to proceed in this case.

The Commission concludes that the percentage revenue increase for each major customer class should be the same as the percentage increase for the overall revenues from the various rate schedules.

Transportation Rates

Both Company witness Dickey and Public Staff witness Davis testified that the full margin principle was appropriate for use in designing transportation rates and both proposed transportation rates that were designed based upon this principle. CUCA continues to oppose the use of this full margin principle.

This issue has been discussed extensively in past general rate case orders and these discussions will not be repeated here. However, no new arguments or evidence were presented which would warrant a change in the Commission's prior

decisions of this issue. The Commission is mindful of the fact that the transportation rates are directly impacted by the levels of industrial rates set in this Order. The Commission concludes that the full margin principle is the appropriate methodology to be used for designing transportation rates and should be adopted for use in this proceeding. Transportation rates, consequently, shall equal the margins adopted for the respective industrial rates.

Negotiated Rates

Both the Company's and the Public Staff's respective rate proposals contemplate the continuation of the Special Services Rate (R-160), the negotiated rate. Both Company witness Dickey and Public Staff witness Davis testified that the industrial rates proposed by them exceeded the current price of alternative fuels and that, consequently, the need for negotiation continued to exist. No party objected to allowing the Company to continue to be able to negotiate certain industrial rates.

The Commission concludes that the Special Services Rate (the negotiated rate) is still a necessary part of the Company's rate structure and is reasonable under the facts and circumstances presented in this case.

NCUC Rule R6-19.2

The Company proposed to revise its rate schedules to omit any reference to Commission Rule R6-19.2 dealing with curtailment priorities in anticipation of the repeal or suspension of the Commission's priority curtailment rule in Docket No. G-100, Sub 51. CUCA protested the adoption of curtailment by margin rather than by priority in this proceeding as well as in Docket No. G-100, Sub 51.

The Commission is of the opinion that its decision to allow curtailment by margin rather than by priority has been adequately discussed in its Order of October 31, 1989, in Docket No. G-100, Sub 51, and need not be repeated herein.

General

In addition to those changes discussed herein, the Company proposes various changes which were not contested by any party. Such changes include increases in facilities charges as follows: from $6.00/month to $7.00/month for residential year around service, from $7.00/month to $8.00/month for residential seasonal or heat only service, from $10.00/month to $11.00/month for commercial and small industrial (small general service) year around service, from $11.00/month to $12.00/month for commercial and small industrial (small general service) heat only service, from $100.00/month to $150.00/month for large commercial and industrial service (large general service), and no change for customers who are on large commercial and industrial service with alternate fuel, reclassified as interruptible large general service.

No change was proposed for the outdoor gas lighting schedule or for reconnection fees. A decrease was proposed for Rider A rates per therm as follows: from $0.78394 to $0.70000 for limited emergency service, and from $0.98394 to $0.90000 for on-peak emergency service.

The Commission concludes that the rate design revisions proposed by the Company and unopposed by any party are reasonable and appropriate for purposes of this proceeding except as modified herein.

The Commission further concludes that the rates attached hereto as Appendix A are consistent with the rate revisions adopted herein, and that they along with other miscellaneous operating revenues such as late payment charges, reconnection fees, and energy audit fees will generate total operating revenues of $255,828,268 as approved herein. Such rates will produce a 2.17% increase in revenues for each major customer class as well as a 2.17% increase in revenues from all customer classes.

The base rates as approved herein, and attached as Appendix A, should be adjusted for any Purchased Gas Adjustments (PGA) and for any temporary increments or decrements currently in effect.

IT IS, THEREFORE ORDERED as follows:

1. That Public Service Company of North Carolina, Inc., is hereby authorized to adjust and increase its rates and charges so as to produce an annual revenue level of $255,828,268 from its North Carolina retail customers based on the Company's adjusted test year level of operations. Said amount represents an increase of $5,412,068 above the level of revenues which would have resulted from rates currently in effect based on the adjusted test year level of operations.

2. That Public Service Company of North Carolina, Inc., is hereby required to file a complete set of tariffs in conformity with the base rates set forth in Appendix A attached hereto properly adjusted for any PGA adjustments and for any temporary increments or decrements currently in effect. Said tariffs shall be filed not later than 10 days after the date of this Order effective for service rendered on and after the date of this Order.

3. That Public Service Company of North Carolina, Inc., is hereby required to file monthly reports with the Commission and the Public Staff showing activity in the PGA Deferred Account and the Lost Margin Deferred Account.

4. That Public Service Company of North Carolina, Inc., shall notify its customers of the rates and of the Rider D mechanism approved herein by appropriate bill insert in the next billing cycle following the effective date of the new tariffs. The Company shall submit said bill insert to the Commission for approval not later than 10 days after the date of this Order.

5. That the tariffs filed in response to decretal paragraph two above shall be subject to approval by further order of the Commission.

6. That the AFUDC rate, to be used prospectively by Public Service for purposes of capitalizing the cost of capital associated with its investment in CWIP, shall be developed in a manner consistent with the methodology set forth herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of November 1989.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

APPENDIX A

DOCKET NO. G-5, SUB 246
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.

Rate Schedule	Facilities Charge	Rate Per Therm
105 Residential Year Round	$ 7.00	
Winter		$0.65815
Summer		$0.63315
110 Residential Seasonal	$ 8.00	
Winter		$0.67315
Summer		$0.63315
120 Gas Lights		
Single Upright Mantle	$ 8.00	
Double Inverted Mantle	$ 8.00	
Additional Upright Mantle	$ 7.50	
Additional Inverted Mantle	$ 4.00	
125 Small General Service Year Round	$ 11.00	
Winter		$0.59221
Summer		$0.56721
130 Small General Service Seasonal	$ 12.00	
Winter		$0.60721
Summer		$0.56721
145 Large General Service - Winter	$150.00	
First 15,000 Therms		$0.54855
Next 15,000 Therms		$0.52855
Over 30,000 Therms		$0.50855
145 Large General Service - Summer	$150.00	
First 15,000 Therms		$0.51855
Next 15,000 Therms		$0.49855
Over 30,000 Therms		$0.47855
150 Large Interrup. - Winter	$300.00	
First 15,000 Therms		$0.47855
Next 15,000 Therms		$0.45855
Next 70,000 Therms		$0.44855
Over 100,000 Therms		$0.43355
150 Large Interrup. - Summer	$300.00	
First 15,000 Therms		$0.45855
Next 15,000 Therms		$0.43855
Next 70,000 Therms		$0.42855
Over 100,000 Therms		$0.41355

175 Transport. Large General - Winter		
First 15,000 Therms		$0.19182
Next 15,000 Therms		$0.17182
Over 30,000 Therms		$0.15182
175 Transport. Large General - Summer		
First 15,000 Therms		$0.16182
Next 15,000 Therms		$0.14182
Over 30,000 Therms		$0.12182
180 Transport. Interrupt. - Winter		
First 15,000 Therms		$0.12182
Next 15,000 Therms		$0.10182
Next 70,000 Therms		$0.09182
Over 100,000 Therms		$0.07682
180 Transport. Interrupt. - Summer		
First 15,000 Therms		$0.10182
Next 15,000 Therms		$0.08182
Next 70,000 Therms		$0.07182
Over 100,000 Therms		$0.05682
Rider A		
Limited Emergency Service		$0.70000
On Peak Emergency Service		$0.90000
Reconnection Fees		
To Restore Service	$ 25.00	
For Gas Lights	$ 5.00	
For Service Calls After Normal Operating Hours	$ 7.50	

Note: All rates and charges (except Rates 175 and 180) are subject to 3% state sales tax.

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)	ORDER GRANTING PARTIAL RATE INCREASE

BEFORE: The Full Commission; Sarah Lindsay Tate, Presiding Hearing Commissioner; and William W. Redman, Jr., Presiding at Oral Argument on Exceptions.

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.

On December 5, 1988, the panel of Commissioners Tate, Hipp, and Redman, with Commissioner Hipp dissenting in part, issued its Recommended Order Granting Partial Rate Increase.

On December 20, 1988, the Public Staff filed Exceptions to Recommended Order. On that same date, Piedmont filed Conditional Exceptions. On December 22, 1988, the Commission scheduled oral argument on the exceptions. Oral argument was held on January 13, 1989. The Full Commission has considered the oral argument, the exceptions to the Recommended Order, the Recommended Order, and the entire record in this proceeding. The Commission's rulings on the exceptions of the parties will be considered in the appropriate discussions below.

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 $23,793,661 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 $211,689,422.

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 provide 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 $237,219,474, 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 $264,397,364 (including other operating revenues of $773,673), an increase of $6,248,176 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.

25. Piedmont shall be required to refund to its North Carolina retail customers all revenues or amounts collected under temporary rates and charges since December 19, 1988, pursuant to the Company's undertaking to refund, to the extent said temporary rates and charges produced revenue in excess of the level of rates authorized herein, plus interest calculated at the rate of 10% per annum. To the extent the temporary rates and charges placed in effect by Piedmont beginning December 19, 1988, exceeded the rates and charges authorized by this Order, said temporary rates and charges were unjust and unreasonable.

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

In past general rate cases for Piedmont, the Commission has in recent years always reduced rate base by accumulated deferred income taxes. Piedmont showed such an adjustment in its originally filed Exhibit BLG-1. At Exhibit BLG-1 (revised), Schedule 7, line 16, the Company adjusted its plant in service to reflect additional plant actually placed in service through July 31, 1988, and additional plant expected to be in service by September 30, 1988 [see Exhibit BLG-1, Schedule 7, page 6, line 11 (revised)]. At line 22 a corresponding increase in accumulated deferred income taxes was made by Piedmont, bringing that figure to $23,595,221. In the explanatory note on

Exhibit BLG-1 (revised), Schedule 7, page 7, line 16, the Company stated that the accumulated deferred income taxes had been increased "for additions through September 30, 1988."

On October 10, 1988, just one day before the principal hearing began, the Company changed its numbers again. In Exhibit BLG-1, Schedule 7, page 1 (revised 10/10/88), Piedmont witness Guy showed an even larger amount for plant in service (line 16, column 5) than his prior revised testimony, and he again showed a corresponding increase in accumulated deferred income taxes. His final figure through the close of hearing, as shown on this exhibit, is $23,793,661 for accumulated deferred income taxes.

Two days later, Public Staff witness Hering revised his testimony. He accepted the Company's adjustment for increased plant in service, and he likewise accepted the Company's amount of $23,793,661 for accumulated deferred income taxes. (Hering Exhibit I, Schedule 2 Revised, lines 1 and 7.)

At the hearing, Piedmont presented testimony and exhibits showing that the proper amount of accumulated deferred income taxes was $23,793,661. The Public Staff presented testimony and exhibits accepting that amount. Because the Company and the Public Staff were in agreement on this issue, neither party present any evidence as to the correctness of this amount. Then, after the close of hearing, Piedmont changed its position on this issue so as to add over $3 million to its rate base.

In response to the Commission's request for a statement of rate base, the Company filed on November 4, 1988, a package of documents that included a page entitled "SCHEDULE II." This statement of rate base shows plant in service consistent with the amount stated in Exhibit BLG-1 Revised 10/10/88 and with Hering Exhibit 1 Revised. This gives Piedmont the benefit of the most updated and largest amount for plant in service that was put into evidence. However, Piedmont did not show the corresponding amount of accumulated deferred income taxes that it had presented at the hearing. Instead, the late-filed Schedule II reduces accumulated deferred income taxes to $20,478,963.

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 has 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.

In the Recommended Order entered in this docket on December 5, 1988, the Commission Hearing Panel adopted $20,487,963, as proposed by Piedmont, as the appropriate level of accumulated deferred income taxes for use in this

proceeding. It further found that this was the appropriate level of accumulated deferred income taxes because otherwise Piedmont could be in jeopardy of losing tax benefits associated with accelerated depreciation. The Hearing Panel reached this result on the basis of the late-filed Schedule II and the proposed order from Piedmont, both of which were filed after the close of hearing.

The Public Staff maintains that there are two serious errors in the Hearing Panel's agreement with Piedmont's changed position.

First, the Public Staff asserts that it was deprived of its right to present factual evidence on this issue, and was deprived of its right to cross-examine Piedmont's witnesses. According to the Public Staff, the record contains uncontradicted evidence that $23,793,661 is the proper amount of accumulated deferred income taxes. While the amount of $20,478,963 may be calculated from exhibits in the record, the exhibits do not support that figure as the proper amount, and no other evidence supports it. To the extent Piedmont wished to provide reasons for a change of position, the Public Staff states that the Company should have provided that information in compliance with NCUC Rule R1-17(b) and (c) so that the Public Staff could have exercised its right to provide evidence on this issue.

Piedmont states that the proper level of accumulated deferred income tax is not an evidentiary issue, but rather is a matter of legal interpretation of the Internal Revenue Code. The Public Staff asserts that this is incorrect. The Public Staff concedes that the effect of the Internal Revenue Code can be argued in proposed orders as a matter of legal interpretation, but that a legal interpretation of the effects of the Internal Revenue Code can only be applied properly to a well-developed set of facts related to the issue at hand. The Public Staff asserts that it cannot be assumed that Piedmont's legal interpretation applies to the facts of this case since the facts surrounding Piedmont's accumulated deferred income taxes have not been fully presented in an evidentiary proceeding and that the factual complexity of this issue is illustrated by the amount of accounting testimony on it in prior proceedings.

Moreover, the Public Staff believes that cross-examination of Piedmont's accounting witness as to why the Company changed its position on this issue is crucial. The Public Staff asserts that the right of cross-examination is fundamental to our system of jurisprudence, and even more so when a party reverses the position it had supported under oath on the witness stand.

Second, The Public Staff takes the position that the Hearing Panel has erred on the merits of this adjustment. The Recommended Order states that accumulated deferred income taxes must be set at the level proposed by Piedmont (1) to be consistent with Docket Nos. E-7, Subs 373, 391, and 408, and (2) to avoid the risk of losing benefits associated with accelerated depreciation. Yet, as stated in the November 8, 1988, affidavit of Public Staff witness Daniel, the Hearing Panel's adjustment to accumulated deferred income taxes is inconsistent with Commission Orders in Docket Nos. G-5, Subs 181 and 207; E-22, Subs 273 and 265; and E-2, Subs 461, 526, and 537. There is no indication that any of these companies have lost any benefits associated with accelerated depreciation.

Additionally, the Public Staff asserts that the E-7 dockets are factually different from the present case. In the Duke Power cases, plant in service was updated to a point in time well after the date for expenses and revenues, and the Commission chose to use the date for end-of-period expenses and revenues to determine accumulated deferred income taxes. In the present case, revenues, expenses, and plant in service have been generally updated to July 31, 1988 (and in some instances, up to September 30). The Public Staff takes the position that the test year in this case has effectively been changed to a twelve-month period ending no earlier than July 31, 1988. The entire balance of plant in service has been stated as of September 30, 1988. Depreciation expense has been annualized based on plant in service at September 30, 1988. Most of the other expenses have been updated to July 31, 1988. Revenue has also been updated. Finally, rates have primarily been set on the basis of customers and annualized consumption at September 30, 1988. Thus, the Public Staff takes the position that while the nominal test period was initially set to end January 31, 1988, the real historical test period used to set rates in this case ended no earlier than July 31, 1988.

On reconsideration, the full Commission, including the members of the Hearing Panel, concludes that the motion to exclude improper data from evidence filed in this docket by the Public Staff should be granted. We agree with the Public Staff that the appropriate level of accumulated deferred income taxes which should be used for setting rates in this proceeding is $23,793,661--the amount set forth in the uncontradicted testimony of all parties through the close of the hearing in this docket. The adjustment proposed by the Company in its Exhibit BLG-1 (revised October 10, 1988) and accepted by the Public Staff in Hering Exhibit I (revised) is consistent with the Commission's treatment of this issue in Piedmont's past general rate cases. For example, in Piedmont's general rate cases in Docket No. G-9, Subs 251, 219, and 212, an adjustment was made to accumulated deferred income taxes that is similar to what the Public Staff has proposed in this case (and what Piedmont had proposed in this case through the close of hearing). In those previous cases, the adjustment was agreed to by the Public Staff and Piedmont, and the Commission adopted it.

The Commission agrees with the Public Staff that Piedmont's attempt to incorporate a $3 million change into the record and into our decision-making process after the close of the hearing is a prejudicial procedural error which cannot be allowed to stand. Therefore, due process requires the Commission to decide the issue of the appropriate level of accumulated deferred income taxes in conformity with the uncontradicted testimony of record. We see no prejudice to Piedmont from this action since the Company is being treated no differently in this case than in its last three general rate cases. If Piedmont feels strongly about this issue, the appropriate remedy is for the Company to pursue a change in its next general rate case where a full record can be developed in a manner designed to ensure due process to all parties. If the Company chooses to pursue this issue in its next general rate case, it might be advisable for Piedmont to seek a private letter ruling from the Internal Revenue Service regarding this matter.

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 $211,689,422. 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	(23,793,661)
Allowance for working capital	13,027,485
Cost-free capital-Transco refunds	(282,327)
Unamortized gain from defeasance	(247,496)
Original cost rate base	$211,689,422

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, the cost of gas associated with said contract is greater than that charged for base load requirements from Transcontinental Gas Pipeline Company. Nevertheless, it appears that the Public Staff's real problem with the Cabot contract is its assertion that it did not have enough time to review the contract and to look at other alternatives. As to the contention that the Public Staff did not have adequate time to review the contract, there appears to be adequate reason for Piedmont's delay in signing and filing the contract. Witness Fleenor testified that Piedmont contacted a number of possible suppliers to obtain the lowest cost peaking service available. 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.

As to the contention that the Public Staff needed more time to look at other alternatives, it should be noted that the Public Staff had at least five months notice that Piedmont was negotiating for additional peaking supplies. In witness Schiefer's direct testimony, which was filed five months prior to the hearing, he testified that Piedmont needed additional peaking supplies and that "the best alternative lies in obtaining some peaking supply on a short term basis." He further testified that Piedmont was pursuing several options. If the Public Staff wished to investigate alternative supplies, there is no reason it could not have done so long before Piedmont signed the Cabot contract. Indeed, it would appear that the availability of a cheaper supply would have been of no value to anyone if it were not located until after Piedmont had agreed to purchase gas from Cabot.

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." Witness Hering recommended a level of medical insurance expense based on the 12 months ending July 31, 1988, which he took from Piedmont's ledger.

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.

It is appropriate for the Commission to consider "such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs. . . which is based upon circumstances and events occurring up to the time the hearing is closed." G.S. 62-133(c). Further, the Commission "shall consider all other material facts of record that will enable it to determine what are reasonable and just rates." G.S. 62-133(d). Piedmont witness Foster testified that each fall his Company's underwriters and actuaries determine Piedmont's insurance premium for the following year after considering Piedmont's loss experience, that their latest determination was reflected in the September 13, 1988, letter, and that the

increase was caused by "a dramatic increase in claim activity for Piedmont's employees and their insured dependents. . . [and] the general increases in medical care costs."

The Recommended Order accepted Piedmont's position on this issue. The Public Staff filed an exception, arguing that witness Foster's testimony represents a trend or projection that is inappropriate under G.S. 62-133(c). The Commission concludes that witness Foster's testimony is relevant, material and competent evidence on the issue of the appropriate level of Piedmont's employee medical insurance expense. The Commission, like the panel that issued the Recommended Order, finds this testimony to be convincing. 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 $1,137,731 and federal income tax expense of $4,965,637 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 $237,219,474 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	1,137,731
Federal Income Taxes	4,965,637
Amortization of ITC	(312,484)
Interest on Customer Deposits	191,927
Amortization of Bond Defeasance Gain	(64,560)
Total Operating Revenue Deductions	$237,219,474

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:

Item	Public Staff Capital-ization Ratio (%)	Public Staff Cost Rate %	Company Capital-ization Ratio (%)	Company 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 because that will result in what we find to be an optimal capital structure for ratemaking purposes in this case.

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 within the zone of reasonableness 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	$6,248,176	$263,623,691
Other Revenues	773,673	-0-	773,673
Total operating revenues	258,149,188	6,248,176	264,397,364
Operating Revenue Deductions:			
Cost of gas	176,719,793	-0-	176,719,793
Operating and maintenance expenses	35,484,382	20,831	35,505,213
Depreciation	7,267,141	-0-	7,267,141
Taxes other than income	11,829,907	200,521	12,030,428
State income taxes	1,137,731	421,878	1,559,609
Federal income taxes	4,965,637	1,905,682	6,871,319
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	237,219,474	2,548,912	239,768,386
Net operating income for return	$ 20,929,714	$3,699,264	$ 24,628,978

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	(23,793,661)	(23,793,661)
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	$211,689,422	$211,689,422
Rate of Return	9.89%	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	$ 93,376,204	44.11%	9.90%	$ 9,244,244
Short-term debt	12,870,717	6.08%	10.00%	1,287,072
Common equity	105,442,501	49.81%	9.86%	10,398,398
Total	$211,689,422	100.00%		$20,929,714
		Approved Rates		
Long-term debt	$ 93,376,204	44.11%	9.90%	$ 9,244,244
Short-term debt	12,870,717	6.08%	10.00%	1,287,072
Common equity	105,442,501	49.81%	13.37%	14,097,662
Total	$211,689,422	100.00%		$24,628,978

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.

The Commission notes that the facilities charges reflected on Appendix A attached hereto are at the levels proposed by both the Public Staff and Piedmont. The Commission notes that the approved annual revenue requirement herein is some $543,806 less than the level reflected in the Recommended Order as a result of our decision regarding the issue of accumulated deferred income taxes. The Commission finds it appropriate to use the same rate design formula as that employed by the majority of the panel in their Recommended Order. When the reduced revenue requirement is factored into this formula, rate schedules 101 and 102 experience a reduction from the level of rates reflected in the Recommended Order.

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 Piedmont should not be authorized to pay commissions to PNGE. 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, is 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, since PNGE has no assets, other than current assets, 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.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25

On December 5, 1988, the Commission issued a Recommended Order Granting Partial Rate Increase in this docket allowing Piedmont a rate increase and approving base rates for each of Piedmont's rate schedules. The base rates were approved effective for service rendered on and after the effective date of the Order. Commission Hipp concurred in the level of the overall rate increase, but dissented as to the rate design reflected in the base rates.

On December 6, 1988, Piedmont filed its Petition to Put Adjusted Rates Into Effect Immediately or, in the Alternative, Notice Pursuant to NCGS 62-135 That Suspended Rates Will be Put Into Effect Pending a Final Determination. By its Petition, Peidmont asked that the Commission either allow the Company to put into effect immediately the rate increase and the base rates approved by the Recommended Order or, in the alternative, that the Commission allow Piedmont to put into effect, as temporary rates pursuant to G.S. 62-135, the rate increase requested in its general rate case application of May 6, 1988, and suspended by the Commission's Order of June 1, 1988. In either case, Piedmont filed an undertaking with its petition agreeing to refund any excess if the rates put into effect are finally determined to be excessive.

Piedmont's petition was served upon the parties to this proceeding. The Public Staff orally informed the Commission that it did not oppose the petition. CUCA orally informed the Commission that it did not wish to respond to the petition.

On December 7, 1988, the Commission entered an Order allowing Piedmont to put into effect as temporary rates and charges the rate increase and the base rates approved by the Recommended Order of December 5, 1988, subject to refund.

On December 29, 1988, Piedmont filed temporary rates and charges effective for service rendered on and after December 19, 1988.

Based on the foregoing, the Commission concludes that Piedmont should be required to refund to its North Carolina retail customers all revenue or amounts collected under temporary rates and charges since December 19, 1988,

pursuant to the Company's undertaking to refund, to the extent said temporary rates and charges produced revenue in excess of the level of rates authorized herein, plus interest calculated at the rate of 10% per annum. To the extent the temporary rates and charges placed in effect by Piedmont beginning December 19, 1988, exceeded the rates and charges authorized by this Order, said temporary rates and charges were unjust and unreasonable.

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 $264,397,364 (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 $6,248,176 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 December 19, 1988.

3. That Piedmont is hereby ordered to refund to its North Carolina retail customers all revenues collected under temporary rates and charges since December 19, 1988, pursuant to the Company's undertaking to refund, to the extent said interim rates and charges produced revenue in excess of the level of rates prescribed herein, plus interest calculated at the rate of 10% per annum. Refund calculations shall be made consistent with the Commission's findings set forth herein. Further, Piedmont shall file for Commission approval concurrent with the filing of rates as required by decretal paragraph number 4 below, the Company's plan for making the refunds required by this Order. The Company shall file 10 copies of the calculation of total amount of refunds due, including 10 copies of all detailed workpapers associated therewith.

4. That 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.

5. 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.

6. 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 8th day of February 1989.

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

Commissioner Hipp concurs in part and dissents in part.

APPENDIX A
BASE RATES
Docket No. G-9, Sub 278

Rate Schedule	
101 - Heating Only	
Facilities Charge	$ 7.00 per month
Winter (Nov. - Mar.)	.58762 per therm
Summer (Apr. - Oct.)	.53762 per therm
101 - Year Round	
Facilities Charge	$ 6.00 per month
Winter (Nov. - Mar.)	.57295 per therm
Summer (Apr. - Oct.)	.52295 per therm
101 - Public Housing	N/A
Winter (Nov. - Mar.)	.57295 per therm
Summer (Apr. - Oct.)	.52295 per therm
102 - Heating Only	
Facilities Charge	$ 10.00 per month
Winter (Nov. - Mar.)	.58192 per therm
Summer (Apr. - Oct.)	.53192 per therm
102 - Year Round	
Facilities Charge	$ 10.00 per month
Winter (Nov. - Mar.)	.55274 per therm
Summer (Apr. - Oct.)	.51274 per therm
102B - Air Conditioning	
Facilities Charge	$ 9.50 per month
Winter (Nov. - Mar.)	.55894 per therm
Summer (Apr. - Oct.)	.44924 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*

*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 60% of the amount requested, but I dissent from the rate design adopted by the majority assigning the entire 2.43% increase in the amount of $6,248,176 to the residential and commercial year-round class of customers, while reducing the rates of commercial (heat only) and industrial customers by $870,909, which is also assigned to the residential and commercial heat only customers for a total increase of $7,119,085 on these customers. I further dissent from the majority's rate design within the residential class in allocating $4,319,072 of the $6,248,176 or 69% 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 2.43% for Piedmont into much larger increases for the following customers:

	Increases
Residential year round	5.99%
Residential heat only	4.11%
Residential public housing	1.89%
Commercial year round	3.88%

The majority Order compounds the Recommended Order's discrimination against the residential facilities charge by applying the entire $543,806 reduction in the allowed rate increase made by the Full Commission to reduce the residential and commercial gas commodity increases. The disproportionate high increase of 55% in the facilities charge is thus even more unreasonable since the commodity rate increases were scaled down by the change made by the Full Commission from 6.3% to 5.99% for residential customers, and the overall increase was cut from 2.64% to 2.43%.

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 34 through 38 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 55% 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 $6,248,176, which is an increase of 2.43% in Piedmont's North Carolina revenue. An across-the-board increase of this 2.43% 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 5.99% increase on most residential customers to pay the most of the rate increase plus an additional $870,909 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. B-7, SUB 110

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Greyhound Lines, Inc., 901 Main Street, Suite 2500, Dallas, Texas 75202 - Petition to Discontinue Service Between Greensboro and Fayetteville and Between Fayetteville and Wilmington	) ORDER DENYING PETITION) TO DISCONTINUE SERVICE) BETWEEN GREENSBORO AND) FAYETTEVILLE AND BETWEEN) FAYETTEVILLE AND) WILMINGTON

HEARD IN: Council Chambers, City Hall, Fayetteville, North Carolina, on Wednesday, November 1, 1989, at 7:00 p.m., and Superior Courtroom, Columbus County Courthouse, Courthouse Square, Whiteville, North Carolina on November 2, 1989, at 7:00 p.m.

BEFORE: Commissioner Robert O. Wells, Presiding; and Commissioners J. A. Wright and Charles H. Hughes

APPEARANCES:

For the Applicant:

Henry S. Manning, Jr., Young, Moore, Henderson & Alvis, P.A., Attorneys at Law, P.O. Box 31627, Raleigh, North Carolina 27622
For: Greyhound Lines, Inc.

For the Public Staff:

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

For the City of Fayetteville:

Robert C. Cogswell, Jr., Fayetteville City Attorney, 224 Hay Street, P.O. Box 1513, Fayetteville, North Carolina 28302-1513

For the City of Whiteville:

Carlton F. Williamson, Williamson & Walton, Attorneys at Law, 139 Washington Street, P.O. Box 1467, Whiteville, North Carolina 28472-3387

BY THE COMMISSION: On July 28, 1989, Greyhound Lines, Inc. (hereinafter Greyhound, GLI or Applicant) petitioned, pursuant to Commission Rule R2-47, for an Order permitting it to discontinue motor passenger and package express service on Schedules 3910 and 3911 between Greensboro and Fayetteville, North Carolina, and between Fayetteville and Wilmington, North Carolina, over the following routes:

(a) Route 76 between Greensboro and Fayetteville, North Carolina, over U.S. Highway 421 and North Carolina Highway 87.

(b) Between Fayetteville and Wilmington, North Carolina:

Route 56 between the junction of North Carolina Highways 24 and 53 east of Fayetteville and the junction of North Carolina Highways 53 and 242 north of Elizabethtown over North Carolina Highway 53.

The portion of Route 57 between the junction of North Carolina Highways 24 and 53 and U.S. Highway 701 north of Elizabethtown and Whiteville over U.S. Highway 701.

The portion of Route 55 between Wilmington and Whiteville over U.S. Highways 74 and 76.

Attached to the Petition as exhibits were Exhibit A, a map showing the authorized routes and the routes proposed to be discontinued by Greyhound; Exhibit B, a copy of a portion of Certificate of Public Convenience and Necessity Number B-69, with the involved routes underlined; and Exhibits C and C-1, being certain financial data concerning the two schedules involved. These exhibits included income and expense statements for the route between Fayetteville and Greensboro and also for the route between Fayetteville and Wilmington for the 12-month period ended March 31, 1989.

On September 19, 1989, the Public Staff filed a Notice of Intervention pursuant to G.S. 62-15(d) and a request for public hearing. In its motion, the Public Staff requested that it be recognized as a party to the proceeding and that public hearings be held in Fayetteville and Whiteville, North Carolina.

On September 29, 1989, the Commission issued an Order Requiring Notice of Hearing, requiring Greyhound to give notice of its Petition to Discontinue Service by posting notices in the buses serving the involved routes, by publication in area newspapers, and by providing copies to passengers debarking or embarking at any of the intermediate points on such schedules. The notice required that written objections to the Petition should be filed with the Commission by no later than October 23, 1989. The Order further provided that the matter would be set for hearing in Fayetteville and Whiteville.

A large number of written protests and petitions were filed by various individuals, businesses, and organizations.

The matter came on for hearing as scheduled in Fayetteville on Wednesday, November 1, 1989, and in Whiteville on Thursday, November 2, 1989. At the hearings, Greyhound presented the testimony and exhibits of Gregory Alexander, Director of Capacity Management and Traffic for Greyhound Lines, Inc. Public witnesses at the hearing in Fayetteville included Paul C. Comer, Jr., Chairman of the Fayetteville Convention and Visitors Bureau; J. L. Dawkins, Mayor of the City of Fayetteville; Mike Wofford, a member of the Fayetteville City Council; Senator Lura S. Talley, a member of the North Carolina State Senate; and four other citizens of the area.

At the hearing in Whiteville, the Commission received the testimony of 16 public witnesses, including Horace Whitley, Mayor of Whiteville; Sam Koonce, Chairman of the Board of County Commissioners of Columbus County; Bill Greene, Director of the Boys and Girls Home at Lake Waccamaw; Harold Wells, Chairman of the "Committee of 100" for Columbus County; Representative Leo Mercer of the North Carolina House of Representatives; and Jake Jones, a member of the City Council of Whiteville.

Upon consideration of the testimony and exhibits presented at the hearings and the entire record in this docket, the Commission now makes the following

FINDINGS OF FACT

1. Greyhound Lines, Inc., is a common carrier of passengers by bus in North Carolina intrastate commerce and is subject to the jurisdiction of this Commission.

2. In its Petition filed in this docket on July 28, 1989, GLI seeks to discontinue motor bus transportation over the following routes authorized by North Carolina Intrastate Certificate of Public Convenience and Necessity No. B-69:

(a) Route 76 between Greensboro and Fayetteville, North Carolina, over U.S. Highway 421 and North Carolina Highway 87.

(b) Between Fayetteville and Wilmington, North Carolina, as follows:

Route 56 between the junction of North Carolina Highways 24 and 53 east of Fayetteville and the junction of North Carolina Highways 53 and 242 north of Elizabethtown over North Carolina Highway 53.

The portion of Route 57 between the junction of North Carolina Highways 24 and 53 and U.S. Highway 701 north of Elizabethtown and Whiteville over U.S. Highway 701.

The portion of Route 55 between Wilmington and Whiteville over U.S. Highways 74 and 76.

3. GLI is the only intercity motor carrier of passengers serving the affected routes. Service between Greensboro and Fayetteville and between Fayetteville and Wilmington will continue via other routes so that all points except the intermediate points will continue to have service. Nevertheless, 10 intermediate cities and towns will lose bus service altogether if the abandonment is allowed. Whiteville, Elizabethtown, Spring Lake, and Sanford are the agency points that will no longer receive bus service from GLI.

4. Although bus service will continue between Fayetteville and Greensboro and between Fayetteville and Wilmington, the service will not be as convenient as it is at present. Travel time in each direction will be significantly increased with appreciable layovers at intermediate or change points. The cost of tickets will change as follows:

BETWEEN / AND	CURRENT FARE	PROPOSED FARE
Wilmington/Greensboro	$32	$33
Wilmington/Fayetteville	$19	$18
Fayetteville/Greensboro	$17	$23

5. Alternative package express services, including United Parcel Service, U.S. Postal Service, Purolater Courier and other package carriers will continue to serve all points affected by the discontinuance.

6. The routes which GLI seeks to discontinue are being operated at a financial loss because revenues allocated to the routes are lower than allocated variable costs. Nevertheless, the Commission is not persuaded that the methodology employed by GLI in computing revenues is accurate and representative of the level of revenues attributable to these routes.

7. The discontinuance of intrastate motor bus service between Greensboro and Fayetteville and between Fayetteville and Wilmington by way of Whiteville on the routes in question is not consistent with the public interest.

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

The evidence for these findings of fact is contained in the Petition of GLI, in the testimony of Company witness Alexander, and in the entire record. These findings of fact are largely jurisdictional and procedural in nature and are uncontested and uncontroverted in the record.

The Commission is given full power, authority and jurisdiction to supervise and control all public motor carriers of property or passengers operating in North Carolina pursuant to Article 12 of the North Carolina General Statutes. Greyhound is a public motor carrier of passengers as that term is defined in G.S. 62-3(1a) and 62-3(23)a.4. Greyhound is also a common carrier affected with the public interest as described by G.S. 62-3(7). No public motor carrier authorized to operate in North Carolina shall change, abandon, or discontinue any service or operation established under any certificate of public convenience and necessity without the consent of the Commission after written application and notice pursuant to G.S. 62-262.2.

The Petition to discontinue service at issue in this docket was filed by GLI pursuant to 49 U.S.C. § 10935. In accordance with the provisions of that statute, a motor common carrier of passengers having intrastate authority must first file a request to discontinue service with the state agency that has jurisdiction over such discontinuations. The state agency then has 120 days to act on the request and to conduct whatever investigation it deems appropriate prior to issuing its ruling. At the conclusion of the 120 day period, if the application is denied in whole or in part, or if the state agency having jurisdiction has not acted finally in whole or in part, the carrier may file an application to discontinue intrastate passenger bus service with the Interstate Commerce Commission (ICC).

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

The evidence for these findings of fact is contained in the testimony of Company witness Alexander and in the testimony of the public witnesses. These findings of fact were not contested in the record.

The following cities and towns will lose bus service altogether if Greyhound is allowed to abandon the routes in question: Liberty; Siler City; Goldston; White Oak; Elizabethtown; Whiteville; Lake Waccamaw; Bolton; Delco; and Leland. There are four agency points that will no longer receive bus service from GLI; i.e., Sanford; Spring Lake; Elizabethtown; and Whiteville.

GLI was required to give public notice of its Petition and the public hearings in Whiteville and Fayetteville by publishing such notice in newspapers of general circulation in the involved areas of North Carolina. The affidavits of publication filed by GLI indicate that the Company placed ads in the following newspapers: The Wilmington Star-News; the Greensboro News & Record; and the Fayetteville Observer. The Commission is concerned that the residents of Sanford, which is an agency point, did not receive adequate newspaper notice of GLI's Petition. This would explain why the Commission received no letters of protest from residents of the Sanford area. It also constitutes a basis upon which to deny GLI's Petition. The Commission does not consider a publication of notice in the Greensboro and Fayetteville newspapers to be notice "in newspapers having general circulation" in the Sanford area.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is contained in the Petition of GLI as amended and in the testimony of Company witness Alexander. No party disputed GLI's assertion of financial loss on the routes involved in this proceeding. There were questions both from the parties and from the Commission concerning the method by which allocated revenues and costs were computed, and the Commission is not at all satisfied with that method.

GLI's evidence shows that on the route between Greensboro and Fayetteville total revenue for the twelve months ended March 31, 1989, was $51,023. Total variable cost over this route for the same period was $92,172. Fully allocated costs for this route for the same period were $174,632.

GLI's evidence shows that on the route between Fayetteville and Wilmington total revenue for the twelve months ended March 31, 1989, was $54,680. Total variable cost over this route for the same period was $107,568. Fully allocated costs for this route for the same period were $204,569.

G.S. 62-262.2(c) provides, in pertinent part, as follows:

> ". . . the Commission shall accord great weight to the extent to which the interstate and intrastate revenues from the transportation proposed to be reduced or discontinued are less than the variable costs of providing the transportation. . ."

The amount of revenues reflected in GLI's exhibits includes revenues generated from traffic to and from points where service would be discontinued.

Therefore, as an example, the revenues generated by a passenger who boarded in Wilmington and was bound for Fayetteville would not be included inasmuch as this traffic would continue to be provided over alternate routes. The evidence presented by GLI further reflects that revenues generated to destinations beyond those sought to be discontinued, even though the traffic originated at an intermediate point, would not be considered. For example, if an individual purchased a ticket in Whiteville bound for New York, via Wilmington, only the revenues attributable to the traffic between Whiteville and Wilmington would be considered. In addition, the total amount of passenger revenues for the 12 months ending March 31, 1989, attributed to the Fayetteville to Wilmington route by GLI was $28,842, whereas the amount of revenues collected for passenger service alone at Whiteville, North Carolina, was $53,825 during the same period. In our opinion, GLI's methodology discriminates against rural communities and makes it very difficult if not impossible to justify continued service to communities such as Whiteville if Greyhound proposes to discontinue that service.

Furthermore, the Commission finds it unrealistic to assume that the same level of revenues will continue to be generated beyond the routes proposed to be discontinued if the initial origin point or final destination point is eliminated. Although the Commission is unable to quantify the revenue effect in this proceeding, we feel that it may have a significant impact and certainly should be considered. Furthermore, the Commission is also of the opinion that the increased travel time between Greensboro and Fayetteville and between Fayetteville and Wilmington will certainly affect the revenues between these points and should be considered. For these reasons, the Commission concludes that the methodology used by GLI in computing revenues in this case is flawed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

G.S. 62-262.2(a) provides that when a bus company proposes to discontinue service over any intrastate route or proposes to reduce its level of service to any points on a route to a level which is less than one trip per day (excluding Saturdays and Sundays), the bus company must file a petition with this Commission requesting permission to do so.

The factors which we must consider in making our determination of this matter are stated in G.S. 62-262.2(c) as follows:

> "If. . . any person or the Public Staff objects in writing to the Commission to granting of such permission, the Commission shall grant such permission unless the Commission finds as a fact that the discontinuance or reduction in service is not consistent with the public interest or that continuing the transportation, without the proposed discontinuance or reduction, will not constitute an unreasonable burden on interstate commerce. In making a finding under this subsection, the Commission shall accord great weight to the extent to which the interstate and intrastate revenues from the transportation proposed to be reduced or discontinued are less than the variable costs of providing the transportation, including depreciation for revenue equipment. The Commission may also consider, to the extent applicable, all other factors which are to be considered by the Interstate Commerce Commission in a proceeding commenced under 49 U.S.C. § 10935."

Under 49 U.S.C. § 10935, the Interstate Commerce Commission is also directed to accord great weight to the excess of variable costs over revenues. In addition, 49 U.S.C. § 10935(g)(2) directs the ICC to consider the following:

(A) The national transportation policy set out in 49 U.S.C. § 10101;

(B) Whether the motor common carrier of passengers has received an offer of, or is receiving, financial assistance to provide the transportation to be discontinued or reduced from a financially responsible person (including a governmental authority); and

(C) In the case of petition to discontinue transportation to any point, whether the transportation service in question is the last motor carrier of passenger service to such point and whether a reasonable alternative to such service is available.

With respect to the goals and principles enunciated by the national transportation policy, the Commission concludes that the intent of this policy is that a balance should be struck between the needs of the public for safe, efficient and economical transportation and the needs of the carriers for an adequate economic return. The Commission concludes that these goals and principles are not substantially different from those which are established by the laws of North Carolina and which have historically guided our considerations. It is important as a matter of sound national and state transportation policy to maintain bus service to rural communities and to meet the needs of shippers, receivers, passengers, and consumers. See 49 U.S.C. § 10101(a)(2). A total of 23 individuals testified at the public hearings and many more people were in attendance. The individuals who testified were unanimous in their opposition to the proposed discontinuance of passenger bus service. In addition, the official file in this docket contains approximately 60 letters and petitions with hundreds of signatures in opposition to the proposed abandonment. Furthermore, abandonment of this route will also eliminate same day package express service to the 10 intermediate cities and towns that will lose bus service altogether. While alternative package express services will still be available, the service provided will not be same day service.

Mr. Alexander testified that GLI had notified an unnamed person within the North Carolina Department of Transportation in advance of filing its Petition. GLI did not discuss the discontinuance of these routes with any state or local agency which might have been in a position to seek or provide the financial assistance mentioned in 49 U.S.C. § 10935(g)(2)(B). In view of this fact, the Commission finds GLI's assertion that it is not receiving and has not been offered any such assistance to be, at best, self-serving.

Finally, with respect to the considerations mandated by 49 U.S.C. § 10935, the Commission notes that GLI is the last motor carrier of passenger service to the 10 intermediate cities and towns previously discussed in this Order, including the agency stations at Elizabethtown and Whiteville. While alternate providers of bus service may emerge in the future, no reasonable alternative to GLI's service exists at present. The effect of discontinuance

of this service will be severe on a significant number of riders along the routes in question.

On a more general level, the Commission notes that GLI has made little or no effort to stimulate ridership on the routes in question. Public witnesses in Whiteville in particular mentioned the deterioration in the level of service and the inconvenience resulting from the location and limited hours of operation of the terminal in Whiteville. Mr. Alexander also testified that GLI did no local advertising and in general relied on local agents, apparently with no significant assistance from GLI, for any effort to increase business.

The Commission is aware that a corporation such as GLI, which has been the subject of a leveraged buyout, is subject to great pressure to generate cash flow at all costs. This corporate goal, while generally not improper, is not consonant with the obligations of a regulated public utility. GLI is, of course, entitled to a reasonable return on expenses. However GLI may not rely on its operating loss to evade its responsibility as a utility when, by providing the services needed by its customers, it might have been able, and might yet be able, to stimulate its ridership so as to earn the return it needs. In Docket No. P-84, Sub 24, the Commission considered the application of Two-Way Radio of Carolina, Inc., to discontinue manual mobile service in Gastonia, Statesville and Shelby, North Carolina. The Commission denied that application, finding that Two-Way had not made sufficient effort to preserve its service. The Order in that docket states in part: "[A] utility that has not attempted to increase its rates or the number of its subscribers cannot be heard to complain that its service is priced under cost."

In light of all of these considerations, the Commission concludes that GLI has not complied with the implicit requirements of the state and federal statutes cited. The Commission also finds that the operating loss suffered by GLI on the subject routes must be viewed from the perspective of its failure to attempt to stimulate ridership and the deterioration in service which the Company has allowed. Finally, the Commission finds that the public convenience and necessity is served by continuation of passenger bus service on the routes in question. Greyhound's proposed discontinuation of service would have a devastating effect on the communities affected and would pose extreme hardship to the elderly and handicapped individuals residing in those communities. We are charged with administering the state and national transportation policy within the State of North Carolina. Preserving transportation links to rural communities is one of the primary goals of this policy. Bus service is essential to preserving the vitality of rural North Carolina. Therefore, the Commission concludes that the Petition of GLI should be denied.

IT IS, THEREFORE, ORDERED that the Petition to Discontinue Intrastate Motor Bus Transportation filed in this docket by Greyhound Lines, Inc., on July 28, 1989, be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of November 1989.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

MOTOR TRUCKS - CONTRACT CARRIER - AUTHORITY

DOCKET NO. T-2940, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Respess Trucking, Inc., Route 2, Box 155, Pantego, North Carolina 27860 - Application For Contract Carrier Authority	)))	FINAL ORDER GRANTING APPLICATION AND OVERRULING EXCEPTIONS

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 9, 1989, at 2:00 p.m.

BEFORE: Chairman Robert O. Wells, Presiding; and Commissioners Edward B. Hipp, Ruth E. Cook, and William W. Redman

APPEARANCES:

For the Applicant:

Ralph McDonald, Bailey & Dixon, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865
For: Respess Trucking, Inc.

For the Protestant:

David H. Permar, Hatch, Little & Bunn, Attorneys at Law, Post Office Box 527, Raleigh, North Carolina 27602
For: Forbes Transfer Co., Inc.

BY THE COMMISSION: By application filed July 18, 1988, Respess Trucking, Inc. (Applicant) seeks 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.

With the application, Applicant filed a request for corresponding temporary authority. Notice of the temporary authority request was mailed to certified carriers of general commodities on July 20, 1988.

A Protest and Motion for Intervention was filed on July 26, 1988, by Forbes Transfer Company, Inc. (Protestant). By Order issued August 29, 1988, the intervention was allowed and Applicant's request for temporary authority was denied.

The application for permanent authority was listed in the Commission's calendar of August 26, 1988, and was thereby scheduled for hearing on September 27, 1988.

Upon call of the matter for hearing, Applicant and Protestant were present and represented by counsel. Applicant offered in support of its application the testimony of Keith Respess, Applicant's Secretary and Treasurer, and

H. C. Edwards, Ahoskie Branch Manager for Bellcross Beverage Company, Inc. (Bellcross), the supporting shipper.

Protestant then offered in opposition to the application the testimony of Vance T. Forbes, Jr., Protestant's President and John H. Tew, a sales representative for Protestant.

On December 7, 1988, Commission Hearing Examiner Sammy R. Kirby entered a Recommended Order in this docket whereby the Applicant was granted the contract carrier operating authority at issue in this proceeding.

On December 22, 1988, the Protestant filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

The matter came on for oral argument on exceptions before the full Commission on Monday, January 9, 1989. The parties were present, represented by counsel, and presented oral argument.

Based upon a careful consideration of the Recommended Order and the entire record in this proceeding, the Commission is of the opinion, finds, and concludes that with only minor changes all the findings, conclusions, and ordering paragraphs contained in 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. Therefore, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant is a North Carolina corporation located in Pantego, North Carolina and operating as a contract carrier under Permit No. P-558, issued by this Commission, authorizing the Applicant to transport general commodities under contract with C.O. Tankard Company, Washington, North Carolina.

2. By this application, Applicant seeks authority to transport Group 1, general commodities, from Eden to Ahoskie and Elizabeth City as a contract carrier for Bellcross.

3. Applicant maintains a fleet of equipment suitable for the transportation of the commodities involved in this application and has the resources to acquire additional units as needed.

4. Bellcross is a wholesale distributor of Miller Brewing Company (Miller) products. Bellcross has its headquarters in Elizabeth City and a branch in Ahoskie. Approximately 40% of Bellcross' business is done by the Ahoskie branch.

5. Bellcross has need for motor transportation of beer and related products from the Miller brewery at Eden to Bellcross facilities at Ahoskie and Elizabeth City. The distances from Eden to Elizabeth City is approximately 70 miles further than the distance from Eden to Ahoskie.

6. On the average, the Bellcross facilities receive 22 to 23 truckloads of beer from Eden each month. The number of truckloads may be as many as 40 in the summer months and as few as 15 in the winter months.

7. Bellcross schedules freight deliveries from Eden by 30-day periods. Orders are placed with Miller 60 days in advance. The date of the shipment can be controlled approximately 70% of the time, but some products are available only on certain days of the month. After the order is placed, Miller furnishes a schedule with assigned loading periods. These periods are in two-hour increments around the clock.

8. If a load is not picked up by the customer when scheduled, Miller has the option, after a grace period, to choose a common carrier. The customer must pay the freight when Miller chooses the carrier.

9. Protestant has served Bellcross as a common carrier for several years. Protestant has provided generally good service, but Bellcross would prefer to have the services of a contract carrier.

10. Protestant does not always use the same drivers to serve Bellcross. It would be an advantage to Bellcross to have a contract carrier who would use the same drivers every day.

11. On several occasions during the past year, Forbes did not pick up Bellcross' product within the time scheduled by Miller. On those occasions, Miller shipped by another carrier who charged higher rates which Bellcross had to pay.

12. Bellcross requires deliveries in the mornings. Its business is disrupted if a load of beer arrives in the afternoon. Forbes drivers sometimes do not make deliveries to Bellcross in the morning because they have to stop and sleep on the way.

13. Applicant and Bellcross have entered into a transportation contract, a copy of which was filed with the Commission at the hearing.

14. Applicant has agreed to charge Bellcross 65 cents per 100 pounds for freight from Eden to Ahoskie and 78 cents per 100 pounds for freight from Eden to Elizabeth City. Protestant's rates are 78 cents per 100 pounds for freight from Eden to Ahoskie and 79 cents per 100 pounds for freight from Eden to Elizabeth City.

15. Protestant is an authorized common carrier operating under Certificate No. C-58 which authorizes statewide transportation of general commodities.

16. Protestant's rates for beer from Eden to Ahoskie and Elizabeth City are published by North Carolina Trucking Association, Inc. (the Bureau). The Bureau tariff was raised in the summer of 1988, but Protestant flagged out as to beer moving from Eden to Ahoskie and Elizabeth City.

17. Protestant does not charge the same rate as others for carrier participation in the Bureau tariff of beer moving from Eden to Ahoskie and Elizabeth City.

18. Protestant is contemplating raising its rates for beer moving from Eden to Ahoskie and Elizabeth City.

19. Protestant transports beer for several North Carolina shippers. In 1987, Protestant's gross revenue was 6½ million dollars, and its revenue from operations for Bellcross was $78 thousand. Through September 1988, Protestant's gross revenue is $4 million and its revenue from Bellcross is approximately $64 thousand.

WHEREUPON, the Commission reaches the following:

CONCLUSIONS

This application for a contract carrier permit is governed by G.S. 62-262(i) which imposes upon the Applicant the burden of proving the following to the satisfaction of this Commission:

(1) Whether the proposed operations conform with the definition in this chapter of a contract carrier,

(2) Whether the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers,

(3) Whether the proposed service will unreasonably impair the use of the highways by the general public,

(4) Whether the Applicant is fit, willing, and able to properly perform the service proposed as a contract carrier,

(5) Whether the proposed operations will be consistent with the public interest and the policy declared in this Chapter, and

(6) Other matters tending to qualify or disqualify the Applicant for a permit.

NCUC Rule R2-15(b) amplifies the burden of proof upon the Applicant for a contract carrier permit:

> (b) If the application is for a permit to operate as a contract carrier, proof of a public demand and need for the service is not required; however, proof is required that one or more shippers or passengers have a need for a specific type of service not otherwise available by existing means of transportation, and have entered into and filed with the Commission a copy to the Public Staff prior to the hearing or at the time of the hearing, a written contract with the applicant for said service, which contract shall provide for rates not less than those charged by common carriers for a similar service.

Under the statutes, the threshold consideration is whether the proposed operations conform with the definition of contract carrier. Applicant has entered into and filed with this Commission a written transportation contract with Bellcross, the shipper it proposes to serve. The proposed operations conform therefore with the threshold definition of a contract carrier.

Next, Applicant must prove that the supporting shipper has a need for a specific type of service not otherwise available by existing means of transportation. Applicant proposes to dedicate one of its trucks to Bellcross' use and to use a second truck approximately half of the time for Bellcross and the other half of the time for its other contracting shipper, C. O. Tanker Company, Inc. In a publication entitled "Explanation of the North Carolina Truck Act of 1947 and Rules and Regulations for the Administration and Enforcement of Said Act" issued by this Commission to be effective June 1, 1948, pursuant to general order #4066-A, the specialized service that distinguishes a contract carrier from a common carrier was defined as follows:

> It may be stated as a general rule that it requires (1) individual contracts and (2) specialized service to distinguish a contract carrier from a common carrier. The specialized service varies according to the peculiar needs of the particular shipper. It may consist of furnishing equipment especially designed to haul a certain kind of property, or it may consist of the use of employees trained in loading, unloading, or handling a particular commodity. It may consist of services in addition to the usual transportation service, such as packing goods or the installation of machinery, or it may consist of devoting all or a particular part of the carriers' services and equipment to the use of the particular shipper. If the carrier does not limit himself to both individual contracts and some specialized service, his operations cannot be distinguished from those of a common carrier. Unless his operations can be so distinguished, he is a common carrier.

Id. p. 8. In addition to providing dedicated equipment, Applicant will provide dedicated service and guaranteed rates utilizing the same drivers each day. This is a type of service different from that generally available from common carriers. As the proposed operation entails dedication of equipment and other specialized service features, the Commission concludes that the proposed operations are responsive to a need for a specific type of service not otherwise available by existing means of transportation.

Another element of G.S. 62-262(i) is the Applicant's fitness and willingness to perform proper service as a contract carrier. The Applicant's fitness and willingness to serve as a contract carrier is apparent. Applicant has its equipment properly insured. It maintains a fleet of equipment suitable for transportation of the involved commodities. It has experienced management. The Commission, therefore, concludes that the Applicant is fit, willing, and able to properly perform the proposed contract carrier services.

With respect to the remaining criteria of G.S. 62-262(i), there is no evidence that the proposed contract carrier operations will unreasonably impair the efficient public service of carriers operating under certificates or that it will unreasonably impair the use of the highways by the general public. The revenue Protestant has realized from servicing the Bellcross account represents only slightly more than 1% of Protestant's gross annual revenue. Further, even if granting this application would deprive Protestant of a substantial percentage of its gross revenue, that fact by itself would not be grounds for denying this application. In Utilities Commission v. McCotter, Inc., 16 N.C. App. 475 (1972), a protestant appealed a grant of contract carrier permit to the Court of Appeals of North Carolina, arguing inter alia that the protestant

would be deprived of business that it might receive should contract carrier authority be granted to the applicant. The court held:

> Protestant's argument that the Commission's action is inconsistent with the public interest seems to be based primarily upon the contention that the granting of contract authority to applicant is unfair to protestant. As previously noted, if the authority were withheld, Hatteras might turn to protestant for intrastate carrier service. Presumably, this would be in protestant's economic interest. However, the interest of a single carrier and the interest of the public are not necessarily one and the same. Certainly, it is in the public's interest for this State's manufacturers to have available the service of carriers which are equipped to efficiently handle their particular shipping requirements. Here the Commission determined that the issuance of contract authority to applicant was the only effective means of assuring that Hatteras would have adequate transportation service available to meet its specific needs. This determination is supported by the evidence and supports the Commission's finding that the contract authority granted is consistent with the public interest.

Protestant contends that Applicant's proposed rates are lower than Protestant's current rates and that Rule R1-15(b), therefore, requires denial of the application. However, this rule must be construed in conjunction with NCUC Rule R2-16(b) and G.S. 62-147(b):

> NCUC Rule R2-16(b):
>
> Every contract carrier shall establish and observe reasonable minimum rates and charges for any service rendered or to be rendered in intrastate commerce, and shall file with the Commission, publish and keep open for public inspection such schedules of rates and charges. To encourage the establishment and maintenance of reasonable charges for transportation service without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practice, said schedule of rates and charges shall not be less than the rates and charges approved or prescribed by the Commission for common carriers performing similar service except with the approval of the Commission pursuant to G.S. 62-147.
>
> G.S. 62-147(b):
>
> . . . . Such minimum rate, or such rule, regulation, or practice, so prescribed by the Commission, shall give no advantage or preference to any such carrier in competition with any common carrier by motor vehicle subject to this Chapter, which the Commission may find to be undue or inconsistent with the public interest and the policy declared in this Chapter, and the Commission shall give due consideration to the cost of the services rendered by such carriers, and to the effect of such minimum rate, or such rule, regulation, or practice, upon the movement of traffic by such carriers. All complaints shall state fully the facts complained of and the reasons for such complaint and shall be made under oath.

The statute does not require that contract carrier rates not be lower than common carrier rates in every case. Contract carrier rates may be lower if approved by the Commission pursuant to G.S. 62-147. In this instance, approval of Applicant's proposed rates appears to be justified. Applicant's rates to Elizabeth City are substantially the same as Protestant's. There is justification for Applicant's having lower rates to Ahoskie which is 70 miles closer to Eden, than to Elizabeth City. Further, it would not be fair to either Applicant or Bellcross to deny this application because Applicant's proposed rates are lower than Protestant's when Protestant has lower rates than other common carriers participating in the Bureau tariff. Further, Protestant has stated that it is contemplating raising its rates applicable to Bellcross' traffic. If this application were to be denied because Applicant proposed lower rates than Protestant and Protestant were then to raise its rates, Bellcross would be the victim.

The Commission, therefore, concludes that the proposed operation is consistent with the public interest and policy declared in the Public Utilities Act.

IT IS, THEREFORE, ORDERED as follows:

1. That the application of Respess Trucking, Inc., for a contract carrier permit be, and the same is hereby, granted in accordance with Exhibit A attached hereto and made a part thereof.

2. That Respess Trucking, Inc., to the extent that it has not already done so, shall file with the Division of Motor Vehicles evidence of required insurance, a list of equipment, and a designation of process agent, and with the Commission a schedule of minimum rates and charges, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date of this Order.

3. That unless Respess Trucking, Inc., complies with the requirements set forth in decretal paragraph 2 above and begins operations as authorized within a period of thirty (30) days after the date of this Order, unless such time is extended by the Commission upon written request, the operating authority granted herein shall cease and determine.

4. That the Applicant shall maintain its books and records in such a manner that all of the applicable items of information required in its prescribed Annual Report to the Commission can be used by the Applicant in the preparation of such Annual Report. A copy of the Annual Report form shall be furnished to the Applicant upon request made to the Transportation Rates Division, Public Staff, North Carolina Utilities Commission.

5. That this Order shall constitute a permit until a formal permit has been issued and transmitted to the Applicant authorizing the contract carrier transportation described and set forth in Exhibit A attached hereto.

6. That the exceptions filed by the Protestant on December 22, 1988, be, and the same are hereby, overrulled and denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of January 1989.

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

Commissioner Edward B. Hipp dissents.

EXHIBIT A

SCOPE OF OPERATIONS

Docket No. T-2940, Sub 1 RESPESS TRUCKING, INC.

EXHIBIT A

Contract Carrier Authority

2. "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."

HIPP, COMMISSIONER, DISSENTING. I dissent based upon the decision of the majority to approve a contract carrier permit with rates which create an advantage or preference over the common carrier presently transporting the movement of freight which the applicant proposes to transport.

Under the facts in this case, in my opinion, this violates G.S. 62-147(b), G.S. 62-262(i) (1), (2), and (3), and NCUC Rules R2-15(b) and R2-16(b), stating, in part, as follows:

> "G.S. 62-147. Rates of motor contract carriers. ... (b) ... Such minimum rate, or such rule, regulation, or practice, so prescribed by the Commission, shall give no advantage or preference to any such carrier in competition with any common carrier by motor vehicle subject to this Chapter, which the Commission may find to be undue or inconsistent with the public interest, and the policy declared in this Chapter, and the Commission shall give due consideration to the cost of the services rendered by such carriers, and to the effect of such minimum rate, or such rule, regulation, or practice, upon the movement of traffic by such carriers. ..."

> "G.S. 62-262. Applications and hearings. ...(i) If the application is for a permit, the Commission shall give due consideration to: (1) Whether the proposed operations conform with the definition in this Chapter of a contract carrier, (2) Whether the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers, (3) Whether the proposed service will unreasonably impair the use of the highways by the general public, ..."

"Rule R2-15. Proof required. ...(b) ... proof is required that one or more shippers or passengers have a need for a specific type of service not otherwise available by existing means of transportation, and have entered into and filed with the Commission with a copy to the Public Staff prior to the hearing or at the time of the hearing, a written contract with the applicant for said service, which contract shall provide for rates not less than those charged by common carriers for similar service."

"Rule R2-16. Rates and charges. ...(b) ...said schedule of rates and charges shall not be less than the rates and charges approved or prescribed by the Commission for common carriers performing similar service except with the approval of the Commission pursuant to G.S. 62-147."

I do not believe that part of the justification given by the majority to authorize the lower contract rates, i.e., that the common carrier rate presently moving the freight is already lower than other common carrier rates for such haul, is adequate. The present common carrier rate is lower than other common carriers because the other common carriers recently increased their rates and the common carrier handling the freight in this case declined to take the increase. In my view, this is a reason not to justify the lower contract rate of the applicant rather than in support of it as the majority has found.

The Legislature has established a plan for issuing certificates to common carriers and granting permits to contract carriers which generally relies upon common carriers who hold themselves out to serve the public generally, unless good cause is shown to permit contract carriers as provided in the above quoted provisions of the statutes and the Commission's Rules.

The beer shipments in question are presently part of a two way common carrier truck haul, moving tobacco from Ahoskie to Danville and returning with beer from Eden to Ahoskie on the backhaul. The Majority Order grants a contract permit which gives the backhaul of beer to a new carrier. It makes two one-way hauls. The existing common carrier will transport tobacco from Ahoskie to Danville and return empty. The new contract hauler will go empty from Ahoskie to Eden and return with beer. The result is to put two trucks on the public highways in place of one truck. It is not efficient public service, and it unreasonably impairs the use of the highways by the general public, in violation of G.S. 62-262(i) (1), (2), and (3), quoted above.

The statutory plan to rely in the first instance on common carriers serves the public well, to establish truck service for all shippers equally without preference or discrimination. The intent of the Legislature is clear. Until it is changed, the Commission should administer the statute as plainly written. I do not believe the result of the present decision recognizes the spirit of the legislative plan. The Commission should not grant contract rights for transportation presently moving by common carrier, except for good cause shown. I do not believe that good cause has been shown in this case.

The fact that the freight sought to be hauled as contract carriage is presently moving by common carrier is considerable evidence that the movement

is not such specialized transportation as was contemplated by the definition "Contract carrier by motor vehicle" shown in G.S. 62-3(8).

In my opinion, the public interest would be better served if the contract carrier permit authorized by the Majority Order gave no undue preference or advantage over existing common carriers as contemplated by G.S. 62-147 quoted above.

Edward B. Hipp

DOCKET NO. T-2940, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Respess Trucking, Inc., Route 2, Box 155,	)	FINAL ORDER RESCINDING LAST
Pantego, North Carolina 27860 - Application	)	FINAL ORDER, ALLOWING
For Contract Carrier Authority	)	WITHDRAWAL OF NOTICE OF
	)	APPEAL AND EXCEPTIONS AND
	)	ISSUING NEW FINAL ORDER

BY THE COMMISSION: On December 7, 1988, Commission Hearing Examiner Sammy R. Kirby entered a Recommended Order in this docket whereby the Applicant was granted the contract carrier operating authority at issue in this proceeding.

On December 22, 1988, the Protestant filed certain exceptions to the Recommended Order. The matter came on for oral argument on exceptions before the full Commission on Monday, January 9, 1989.

On January 23, 1989, the Commission issued its Final Order Granting Application and Overruling Exceptions.

On February 1, 1989, the Protestant filed its Notice of Appeal and Exceptions and Motion for Relief Pending Review on Appeal.

Subsequently, on February 8, 1989, the Applicant and the Protestant filed a Joint Motion to Rescind the Final Order Granting Application and Overruling Exceptions. On that same date, the Protestant filed a Motion to Withdraw Notice of Appeal and Exceptions and Motion for Relief. From these Motions, it appears that the Applicant and the Protestant have agreed to settle the matters in dispute between them in this docket contingent upon the Commission's (1) rescinding its Final Order of January 23, 1989, (2) issuing a new Final Order granting contract carrier operating authority to the Applicant but without approving a contract carrier rate for the Applicant lower than the rates charged by common carriers for similar service, and (3) allowing withdrawal of the Protestant's February 1, 1989 Notice of Appeal and Exceptions and Motion for Relief Pending Review on Appeal.

On the basis of the Motions of February 8, 1989, the Commission finds good cause to grant the relief requested. The Commission, therefore, makes the following

FINDINGS OF FACT

1. The Applicant is a North Carolina corporation located in Pantego, North Carolina and operating as a contract carrier under Permit No. P-558, issued by this Commission, authorizing the Applicant to transport general commodities under contract with C.O. Tankard Company, Washington, North Carolina.

2. By this application, Applicant seeks authority to transport Group 1, general commodities, from Eden to Ahoskie and Elizabeth City as a contract carrier for Bellcross.

3. Applicant maintains a fleet of equipment suitable for the transportation of the commodities involved in this application and has the resources to acquire additional units as needed.

4. Bellcross is a wholesale distributor of Miller Brewing Company (Miller) products. Bellcross has its headquarters in Elizabeth City and a branch in Ahoskie. Approximately 40% of Bellcross' business is done by the Ahoskie branch.

5. Bellcross has need for motor transportation of beer and related products from the Miller brewery at Eden to Bellcross facilities at Ahoskie and Elizabeth City. The distances from Eden to Elizabeth City is approximately 70 miles further than the distance from Eden to Ahoskie.

6. On the average, the Bellcross facilities receive 22 to 23 truckloads of beer from Eden each month. The number of truckloads may be as many as 40 in the summer months and as few as 15 in the winter months.

7. Bellcross schedules freight deliveries from Eden by 30-day periods. Orders are placed with Miller 60 days in advance. The date of the shipment can be controlled approximately 70% of the time, but some products are available only on certain days of the month. After the order is placed, Miller furnishes a schedule with assigned loading periods. These periods are in two-hour increments around the clock.

8. If a load is not picked up by the customer when scheduled, Miller has the option, after a grace period, to choose a common carrier. The customer must pay the freight when Miller chooses the carrier.

9. Protestant has served Bellcross as a common carrier for several years. Protestant has provided generally good service, but Bellcross would prefer to have the services of a contract carrier.

10. Protestant does not always use the same drivers to serve Bellcross. It would be an advantage to Bellcross to have a contract carrier who would use the same drivers every day.

11. On several occasions during the past year, Forbes did not pick up Bellcross' product within the time scheduled by Miller. On those occasions, Miller shipped by another carrier who charged higher rates which Bellcross had to pay.

12. Bellcross requires deliveries in the mornings. Its business is disrupted if a load of beer arrives in the afternoon. Forbes drivers sometimes do not make deliveries to Bellcross in the morning because they have to stop and sleep on the way.

13. Applicant and Bellcross have entered into a transportation contract, a copy of which was filed with the Commission at the hearing.

14. The Applicant will charge Bellcross a rate no lower than the common carrier rate for similar service.

15. Protestant is an authorized common carrier operating under Certificate No. C-58 which authorizes statewide transportation of general commodities.

16. Protestant's rates for beer from Eden to Ahoskie and Elizabeth City are published by North Carolina Trucking Association, Inc. (the Bureau). The Bureau tariff was raised in the summer of 1988, but Protestant flagged out as to beer moving from Eden to Ahoskie and Elizabeth City.

17. Protestant transports beer for several North Carolina shippers. In 1987, Protestant's gross revenue was 6½ million dollars, and its revenue from operations for Bellcross was $78 thousand. Through September 1988, Protestant's gross revenue is $4 million and its revenue from Bellcross is approximately $64 thousand.

WHEREUPON, the Commission reaches the following:

CONCLUSIONS

This application for a contract carrier permit is governed by G.S. 62-262(i) which imposes upon the Applicant the burden of proving the following to the satisfaction of this Commission:

(1) Whether the proposed operations conform with the definition in this chapter of a contract carrier,

(2) Whether the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers,

(3) Whether the proposed service will unreasonably impair the use of the highways by the general public,

(4) Whether the Applicant is fit, willing, and able to properly perform the service proposed as a contract carrier,

(5) Whether the proposed operations will be consistent with the public interest and the policy declared in this Chapter, and

(6) Other matters tending to qualify or disqualify the Applicant for a permit.

NCUC Rule R2-15(b) amplifies the burden of proof upon the Applicant for a contract carrier permit:

> (b) If the application is for a permit to operate as a contract carrier, proof of a public demand and need for the service is not required; however, proof is required that one or more shippers or passengers have a need for a specific type of service not otherwise available by existing means of transportation, and have entered into and filed with the Commission a copy to the Public Staff prior to the hearing or at the time of the hearing, a written contract with the applicant for said service, which contract shall provide for rates not less than those charged by common carriers for a similar service.

Under the statutes, the threshold consideration is whether the proposed operations conform with the definition of contract carrier. Applicant has entered into and filed with this Commission a written transportation contract with Bellcross, the shipper it proposes to serve. The proposed operations conform therefore with the threshold definition of a contract carrier.

Next, Applicant must prove that the supporting shipper has a need for a specific type of service not otherwise available by existing means of transportation. Applicant proposes to dedicate one of its trucks to Bellcross' use and to use a second truck approximately half of the time for Bellcross and the other half of the time for its other contracting shipper, C. O. Tanker Company, Inc. In a publication entitled "Explanation of the North Carolina Truck Act of 1947 and Rules and Regulations for the Administration and Enforcement of Said Act" issued by this Commission to be effective June 1, 1948, pursuant to general order #4066-A, the specialized service that distinguishes a contract carrier from a common carrier was defined as follows:

> It may be stated as a general rule that it requires (1) individual contracts and (2) specialized service to distinguish a contract carrier from a common carrier. The specialized service varies according to the peculiar needs of the particular shipper. It may consist of furnishing equipment especially designed to haul a certain kind of property, or it may consist of the use of employees trained in loading, unloading, or handling a particular commodity. It may consist of services in addition to the usual transportation service, such as packing goods or the installation of machinery, or it may consist of devoting all or a particular part of the carriers' services and equipment to the use of the particular shipper. If the carrier does not limit himself to both individual contracts and some specialized service, his operations cannot be distinguished from those of a common carrier. Unless his operations can be so distinguished, he is a common carrier.

Id. p. 8. In addition to providing dedicated equipment, Applicant will provide dedicated service and guaranteed rates utilizing the same drivers each day. This is a type of service different from that generally available from common carriers. As the proposed operation entails dedication of equipment and other specialized service features, the Commission concludes that the proposed operations are responsive to a need for a specific type of service not otherwise available by existing means of transportation.

Another element of G.S. 62-262(i) is the Applicant's fitness and willingness to perform proper service as a contract carrier. The Applicant's fitness and willingness to serve as a contract carrier is apparent. Applicant has its equipment properly insured. It maintains a fleet of equipment suitable for transportation of the involved commodities. It has experienced management. The Commission, therefore, concludes that the Applicant is fit, willing, and able to properly perform the proposed contract carrier services.

With respect to the remaining criteria of G.S. 62-262(i), there is no evidence that the proposed contract carrier operations will unreasonably impair the efficient public service of carriers operating under certificates or that it will unreasonably impair the use of the highways by the general public. The revenue Protestant has realized from servicing the Bellcross account represents only slightly more than 1% of Protestant's gross annual revenue. Further, even if granting this application would deprive Protestant of a substantial percentage of its gross revenue, that fact by itself would not be grounds for denying this application. In Utilities Commission v. McCotter, Inc., 16 N.C. App. 475 (1972), a protestant appealed a grant of contract carrier permit to the Court of Appeals of North Carolina, arguing inter alia that the protestant would be deprived of business that it might receive should contract carrier authority be granted to the applicant. The court held:

> Protestant's argument that the Commission's action is inconsistent with the public interest seems to be based primarily upon the contention that the granting of contract authority to applicant is unfair to protestant. As previously noted, if the authority were withheld, Hatteras might turn to protestant for intrastate carrier service. Presumably, this would be in protestant's economic interest. However, the interest of a single carrier and the interest of the public are not necessarily one and the same. Certainly, it is in the public's interest for this State's manufacturers to have available the service of carriers which are equipped to efficiently handle their particular shipping requirements. Here the Commission determined that the issuance of contract authority to applicant was the only effective means of assuring that Hatteras would have adequate transportation service available to meet its specific needs. This determination is supported by the evidence and supports the Commission's finding that the contract authority granted is consistent with the public interest.

The Commission, therefore, concludes that the proposed operation is consistent with the public interest and policy declared in the Public Utilities Act.

IT IS, THEREFORE, ORDERED as follows:

1. That the application of Respess Trucking, Inc., for a contract carrier permit be, and the same is hereby, granted in accordance with Exhibit A attached hereto and made a part thereof.

2. That Respess Trucking, Inc., to the extent that it has not already done so, shall file with the Division of Motor Vehicles evidence of required insurance, a list of equipment, and a designation of process agent, and with the Commission a schedule of minimum rates and charges, and otherwise comply

with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date of this Order.

3. That unless Respess Trucking, Inc., complies with the requirements set forth in decretal paragraph 2 above and begins operations as authorized within a period of thirty (30) days after the date of this Order, unless such time is extended by the Commission upon written request, the operating authority granted herein shall cease and determine.

4. That the Applicant shall maintain its books and records in such a manner that all of the applicable items of information required in its prescribed Annual Report to the Commission can be used by the Applicant in the preparation of such Annual Report. A copy of the Annual Report form shall be furnished to the Applicant upon request made to the Transportation Rates Division, Public Staff, North Carolina Utilities Commission.

5. That this Order shall constitute a permit until a formal permit has been issued and transmitted to the Applicant authorizing the contract carrier transportation described and set forth in Exhibit A attached hereto.

6. That the Final Order Granting Application and Overruling Exceptions issued by the Commission on January 23, 1989, should be, and the same hereby is, rescinded and the present Final Order should be, and hereby is, substituted therefor.

7. That the Protestant should be, and hereby is, allowed to withdraw its Notice of Appeal and Exceptions and Motion for Relief Pending Review on Appeal dated February 1, 1989.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of February 1989.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

EXHIBIT A

SCOPE OF OPERATIONS

Docket No. T-2940, Sub 1
EXHIBIT A

RESPESS TRUCKING, INC.
Contract Carrier Authority

2. "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."

DOCKET NO. T-825, SUB 305

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of North Carolina Motor Common Carriers of Household Goods (Group 18) for an Increase in Intrastate Line Haul Rates	)	ORDER APPROVING RATE INCREASE

HEARD IN: Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on Wednesday, March 29, 1989, at 9:30 a.m.

BEFORE: Commissioner Ruth E. Cook, Presiding and Commissioners Edward B. Hipp and Sarah Lindsay Tate

APPEARANCES:

For the Applicants:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605

For the Intervenor:

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

BY THE COMMISSION: On October 26, 1988, the North Carolina motor carriers of household goods filed an Application with this Commission seeking approval of increased rates and charges as published in the following tariffs:

5th Revised Page 34 to Tariff No. 4, NCUC No. 10, issued by the North Carolina Movers Association, Inc., on behalf of its participating carriers;

Supplement No. 5 to Tariff No. 18-E, NCUC No. 156, issued by the North Carolina Trucking Association, Inc., on behalf of its participating carriers.

The tariff supplements which were published simultaneously with the instant filing on behalf of statewide household goods common carriers represents an approximate 15% increase in the presently approved rates and charges for line haul transportation charges (Section II).

On November 28, 1988, the Commission issued "Order of Suspension and Investigation Notice of Hearing." The Commission, on January 31, 1989, issued "Order Granting Extension of Time To File Testimony." The public hearing was held at the time and place specified in the November 28, 1988, Commission Order.

At the hearing, Dan Capps, Chairman, Highway Committee, North Carolina Traffic League, testified concerning the cost allocation used by Applicants.

Witness Capps stated the Traffic League's belief that ". . . the methodologies used to develop the cost study data requires review and clarification to insure it properly associates intrastate cost and revenue on future rate filings." He further recommended that the Traffic League join the household goods carriers and the Public Staff in this review. Both the Applicants and the Public Staff agreed with this recommendation.

The Applicants offered in support of their application the testimony of Evan Davis, Chairman, Rates Committee, North Carolina Movers Association, Inc., and H. Randolph Currin, Jr., President, Currin and Associates, Inc. Phillip W. Cooke, Rate Specialist, Public Staff, North Carolina Utilities Commission, testified that the cost allocations used by the carriers had been reviewed by the Public Staff and were appropriate for use in this proceeding. Witness Cooke stated that the Public Staff would continue to review said allocations. The Public Staff recommended that the proposed rates be allowed to become effective April 3, 1989, as requested by Applicants.

Based on the information contained in the Application and the Commission's files and the entire record in this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. That Applicants are lawfully engaged in North Carolina common carrier service of household goods, as noted in their tariffs.

2. The Applicants' quality of service is good.

3. The appropriate test period to be used in this proceeding is the 12 months ended December 30, 1987.

4. The Applicants' cost study carriers present intrastate rates produce an operating ratio of 114.9%.

5. The Applicants' proposed intrastate rates produce an operating ratio for the cost study carriers of 107.1%.

6. The proposed rates are reasonable to both the companies and the consuming public and should be approved.

7. The method used to develop the cost study data used by the North Carolina household goods carriers in rate applications as specified by Docket No. T-825, Sub 240, should be reviewed by the Public Staff and the household goods carriers, with input from the North Carolina Traffic League.

CONCLUSIONS

From a review and study of the application, the evidence presented at the hearing, supporting material, and information in the Commission's files, the Commission reaches the following conclusions:

1. The evidence supporting Findings of Fact Nos. 1 and 2 is found in the Application and the Commission's files.

2. The evidence supporting Findings of Fact Nos. 3 through 6 is found in the testimony of Evan Davis and H. Randolph Currin, Jr. This evidence is uncontested in the record. The Public Staff supports this evidence in its recommendation to approve the proposed increase.

Based on the testimony offered herein and a review of the entire record, the Commission concludes that the rates should be approved as filed.

The Commission further concludes that the Public Staff and the household goods carriers, in consultation with the North Carolina Traffic League, review the cost allocation methodology employed by the movers, as agreed to by the parties during the course of this hearing. Any recommended changes to that methodology may be filed before the Commission by any party.

IT IS, THEREFORE, ORDERED as follows:

1. That 5th Revised Page 34 to Tariff No. 4, NCUC No. 10, issued by the North Carolina Movers Association, Inc., and Supplement No. 5 to Tariff No. 18-E, NCUC No. 156, issued by the North Carolina Trucking Association, Inc., are hereby approved to become effective April 3, 1989.

2. That the Public Staff and the household goods carriers, in consultation with the North Carolina Traffic League, review the cost allocation methodology employed by the movers, as agreed to by the parties during the course of this hearing. Any recommended changes to that methodology may be filed before the Commission by any party.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of March 1989.

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

DOCKET NO. T-825, SUB 310

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Motor Common Carriers - Suspension and Investigation of Proposed 5% Increase in Rates and Charges Applying on Tariff NCTA No. 5-V, Item 40 Petroleum and Petroleum Products, in Bulk, in Tank Trucks, Scheduled to Become Effective on July 9, 1989	)	ORDER VACATING SUSPENSION AND ALLOWING RATE INCREASE

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, August 3, 1989, at 10:00 a.m.

BEFORE: Commissioner Julius A. Wright, Presiding; and Chairman William W. Redman, Jr. and Commissioner Sarah Lindsay Tate

APPEARANCES:

For the Respondent:

Ralph McDonald, Attorney at Law, Bailey & Dixon, Post Office Box 12865, Raleigh, North Carolina 27605
For: Petroleum Rate Committee of the North Carolina Trucking Association, Inc.

For the Public Staff:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626
For: The Using and Consuming Public

For the Protestant:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605
For: Exxon Company, U.S.A.

BY THE COMMISSION: On June 9, 1989, North Carolina Trucking Association, Inc. (NCTA or Respondent), filed Supplement No. 10 to its Petroleum Tariff No. 5-V, NCUC No. 153 proposing to increase rates and charges on Item 40 Commodities (gasoline, kerosene, etc.) published in said tariff by 5% to help offset increased operating expenses.

On June 26, 1989, Exxon Company, U.S.A. filed a protest of the proposed increase asking for a suspension and an investigation of the matter.

The Ashland Oil Company furnished the Respondent with a letter stating that it would not oppose the increase.

On July 5, 1989, the Commission issued an Order in this docket entitled "Order of Suspension and Investigation; Notice of Hearing." Said Order suspended the proposed tariffs and set the matter for hearing on August 3, 1989.

The matter came on for hearing as scheduled. No public witnesses testified at the hearing. Gary Knutson, Vice President, Pricing and Business Analysis for Kenan Transport Company, testified on behalf of NCTA in support of the application. James C. Turner, Director, Public Staff Transportation Division, testified for the Public Staff. No witness testified against the proposed increase.

Based on a careful review of the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. This proceeding is a complaint case that is confined to the reasonableness of a specific single rate and does not require a determination of the entire rate structure and overall rates of return of the study carriers.

2. The consolidated operating ratio based on 1988 actual issue traffic for the cost study carriers is 95.5%.

3. The proposed operating ratio based on 1988 actual issue traffic adjusted for the proposed increase and associated expense increases for the cost study carriers is 93.1%.

4. The cost study companies will experience an increase in annual revenues of approximately $610,000 under proposed rates.

5. The proposed rates are just and reasonable and the suspension of those rates should be vacated.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

The evidence supporting these findings of fact is found in the testimony and exhibits of both the Respondent's witness and the Public Staff's witness. The operating results shown on these exhibits are uncontested in the record.

Pursuant to G.S. 62-137, the Commission has treated this proceeding as a complaint case that is confined to the reasonableness of a specific single rate and does not require a determination of the entire rate structure and overall rates of return of the study carriers. The Respondent and the Public Staff agree with this determination. The Protestant Exxon, however, takes the position that this proceeding should be declared to be a general rate case under G.S. 62-133. The Commission is of the opinion that it is appropriate to treat this proceeding as a complaint case rather than a general rate case primarily because the 1988 composite revenues associated with the commodity in question amount to only 14.72% of the 1988 composite system operational revenues for the six study carriers.

The Commission further concludes that it is appropriate to decide this case based upon use of a consolidated operating ratio for only Tariff 5 Item 40 operations rather than a ratio based on the study carriers' total North Carolina intrastate operations. We reach this conclusion for the reasons set forth by Public Staff witness Turner in his testimony; specifically his observation that total North Carolina intrastate data can and does include substantial traffic, costs, and revenues which are not under consideration in this proceeding and may even include traffic that is not regulated. For instance, 40% of Tidewater's total North Carolina intrastate revenues and 37% of its total North Carolina intrastate shipments are generated by fertilizer, nitrogen, acids and chemicals. Thirty-three percent of East Coast's North Carolina intrastate revenues and 23% of its shipments are derived from chemicals and fertilizers. A.C. Widenhouse's North Carolina intrastate totals include substantial amounts of asphalt (61% of revenues and 44% of shipments).

Respondent's witness Knutson testified that the following reasons justify the proposed rate increase:

> "Item 40 rates have not been increased since January 27, 1986. Consequently, industry drivers who are paid on a percentage-of-revenue basis have not had an increase in income. Carriers' costs of operation and drivers' costs of living have, however, continued to increase since January 27, 1986. The proposed

five percent increase is a conservative measure which will result in carrier operating ratios well within a range that has been found acceptable in prior proceedings and a corresponding modest increase in driver wages."

Witness Knutson further testified as follows regarding the justification data:

"The justification study (Respondents' Exhibit 4) is based on 1988 calendar year data. Consistent with the practice in prior cases, this study is based on the experience of six major carriers of petroleum products who participate in Tariff No. 5-V. These six carriers were approved as Item 40 cost study carriers in Docket No. M-100, Sub 96 on October 4, 1983. The three other study carriers approved in that docket have not been used because two, Infinger Transportation Company, Inc. and Wendell Transport Corp. no longer participate in Tariff 5-V and the third, Carolina Carriers, Inc. is no longer a major carrier of petroleum products. The study carriers are:

Coastal Transport, Inc.
Eagle Transport Corporation
East Coast Transport Company, Incorporated
Kenan Transport Company, Incorporated
Tidewater Transit Co., Inc.
[A.C. Widenhouse, Inc.]

"Each of the study carriers furnished revenue and expense data from public reports. Revenue derived from Item 40 shipments is, of course, easily ascertainable. It is necessary, however, to allocate expenses from system operations to Item 40 shipments. This allocation has been performed using the long-established uniform allocation methodology. The uniform methodology allocates each expense item on the basis of an allocation factor which is the ratio of Item 40 traffic to system revenue, miles, shipments or some combination of these three elements. Complete details as to the allocation factors used and the system expenses of each study carrier are set forth in the work papers. After completing the allocation process for each carrier, Item 40 revenues and expenses were totalled to obtain a consolidated 1988 operating ratio of 95.54 percent.

"To give effect to the proposed increase, 1988 revenues were increased by five percent and the allocation process repeated. Consequently, all expenses which are allocated in whole or in part on the basis of the revenue factor were also increased. Expenses based on the other factors were maintained at 1988 levels. This process resulted in a consolidated 93.1 percent operatng ratio."

Public Staff witness Turner testified as follows regarding the results of the Staff's investigation of this matter:

"We have found that the data furnished by the carriers in support of their rate proposal complies with the procedures that have been in use for many years. The cost allocation method relied upon by the carriers and the Public Staff in this proceeding, has been

accepted by the Commission as a reasonable method for computing the required North Carolina intrastate issue traffic operating ratios for use in determining North Carolina intrastate motor common carrier freight rates on truckload traffic."

Mr. Turner concluded his testimony by making five observations and recommendations as follows:

1. The Commission, as it has on many previous occasions, should base its decision in this proceeding on the operating ratios appearing in Column (2), Items D and E of Public Staff, Turner Exhibit 1, which shows a 1988 actual issue traffic operating ratio of approximately 95.5% and a proposed operating ratio of about 93%.

2. The proposed five percent increase in issue traffic rates, which produces additional annual revenues of about $610,000, for the cost-study carriers, is not unreasonable.

3. A proposed issue traffic operating ratio of 93%, which is consistent with the Commission's prescribed operating ratio in the January 18, 1983, Order, in Docket No. T-825, Sub 272, is not unreasonable.

4. Since no cost, revenue or operating ratio data has been furnished in this proceeding showing that the issue traffic data relied upon herein and determined through previously approved and accepted methods and procedures is misleading or unreliable, the Respondent's and Staff's data is reasonably reliable and acceptable. Therefore, it should be considered as such by the Commission.

5. In the event the Commission is persuaded to place emphasis on total North Carolina intrastate operating ratios and revenue cost comparisons in proceedings of this type, the Commission should amend the procedures adopted in Docket No. M-100, Sub 96 (a result of Commission Order in Docket No. T-825, Sub 272) to require such data to be furnished by the carriers.

The Commission finds the testimony offered by witnesses Knutson and Turner to be credible and persuasive. For that reason, we hereby adopt their recommendations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is contained throughout the record. Based on the operating results of the issue traffic the Commission concludes that the proposed increase is fair and reasonable and should be approved.

IT IS, THEREFORE, ORDERED that the suspension of the proposed tariff as noted herein be, and hereby is, vacated and the Respondent is hereby allowed to refile that tariff to become effective on one (1) day's notice.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of August 1989.

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

DOCKET NO. T-825, SUB 311

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Carolina Trucking)
Association, Inc., Post Office Box 2977,) ORDER
Raleigh, North Carolina 27602)

BY THE COMMISSION: By Application No. 689 filed on August 9, 1989, as provided for in the Commission Rules and Regulations governing the construction, filing and posting of tariffs, North Carolina Trucking Association, Inc., Agent, Post Office Box 2977, Raleigh, North Carolina 27602, seeks authority to tender for filing a tariff schedule proposing to make a tariff publication on less-than-statutory notice, on one day's notice to the Commission and the public, providing for a 2.25% increase in rates applying on transportation of petroleum and petroleum products published in its Tariff 5-V, NCUC No. 153 and asphalt and related products published in its Tariff 16-K, NCUC No. 157, between points in North Carolina in order to offset tax increases as more specifically described therein.

Upon consideration of the circumstances and conditions relied upon and good cause appearing,

IT IS, THEREFORE, ORDERED that the Applicant here be, and the same is hereby, authorized to publish on one day's notice to the Commission and to the public the tariff schedule hereinbefore described by filing and posting in the manner otherwise required by the Commission rules.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of August 1989.

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

Commissioner Charles H. Hughes dissents.

I respectfully dissent from the Majority's decision in this case to increase rates on issue traffic by 2.25% as a dollar-for-dollar pass through of increased fuel taxes and sales taxes. I respectfully submit that changes in all revenues and expenses on the issue traffic should be reviewed before making a decision in this case. This information has not been presented and therefore, in my view, there is inadequate information to support the Majority's decision.

Commissioner Charles H. Hughes

DOCKET NO. P-191

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of International Telecharge, Inc., for a Certificate of Public Convenience and Necessity	)	ORDER RULING MORATORIUM APPLIES TO MOTION FOR CERTIFICATE TO SERVE PAY TELEPHONES

BY THE COMMISSION: On November 10, 1988, International Telecharge, Inc. (ITI), filed a motion for certificate of intrastate authority for pay telephones. In that motion, ITI cited the October 14, 1988, opinion and order of Judge Harold Greene in United States of America v. Western Electric Co., Inc., Civil Action No. 82-0192 (DDC). In that order, Judge Greene held the Bell regional companies' practice of routing all 0+ calls from their public payphones to AT&T, even though other operator systems could handle these calls, to be discriminatory. While the judge said that the best solution would be to allow the billed party to choose his interexchange carrier (IXC), he approved on an interim basis presubscription by the premises owner on which the Bell payphones are located. The judge's decision has given rise to a presubscription procedure which will include balloting of premises owners on their IXC preference. Originally, ITI said that Southern Bell required compliance with its presubscription procedures on or before November 21, 1988, including proof of certification from state and federal regulatory agencies for intrastate and interstate service, before ITI could be placed on the presubscription ballot. However, in its December 6, 1988, filing, ITI said that Southern Bell said that ITI would be appearing on the ballot but, unless ITI were certificated on or before February 1, 1989, Southern Bell would not direct any interLATA traffic from payphones to ITI. ITI maintains that if it is not certified by February 1, 1989, it will suffer severe and irreparable harm. ITI made a supplemental filing of information on December 22, 1988.

On November 23, 1988, the Attorney General filed a reply to ITI's motion of November 10, 1988, for pay telephone authority. The Attorney General argued that the Commission should deny ITI's request for payphone authority because of ITI's record, because granting authority would be inconsistent with the Commission's recently announced policy finding intrastate certification of alternative operator services (AOS) not to be in the public interest, and because Judge Greene's order in no way mandates the granting of such authority to uncertificated entities.

On December 23, 1988, Judge Greene issued a Memorandum opinion in the above-referenced case approving the presubscription plans of the regional Bell companies subject to certain conditions and modifications. Judge Greene held that, while state certification could not be a condition precedent to eligibility to take part in the balloting process, "at the time of the initiation of presubscribed service a carrier must either have obtained appropriate certification to carry intrastate interLATA calls as well as interstate calls, or have made arrangements to transfer such calls to a certified carrier in order to commence providing service from its presubscribed payphones." (December 23, 1988, Memorandum at p. 5).

In order to put this matter into proper perspective, the history of this and related dockets should be examined.

On November 16, 1987, ITI filed an application for a certificate of public convenience and necessity in Docket No. P-191 before the North Carolina Utilities Commission for authority to operate as a reseller of telecommunications service within the state of North Carolina. The matter came on for hearing on February 16, 1988, with the Applicant, the Public Staff of the North Carolina Utilities Commission, the Attorney General, and AT&T as parties. The Applicant and the Public Staff presented the testimony of witnesses. In addition, one public witness testified.

At the close of the hearing, ITI requested interim authority to provide service within North Carolina. ITI stated that interim authority was necessary because it was currently providing intrastate telecommunications services and was not receiving revenues for those calls which were billed by Southern Bell. Upon instruction from the Commission, ITI submitted a written request seeking interim authority on February 17, 1988.

On March 3, 1988, the Attorney General, and on March 8, 1988, the Public Staff filed responses to ITI's request for interim authority. Both generally suggested that nothing compelled interim authority. On March 15, 1988, in a brief and motion, the Attorney General suggested that ITI may have violated G.S. 75-1.1, the North Carolina Unfair and Deceptive Trade Practices Act. Also on that date, the Public Staff filed a proposed Order recommending that the Commission hold ITI's permanent certificate in abeyance.

On March 16, 1988, in Docket Nos. P-100, Subs 84 and 101, the Commission issued an Order Initiating a Generic Inquiry into Alternative Operator Service and declaring a moratorium on the issuance of any certificate to AOS companies until the resolution of the proceeding.

On March 18, 1988, in this docket, the Commission denied the ITI's request for interim resale authority citing its moratorium Order of March 16, 1988, in the generic AOS docket and additionally stating: "Even were this not the case, the Public Staff and the Attorney General have raised substantial questions regarding ITI's practices, and the Commission would in any case be disposed to deny interim certification." (Order of March 18, 1988, at pp. 1-2).

On October 21, 1988, after notice and comment from all interested parties, including ITI, the Commission issued in the generic AOS docket an Order Finding that Intrastate Certification of Alternate Operator Services is Not in the Public Interest (hereinafter "generic AOS Order" or "generic Order"). The Commission continued the moratorium on the issuance of certificates to AOS providers. In that Order, the Commission found as a fact that:

> There have been substantial complaints concerning the sales, charges, and practices of AOS providers. The structure of the industry is such that there are inherent incentives to abuse. Due to the industry's record and structure, the Commission lacks confidence that AOS providers would obey regulations, if promulgated. (Generic AOS Order, Finding of Fact No. 4, p. 13).

In its supporting paragraphs to this finding, the Commission pointed out that "there is no identity between the 'customer' of the AOS and the end-user. The AOS's customer is its contracting parties, to which the AOS generally pays a commission. Both have an interest in higher rates. The end-user, on the other hand, is in a transient or captive venue and lacks the time and ability to make studied choices. The element of choice is vitiated further when the end-user is subject to false, deceptive or misleading practices." (Generic AOS Order, at p. 17).

The Commission further stated in that Order:

> First, the operating record of AOS companies has by and large not been a good one. This Commission, as well as other state commissions, have received substantial numbers of complaints concerning excessive rates and unjust and unreasonable practices.
>
> Second, the structure of the industry creates inherent incentives to abuse. The Commission notes again that the "customer" and end-user are not identical, that the end-user in the captive venue is vulnerable to overreaching, and that there are incentives to higher rates because of the relationship between the AOS and the contracting party.
>
> Third, the Commission is not confident that AOS companies would consistently obey the state law and the Commission's rules and regulations even if certification were allowed. The results of the access line study clearly demonstrate that certain AOS companies were willing to operate intrastate without obtaining certification. The patterns of abuse in this and other states justify examining the claims of AOS providers with a jaundiced eye.
>
> An additional consideration related to the third point above is limited regulatory resources... The Commission and the Public Staff furthermore lack sufficient staff to police and investigate AOS companies adequately. The Commission notes that if, as seems likely, in the light of the commissions they would receive, many COCOTS [customer owned coin operated telephone stations or payphones] contracted with AOS companies, this would multiply potential enforcement problems many times over. COCOTS are a rapidly growing segment in the market and are as geographically diffuse as they are becoming numerous. (Generic AOS Order at pp. 9-10).

On November 2, 1988, ITI filed a petition for writ of mandamus to the North Carolina Court of Appeals in the generic AOS dockets seeking to compel an adjudicatory hearing on the matter. The Public Staff filed a response on November 14, 1988. The Court of Appeals denied this motion on November 23, 1988. On December 20, 1988, ITI filed a notice of appeal and exceptions in the generic AOS dockets.

In Docket No. SC-166, Sub 1, on November 15, 1988, this Commission ordered surrender of a special certificate from a payphone provider who gave his end-users interexchange telephone service by subscribing to ITI. In the Order Directing Surrender of the Special Certificate, the Commission noted that evidence at a June 21, 1988, hearing established, among other things, that the

payphone operator had permitted charges to end-users in excess of the Commission's regulated payphone rates, had failed to post appropriate notice at his payphones and had programmed his payphones to access an interexchange carrier--ITI--had not been certified on an intrastate basis in North Carolina.

ITI now requests authority to serve payphones, citing the order of federal Judge Harold Greene on October 14, 1988, noted above.

After careful consideration, the Commission concludes that in light of the generic AOS Order and the most reasonable construction of Judge Greene's order, there exist no reasonable grounds to grant ITI's motion for payphone certification.

To certify ITI to provide intrastate service to payphones would be inconsistent with the Commission's policy announced in the generic AOS dockets finding intrastate certification of AOS not in the public interest. This is a simple matter of logic. If it is not in the public interest to certify an AOS for the entire category of services to transient venues, it cannot be in the public interest to do so for a subcategory of transient venues--in this case, payphones. Nevertheless, ITI complains that other carriers can serve such venues and that its exclusion is therefore discriminatory. A closer reading of the Commission's generic decision reveals the flaws in this reasoning. First of all, the Commission narrowly defined a subcategory of IXCs--the AOS--as an IXC which specializes in providing operator services to transient venues and whose end-users are not presubscribed to its services. Secondly, in the generic Order, the Commission dealt specifically with the issue of the reasonableness of the classification. The Commission noted that "(i)t may be objected that AOSs are not the only entities providing operator services to transient venues, yet they are singled out as not being in the public interest." The Commission's answer to this objection was that an economic classification such as this only needs to have a rational basis and that considerable leeway is given in framing the regulation. See N.C. Index 3d, Constitutional Law, Sec. 20; 16A Am Jur 2d, Constitutional Law, Sec. 759. This classification is reasonable because the definition of AOS was narrowly drawn and specific inherent and historical evils were identified with this industry subcategory.

ITI maintains that the advent of Judge Greene's October 14, 1988, Order somehow changes ITI's posture for certification. This is not so for several reasons. First, Judge Greene's October 14, 1988, ruling neither stated nor implied that an uncertified carrier like ITI must be allowed to serve Bell payphones or that a state must certify any IXC of whatever type of history which requests intrastate certification. Indeed, the Ordering Paragraph No. 5 of his December 23, 1988, Memorandum indicates just the opposite:

> (A)lthough state certification is not required of carriers participating in the presubscription process, no carrier may commence providing service from a presubscribed public telephone unless it has been state certified to provide intrastate interLATA service or has made arrangements to transfer such calls to a certified carrier. . . (December 23, 1988, Memorandum at p. 8).

The above provision simply contemplates that, in the example of a carrier certified to provide interstate service but not intrastate service, that

carrier must either receive intrastate certification from the appropriate state regulatory body or transfer out the intrastate interLATA calls to a carrier who is certified, before any service, interstate or intrastate, can be commenced from the payphones. Under either scenario, a carrier uncertified for intrastate service is ineligible to carry intrastate interLATA calls. Plainly, this paragraph shows no intent to pre-empt or otherwise vitiate the power of the states to regulate intrastate telecommunications service in the public interest. Indeed, the provision that intrastate interLATA calls be transferred out to certified carriers implicity recognizes the importance of the state certification process.

Second, the end sought by Judge Greene's orders--competition in the Bell payphones--exists whether or not ITI is certified, since other carriers which are currently certified and are not AOSs are eligible to serve the payphones.

Third, ITI appears to be somewhat disingenuous in its request for payphone authority. While citing Judge Greene's ruling as necessitating payphone certification, ITI has not confined its request for authority to Bell payphones alone but rather has requested authority for all payphones. This raises substantial issues far in excess of the Bell payphone question alone.

Lastly, even were the Commission disposed to overlook all of this and consider ITI's request, there is insufficient time between now and February 1, 1989, to give the type of thorough-going examination to this request which the public interest demands.

In view of all of the foregoing, including ITI's past actions in this jurisdiction, problems with at least one payphone provider who used the ITI's service, and the above analysis, the Commission concludes that the moratorium on the issuance of certificates of public convenience and necessity to intrastate AOS set out in the Commission's March 18, 1988, Order and continued in the Commission's October 21, 1988, Order applies to ITI's request for payphone authority and that, accordingly, questions ITI has raised to the Commission's moratorium on certification should be determined in an orderly fashion by the Appellate Courts of this State.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of January 1989.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-205

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Lynda B. Lovett, d/b/a Florida Cellcom, for a Certificate of Public Convenience and Necessity to Provide Wholesale and Retail Cellular Telephone Services and for Approval of Initial Rates, Charges and Regulations to Serve the Hickory N.C. MSA	)	FINAL ORDER AFFIRMING RECOMMENDED ORDER

BY THE COMMISSION: On March 31, 1989, Lynda B. Lovett, d/b/a Florida Cellcom (Applicant) filed an application (amended by filing of May 4, 1989) with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity and approval of tariffs to provide cellular radio telecommunications service at wholesale for resale to the public and at retail directly to the public in the Hickory Metropolitan Statistical Area (MSA).

By Order of April 12, 1989, the Commission scheduled the application for hearing on Thursday, June 1, 1989, at 1:00 p.m. The Commission further provided for publication of notice and the prefiling of testimony. The testimony of Michael G. Morehead, Sr. was prefiled by the Applicant on May 4, 1989.

On May 12, 1989, Gary R. Alexander filed a Petition for Leave to Intervene in this docket. The Applicant filed a Response and Motion to Dismiss in opposition to this Petition on May 19, 1989. Mr. Alexander filed a Reply on May 25, 1989. This Petition for Leave to Intervene was denied by the Commission by its Order entered May 30, 1989.

By letter of May 24, 1989, the Applicant requested a prehearing conference. By oral agreement of the parties and the Hearing Examiner, it was decided that the hearing scheduled for June 1, 1989, would be convened (1) to hear from any public witnesses who may appear in response to the published notice and (2) to deal with any outstanding procedural matters.

The June 1, 1989, hearing was convened as scheduled. The Applicant filed an affidavit of publication with respect to the notice of the hearing. No public witnesses appeared to testify. On the day of the hearing, the Applicant filed a Motion to Supplement and Amend Application and further testimony of Lynda B. Lovett and Michael Marcovsky. By Order on Initial Hearing entered June 5, 1989, the Hearing Examiner granted the Motion to Supplement and Amend Application, accepted the testimony of Lynda B. Lovett and Michael Marcovsky and scheduled a further hearing for July 6, 1989.

On June 20, 1989, Mr. Alexander filed a Notice of Appeal and Exceptions and a Motion for Reconsideration of Commission Order Denying Petition to Intervene. The Applicant filed a Response on June 28, 1989. The Commission, by Order entered July 3, 1989, denied the Motion for Reconsideration but noted that Mr. Alexander could move to submit a statement or brief as amicus curiae.

On June 26, 1989, the Applicant filed a Notice of Intention to Tender Testimony as Affidavit. The Notice pertained to the testimony of the Applicant and Michael Marcovsky.

On July 3, 1989, the Applicant filed a Motion to Supplement and Amend Application. The Motion sought to supplement the Application by providing a verification of the Applicant and leave to submit Supplemental Testimony of Michael G. Morehead, Sr.

On July 6, 1989, the Attorney General intervened in this docket.

The hearing was held on July 6, 1989, as scheduled. The Applicant filed a brief addressing the Commission's jurisdiction to proceed despite Mr. Alexander's outstanding Notice of Appeal. The Hearing Examiner first considered the jurisdiction of the Commission and determined that the Commission had jurisdiction because the Order from which Mr. Alexander had appealed was a non-appealable interlocutory order. The Hearing Examiner next considered the Applicant's request to file the testimony of the Applicant and of Michael Marcovsky as affidavits and, there being no objection, allowed such testimony to be filed as affidavits. The Hearing Examiner then granted the Applicant's Motion to Supplement and Amend Application filed July 3, 1989.

The Applicant presented the affidavits of the Applicant and of Michael Marcovsky. The Applicant presented the testimony of Michael G. Morehead, Sr., the General Manager of the Applicant, and of Jerome K. Blask, the Applicant's Attorney before the Federal Communications Commission. Mr. Blask was presented at the request of the Public Staff to testify as to the FCC proceedings involving the Applicant. No other party presented testimony. At the close of the hearing, Applicant filed a Motion for Temporary Authority, which is being granted by separate Order of this date.

On July 14, 1989, the Applicant submitted a Proposed Order. On July 28, 1989, the Public Staff submitted a Proposed Recommended Order and, on the same date, filed the Applicant's projected budget as a late-filed cross-examination exhibit. On July 28, 1989, the Attorney General filed Comments addressing the Applicant's Proposed Order. On July 31, 1989, Mr. Alexander filed a Motion asking that his attached Statement of Position and Offer of Proof be accepted and considered. On August 3, 1989, the Applicant filed a Response to Proposed Order and Comments of Intervenors, which was supplemented on August 7. The Applicant's August 7 supplement presented a recent press release issued under the name of Mr. Alexander's local counsel and reportedly sent to local newspapers and trade journals. The press release deals with the Attorney General's July 28 comments. Finally, on August 9, 1989, Mr. Alexander filed a Reply to the Applicant's Response.

On August 9, 1989, Hearing Examiner Sammy R. Kirby entered a Recommended Order in this docket granting the Applicant a Conditional Certificate of Public Convenience and Necessity to provide cellular mobile radio telephone service on a retail basis and on a wholesale basis in the Hickory MSA. By separate Order issued that same date, the Hearing Examiner also granted the Applicant temporary operating authority on a conditional basis. The conditions specified by the Hearing Examiner in both Orders are as follows:

1. the timely filing of quarterly and yearly audited financial statements as agreed;

2. the continued availability of financial resources as committed;

3. Ms. Lovett's position as the sole party in interest;

4. the termination and continued exclusion of involvement by Michael Marcovsky or any of the businesses in which he is involved; and

5. the continued status of Lynda B. Lovett, d/b/a Florida Cellcom as the FCC licensee.

On August 24, 1989, the Attorney General filed two exceptions to the Recommended Order and requested the Commission to modify and amend the Order in conformity with those exceptions. The Attorney General did not request the Commission to schedule an oral argument to consider those exceptions.

On August 25, 1989, Gary R. Alexander filed a Motion whereby the Commission was requested to reopen the record in this case and remand the matter for further proceedings. Alternatively, the Commission was requested to give favorable consideration to the Alternative Statement of Exceptions that was submitted by Mr. Alexander as part of his Motion.

On August 31, 1989, the Applicant filed a Response in opposition to Mr. Alexander's Motion for Remand and requested the Commission to deny that Motion and affirm the Recommended Order in its entirety.

WHEREUPON, the Commission now reaches the following

FINDINGS AND CONCLUSIONS

Commission Hearing Examiner Kirby made the following findings of fact in his Recommended Order:

1. The Applicant Lynda B. Lovett, d/b/a Florida Cellcom is a sole proprietorship. Applicant Lovett proposes to provide nonwireless cellular mobile radio telephone service at wholesale and retail in the Hickory metropolitan statistical area.

2. The FCC has pre-empted the states with respect to the market structure pursuant to which cellular mobile radio telephone service will be offered. The FCC has expressly reserved to the states jurisdiction with respect to the charges, classifications, practices, services, facilities and regulation for service.

3. Lynda B. Lovett, d/b/a Florida Cellcom has been designated and licensed by the FCC as the nonwireless carrier authorized to provide cellular mobile radio telephone service in the subject service area, pending action on the application for review filed by Gary R. Alexander before the FCC.

4. The Applicant was derelict in neglecting to obtain permission from the North Carolina Utilities Commission prior to constructing the system, as required by North Carolina law. This dereliction took place while Florida

Cellcom was being operated by Michael Marcovsky pursuant to a Power of Attorney from the Applicant, subject to the Applicant's general authority.

5. The Applicant was derelict in failing to make application for a certificate of public convenience and necessity within sufficient time prior to the date operations were required by the FCC with the result that Florida Cellcom is providing limited service prior to approval of its application. This dereliction took place while Florida Cellcom was being operated by Michael Marcovsky pursuant to a Power of Attorney from the Applicant, subject to the Applicant's general authority.

6. On June 1, 1989, the Applicant executed a Revocation of the Power of Attorney she had given Michael Marcovsky to construct and manage Florida Cellcom. There is no further business relationship between Lynda B. Lovett, d/b/a Florida Cellcom and Michael Marcovsky or any of the cellular operations with which Michael Marcovsky is connected.

7. In order to obtain financing from Motorola, Inc. for construction of the Hickory system, the Applicant pledged the assets of the Hickory system to Motorola, Inc. and entered into assignment provisions in favor of Motorola, Inc. in its leases for real property.

8. While the projected Florida Cellcom budget for July 1989 through June 1990, may be optimistic, Lynda B. Lovett is capable of financing the system for an additional two years if necessary and has agreed to commit her personal resources to do so.

9. Applicant has agreed to provide audited financial statements to this record on a quarterly basis from July 1989 to June 1990, and on a yearly basis thereafter. For so long as Lynda B. Lovett, d/b/a Florida Cellcom is maintaining separate records, books and bank accounts, the audit may be limited to those accounts and records of Florida Cellcom. The audited statement shall include an income statement, balance sheet and notes to the financial statement.

10. The Applicant, based on the record herein, is financially and technically qualified to provide cellular mobile radio telephone service in the Hickory MSA.

11. Lynda B. Lovett, d/b/a Florida Cellcom should be granted a conditional certificate of public convenience and necessity authorizing her to provide cellular mobile radio telephone service, both on a retail basis and on a wholesale basis, in the Hickory MSA as authorized by the FCC. The certificate is conditional upon the truth of Applicant's representation at the hearing concerning the financial resources available to this business as well as upon the representations made regarding the termination of involvement with Mr. Marcovsky and Ms. Lovett's position as the sole party in interest.

12. Applicant's tariff filed with her application should be approved.

We have carefully considered the entire record in this proceeding, including the exceptions filed by the Attorney General and the Motion for Remand and exceptions filed by Mr. Alexander, and conclude that the above-referenced findings of fact are reasonable and fully supported by the

evidence of record. As discussed by the Hearing Examiner, the Public Staff, which is charged by law with the responsibility to represent the interests of the using and consuming public in Commission proceedings, participated in this proceeding from the very beginning and conducted an investigation and discovery. The Public Staff recommended a conditional certificate as issued by the Hearing Examiner's Recommended Order. We see no reason to modify the Recommended Order as requested by the Attorney General in his two exceptions, since the amendments suggested by the Attorney General are not essential to the ultimate decision in this case.

With regard to Mr. Alexander's Motion for Remand and his Alternative Statement of Exceptions, the Commission concludes that the Recommended Order addresses the matters raised by Mr. Alexander and that good cause exists to deny the Motion. In so ruling, we are in complete agreement with the following conclusions drawn by the Hearing Examiner in his Recommended Order:

> "It appears to the Hearing Examiner that the public interest is being lost in this barrage of charges and countercharges. The issues in this case must be measured by the standard of the public interest. The Applicant has built a cellular system at a cost of $2 million, the system is ready to serve the public, the system will provide competition with the cellular system now licensed in the area, and the system will provide broader coverage than the presently licensed system. Is the public interest better served by holding the Applicant to her current level of minimal service while Mr. Alexander opens a new front in his fight for the FCC license? Or is the public interest better served by allowing competitive service to begin subject to conditions that address the concerns that have been raised herein and subject to the outcome of the FCC proceedings? For the Hearing Examiner, the questions answer themselves.
>
> "Mr. Alexander has presented all of his allegations to the FCC. He filed an application for review and a motion for stay in December of 1987 seeking relief directly from the Commissioners of the FCC. He recently filed a lengthy supplement to that application in May 1989. Both are pending. The merits of his allegations must stand or fall based upon the review of the FCC. If he is successful there, the Applicant's own attorney has testified that there will be public notice and that Ms. Lovett will not be able to operate her system. This Commission can best handle the allegations by making our certificate conditional upon the Applicant's retaining her FCC authority. As already stated, Mr. Alexander's allegations must stand or fall based upon the decision of the FCC."

We reject as entirely unreasonable and baseless Mr. Alexander's assertion that our Orders of May 30, 1989, and July 3, 1989, as well as the Recommended Order demonstrate prejudice against Mr. Alexander simply because he is a resident of the State of Michigan. That is simply not the case. We denied Mr. Alexander's petition to intervene and his motion for reconsideration in our Orders of May 30, 1989, and July 3, 1989, because he failed to show a "real interest" in the subject matter of the proceeding such as this Commission exists to hear and protect. Mr. Alexander's state of residence was, by no means, the cornerstone of our ruling. There were many factors which we considered. As we noted in our Order of May 30, 1989:

"G.S. 62-72 authorizes the Utilities Commission to adopt rules of practice and procedure for Commission hearings. 'In the absence of statutory inhibition, the Commission may regulate its own procedures within broad limits . . .' State ex rel Utilities Commission, v. Area Development, Inc., 257 N.C. 560, 569 (1962). Commission Rule R1-19 deals with intervention in Commission proceedings. Section (a) provides for the filing of a petition stating "the nature of the petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding." Subsection (d) provides that a petition to intervene 'showing a real interest in the subject matter of the proceeding, will be granted as a matter of course. . . ' The Commission's Rule and practice with respect to intervention are generous; however, they are not unlimited. Intervention requires a 'real' interest in the proceeding. It is undisputed by the filings herein that Mr. Alexander is a citizen and resident of Michigan, that he is not a citizen or ratepayer of North Carolina, that he is not a customer or licensed competitor of the Applicant's proposed service, and that the basis of his interest in this proceeding arises from his efforts before the FCC to obtain for himself the non-wireline cellular authority for the Hickory MSA. The Commission concludes that Mr. Alexander has failed to show a real interest in the subject matter of this proceeding such as this Commission exists to hear and protect. We recognize that there is a pending motion before the FCC challenging the Applicant's authority. We will require the Applicant to keep the Commission advised as to that motion and we can condition any certificate granted to the Applicant by this Commission upon her retaining her FCC authority. Should Mr. Alexander ultimately prevail at the FCC, his interest in the present proceedings could be reexamined, but that is not the situation now. The Commission concludes that the Petition for Leave to Intervene filed in this proceeding by Gary R. Alexander on May 12, 1989, should be denied and that his Motion for discovery and subpoenas filed on the same date should be dismissed."

Review of the Order Denying Reconsideration entered in this docket on July 3, 1989, clearly indicates that our ruling was predicated upon Mr. Alexander's lack of a "real interest" in this proceeding and not his state of residence. We denied Mr. Alexander's motion for reconsideration based upon the following rationale:

"The Commission has carefully considered the Motion for Reconsideration and the Response thereto. The Commission finds good cause to deny reconsideration. The Commission is persuaded by the arguments in the Applicant's Response. As noted in the Commission's May 30, 1989 Order, the basis for Mr. Alexander's interest in this proceeding arises from his efforts before the FCC to obtain for himself the non-wireline cellular authority for the Hickory MSA which is now held by the Applicant. Mr. Alexander has a motion pending before the FCC challenging the Applicant's FCC authority; however, that motion has not been granted and the FCC authority is now held by the Applicant. This Commission will condition any certificate granted to the Applicant in this docket upon her retaining her FCC

authority and the Commission will reexamine Mr. Alexander's Petition to Intervene, as well as all other issues in this proceeding, should Mr. Alexander prevail in his challenge to the Applicant's FCC authority. In light of these provisions, the Commission again finds that as of this time, Mr. Alexander has failed to show a real interest in the subject matter of this proceeding such as this Commission exists to hear and protect and that Mr. Alexander is not prejudiced by the denial of his Petition for Leave to Intervene. Although the Commission has denied "intervention" as an amicus curiae, Mr. Alexander may, if he chooses, move to submit a statement or brief as amicus curiae.

We believe that the reference to Mr. Alexander's state of residence on page 4 of the Recommended Order has been taken entirely out of context. To the extent that reference may give rise to some confusion, we hereby state for the record that Mr. Alexander's state of residence has never been a deciding factor in our decision to deny his Petition to Intervene. We agree with the Hearing Examiner that:

". . . Mr. Alexander's knowledge does not give him standing to act as a party in this proceeding; it gives him information which he could have offered through appropriate channels. Mr. Alexander could have appeared at either of the two public hearings that have been held herein in order to testify as a public witness, but he did not do so."

We also agree with the Applicant that our Orders in this docket do not violate the U.S. Constitution as alleged by Mr. Alexander. The Constitution does not grant standing to persons who cannot meet the qualifications required of every intervenor, regardless of state of citizenship. As was correctly stated by the Applicant in her Response of August 31, 1989:

"First, it must be noted that the Applicant is a citizen and resident of Colorado. It is difficult to see how citizenship has any bearing in this proceeding when, distilled to its essence, Alexander is arguing that he is being discriminated against in favor of a citizen of Colorado. The fact of the matter is that the NCUC has set up no procedure or policy that favors citizens of North Carolina to the exclusion of citizens of other states. Rather, it evaluates all requests for intervention on the same general neutral principle: Does the intervenor have a 'real interest' in the subject matter of the proceeding? Any intervenor, regardless of his state of citizenship, must meet this test; Alexander does not.

"Second, Alexander's argument is simply that he must be allowed to intervene because he is a resident of Michigan; otherwise, the NCUC will be discriminating against him based upon his citizenship. The privileges and immunities clause exists to ensure that basic legal rights will be the same in all states for all citizens. It does not confer special privileges on non-citizens, nor does it grant standing to non-citizens.

"What the NCUC's decision was based upon, and has always been based upon, is the question of standing. Alexander has no standing

because he has no 'real interest' in the operation of this franchise. He is not a contingent licensee at the FCC, but a disappointed applicant. He will never complete with this franchise, pay tariffs, or in any cognizable way be affected by its operation. He has no 'stake' that confers standing upon him in this case. That he is a citizen of Michigan is important only to show that he will not be affected as a ratepayer of Applicant's system."

We further conclude that the decision of the Hearing Examiner to grant the Applicant a Conditional Certificate of Public Convenience and Necessity is reasonable and justified by the evidence in this case. Accordingly, we hereby affirm and adopt the Recommended Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the Recommended Order entered in this docket on August 9, 1989, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

2. That the exceptions to the Recommended Order filed by the Attorney General on August 24, 1989, be, and the same are hereby, denied.

3. That the Motion for Remand and Alternative Filing of Exceptions filed in this docket by Gary R. Alexander on August 25, 1989, be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of September 1989.

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

DOCKET NO. P-55, SUB 895

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of J. Daniel Fritz, Security Building Company, Post Office Box 967, Chapel Hill, North Carolina 27514, Complainant v. Southern Bell Telephone and Telegraph Company, Respondent	)	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, May 22, 1989, at 2:00 P.M.

BEFORE: Chairman Robert O. Wells, Presiding; and Commissioners Sarah Lindsay Tate, Edward B. Hipp, Ruth E. Cook, J. A. Wright, William W. Redman, Jr., and Charles H. Hughes

APPEARANCES:

For the Complainant:

J. Daniel Fritz, Security Building Company, Post Office Box 967; Chapel Hill, North Carolina 27514

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

For Southern Bell Telephone and Telegraph Company:

Edward L. Rankin III, General Attorney, Post Office Box 30188, Charlotte, North Carolina 28230

BY THE COMMISSION: On April 6, 1989, Commission Hearing Examiner Daniel Long entered a Recommended Order in this docket denying the complaint filed by J. Daniel Fritz of Security Building Company (Complainant) against Southern Bell Telephone and Telegraph Company.

On April 28, 1989, the Complainant, with the assistance of the Attorney General, filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

Upon call of the matter for oral argument at the appointed time and place, all parties were present and offered oral argument before the Commission.

Based upon a careful consideration of the Recommended Order of April 6, 1989, the oral arguments offered by the parties before the full Commission on May 22, 1989, 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 April 6, 1989, should be affirmed and adopted as the Final Order of the Commission; and that each of the exceptions thereto should be overruled and denied. In reaching these conclusions, the Commission believes that the actions heretofore taken by Southern Bell will minimize to the maximum extent possible future service complaints from the Complainant regarding extended outages and switching problems that are unrelated to transmission, atmospheric, and like limitations inherent in mobile telephone service. Southern Bell should remain fully cognizant of the need to continue to provide reasonable and adequate mobile telephone service to the Complainant and should continue to take all steps reasonably necessary to ensure achievement of that goal. The Complainant should remain cognizant of the fact that mobile telephone service is subject to inherent limitations outside the direct control of Southern Bell that affect the Complainant's perceptions of the quality of service he is receiving. In addition, the Commission certainly expects both the Complainant and the Company to continue to exercise their best efforts to reduce future problems.

IT IS, THEREFORE, ORDERED as follows:

1. That each and every exception filed by the Complainant with respect to the Recommended Order of April 6, 1989, be, and the same is hereby, overruled.

2. That the Recommended Order of April 6, 1989, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of May 1989.

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

DOCKET NO. P-7, SUB 722

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Carolina Telephone and Telegraph Company	)	ORDER APPROVING
Wilson County Extended Area Service	)	EXTENDED AREA SERVICE

BY THE COMMISSION: By letter of May 31, 1988, Mr. Avant P. Coleman, Agricultural Extension Service Agent, submitted support for extended area service (EAS) throughout Wilson County among the exchanges of Kenly, Bailey, Lucama, Elm City, and Stantonsburg. Currently, these five exchanges all have EAS to the Wilson exchange, the county seat, but not among themselves. The only other EAS involving these exchanges is the Kenly exchange's EAS to all the exchanges in Johnston County. The support submitted consisted of petitions signed by approximately 1,500 total customers in the five exchanges and letters from the Wilson County Board of Commissioners, Representative Larry E. Etheridge, the Towns of Elm City, Sims, Black Creek, Lucama, Saratoga, and Stantonsburg as well as governmental agencies, schools, colleges, churches, and the Wilson County Chamber of Commerce.

Based on the application of Carolina Telephone and Telegraph Company's (Carolina) EAS matrix plan, the following rate increases were determined for this proposal:

Exchange	Residence	Business
Bailey	$2.31	$ 5.51
Elm City	$2.44	$ 5.82
Kenly	$0.31	$ 0.66
Lucama	$1.89	$ 4.52
Stantonsburg	$2.44	$ 5.82

This matter was initially considered by the Commission at the Regular Commission Staff Conference on June 20, 1988. The Public Staff stated its belief that the support provided for the EAS demonstrated sufficient interest to justify Carolina to conduct a poll of the subscribers in the five exchanges using the computed local rate increases above to determine the desire for county-wide EAS in Wilson County.

The Commission agreed that the subscribers in the exchanges in Wilson County named above should be polled. On August 3, 1988, Robert H. Bennink, Jr., General Counsel for the Commission, sent a letter advising Carolina that it was authorized to conduct an EAS poll of subscribers in Wilson County and requesting Carolina to utilize the polling letter format attached. Part of that notice read in relevant part:

> The Utilities Commission reserves the right to either (1) approve two-way, toll-free calling between the Bailey, Elm City, Kenly, Lucama, and Stantonsburg exchanges if a majority of the total voting customers in those exchanges vote in favor of the EAS or (2) delete any exchange from the EAS arrangement which votes against the EAS...

By letter of September 30, 1988, Carolina submitted the results of the EAS poll conducted of its subscribers in five exchanges providing telephone service

in Wilson County to determine their desire and interest in county-wide EAS in Wilson County. The presentation of these toll results was delayed at the request of the County officials to allow them to coordinate the schedules of key people at an agenda conference. The poll results are as follows:

Exchange	No. of Ballots Mailed	No. of Ballots Returned	Percent of Ballots Returned	Ballots Returned Voting in Favor	Percent of Ballots Returned Voting in Favor
Bailey	2,445	1,033	42.2	440	42.5
Elm City	1,445	472	32.7	157	33.3
Kenly	3,796	1,425	37.5	1,227	86.1
Lucama	1,386	621	44.8	548	88.2
Stantonsburg	1,340	524	39.1	212	40.5
TOTAL	10,412	4,075	39.1	2,584	63.4

These results show that while three of the five exchanges voted against the proposal, 63.4% of the total subscribers voting were in favor of the EAS. Another perspective on the poll results can be gained by comparing the combined results of the three exchanges voting for the proposal with the combined results of the two exchanges voting against the proposal as follows:

	No. of Ballots Mailed	No. of Ballots Returned	Percent of Ballots Returned	Ballots Returned Voting in Favor	Percent of Ballots Returned Voting in Favor
Area Voting For (Kenly, Lucama)	5,182	2,046	39.5	1,775	86.8
Area Voting Against (Bailey, Elm City, Stantonsburg)	5,230	2,029	38.8	809	39.9
TOTAL	10,412	4,075	39.1	2,584	63.4

Presenting the results in this manner essentially compares the poll results of two exchange areas of equal size in terms of ballots mailed and ballots returned. The first exchange area voting for the proposal offsets the vote against the proposal of the other exchange area.

This matter was considered by the Commission at the Regular Commission Staff Conference on January 23, 1989. The Public Staff stated its belief that the poll results, taken as a whole, tend to support approval of the EAS proposal as a total package. In addition, the Public Staff was assured by county and city officials representing the various areas of the county that they strongly supported approval of the EAS as a total package.

The Public Staff accordingly recommended that a letter be sent to Carolina authorizing the establishment of the proposed EAS for the five exchanges serving Wilson County.

The following citizens from Wilson County appeared on behalf of the EAS proposal: Mr. Ernie Perry; Mr. Preston Harrell, Chairman of the Wilson County Board of Commissioners; Mr. Seth Hunt, Stantonsburg; Mr. Bruce Beasley, President of the Wilson County Chamber of Commerce; Mr. Pender Sharp, Lucama; Mr. A. P. Coleman; and Sally Cook, Lucama.

Dwight Allen appeared on behalf of Carolina Telephone and Telegraph Company and stated that Carolina recommended approval of the EAS between Lucama and Kenly, since these were the exchanges voting in favor of the EAS.

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 fully 63.4% of the ballots returned by the Wilson County subscribers were in favor of the EAS. All subscribers will benefit from the greater calling scope. Therefore, the Commission believes that good cause exists to approve this EAS notwithstanding the fact that less than a majority of subscribers in Bailey, Elm City, and Stantonsburg voted in favor of EAS. The Commission notes that the polled subscribers were on notice that the Commission reserved the right to exercise such an option in the portion of the polling letter cited above. Also, the Commission has been greatly influenced by the statements of citizens from Wilson County who appeared at the January 23, 1989, Conference and vigorously supported the county-wide EAS, as well as the petitions and many letters reflecting strong support for the EAS that are contained in our official file. The Public Staff has also been supportive of this proposal. Since most subscribers polled supported the county-wide EAS by a significant margin and all subscribers will receive the benefits of greater calling scope, the Commission concludes that good cause exists to implement the EAS in question.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina shall take the necessary action to provide and implement EAS in Wilson County and that a time schedule for establishing this service 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 8th day of February 1989.

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 to this Order Granting Wilson County-wide EAS because there is very little to justify it.

There are, however, many reasons not to order Wilson County residents to pay monthly increases up to $2.44.

(1) All subscribers in Wilson County already have EAS to the County seat of Wilson, therefore, everyone already has access to toll free calling to obtain governmental services.

(2) The calling studies show that there is virtually no community of interest between most of these exchanges. This Commission used to require a showing of 2 calls per access line per exchange with at least 40% of subscribers making one call as an indication of interest among communities. No exchange in Wilson County meets that standard. At present even under our very flexible rules, calling studies are relevant when a number of exchanges are involved. The majority does not mention calling studies.

(3) It is true that most of the governmental officials in the County seem to be in favor of county-wide EAS, but only 39% of Wilson County telephone owners returned their ballots. In fact, less than 25% of the subscribers have raised the rates of all Wilson ratepayers (2,584 out of 10,412).

(4) Only two of the five exchanges in Wilson County voted for this proposal (Kenly and Lucama). But residents of Bailey will have their monthly bill increased by $2.31 and residents of Elm City and Stantonsburg will see their bills go up by $2.44 per month. It is understandable that Kenly residents would vote in favor since their monthly increase is only 37¢. Almost 50% of the favorable vote came from Kenly.

The majority states three times that "good cause exists" for this EAS but it does not point out good causes. While the majority breaks down the votes into what it calls equal size, it does not point out that of the 2,584 votes for EAS, 1,227 votes came from subscribers who only have to pay 37¢.

This Commission often expresses its concern for universal telephone service but by this Order 2,785 ratepayers will see their telephone bills go up by $29.28 per year and another 2,445 subscribers' rates will increase $27.72 annually. Since 61% of the subscribers in the three high cost exchanges voted against EAS, they may not appreciate this "benefit" the majority is imposing on them. The Commission reserved the right on the ballot to "delete any exchange from the EAS arrangement which votes against the EAS." The Commission should have deleted Elm City, Bailey and Stantonsburg, but the majority has decided that the two exchanges with lower EAS rates shall control the 3 exchanges with the highest rate increases. I dissent!

Sarah Lindsay Tate, Commissioner

Commissioner Wright concurs in this dissent.

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 976 Calls	))))	ORDER ALLOWING 976 TARIFF REVISIONS TO GO INTO EFFECT

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, November 9, 1988, and Wednesday, November 10, 1988

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

APPEARANCES:

For Southern Bell Telephone and Telegraph Company:

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

and

David M. Falgoust, General Attorney, Southern Bell Telephone and Telegraph Company Legal Department, 4300 Southern Bell Center, Atlanta, Georgia 30375

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

William A. Daivs II, Tharrington, Smith & Hargrove, Attorneys at Law, 209 Fayetteville Street, 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 Continental Entities, Incorporated:

Edward D. Seltzer, Pearce & Seltzer, P.A., Cameron Brown Building, Suite 604, 301 South McDowell Street, Charlotte, North Carolina 28204

For Omnicall, Incorporated:

Ralph McDonald, Carson Carmichael, Cathleen Plaut, Bailey & Dixon, 601 St. Mary's Street, Raleigh, North Carolina 27605

For the Public Staff

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

For the Attorney General:

Karen E. Long, Deputy Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27605
For: The Using and Consuming Public

BY THE COMMISSION: On December 18, 1987, Southern Bell Telephone and Telegraph Company (Southern Bell or Company) made a proposed tariff filing whereby the Company sought authority to revise its existing 976 service tariff and to reduce the tariff rates for blocking 976 calls, effective January 20, 1988. Through this tariff filing, Southern Bell stated that it was proposing to add provisions to the 976 service tariff in order to avoid abuse of the service.

The first new provision would prohibit a 976 subscriber from using 976 services to bill for other services or goods or to collect for things such as charitable or political contributions. In addition, the language would also prohibit a subscriber from using 976 service for live voice arrangements and from recording calls made by the subscriber.

The second new provision would prohibit the 976 subscriber from disseminating messages which contain information Southern Bell may choose not to be associated with due to the Company's stated need to protect its corporate image.

The third provision would prohibit the subscriber from requiring proof from a caller that the 976 call was made, such as requiring callers to mail in copies of their telephone bills. It also prohibits the subscriber from giving a Personal Identification Number (PIN) as a condition of receiving any services or goods.

Finally, Southern Bell proposed to reduce the charges for blocking 976 and 900 calls.

This matter was initially presented to the Commission by the Public Staff during the Regular Commission Conference held on Tuesday, January 17, 1988. The Public Staff recommended that, if 976 service continues to be offered in North Carolina, Southern Bell's proposed tariff revisions should be allowed. A representative of Southern Bell appeared at the Staff Conference and spoke in support of the Company's proposed tariff filing. Ralph McDonald, Attorney at Law, appeared at the Staff Conference on behalf of Omnicall, Inc., a 976 subscriber, in opposition to Southern Bell's proposed tariff filing.

Omnicall, Inc., also filed a petition for suspension and investigation in this docket on January 19, 1988. By this petition, the Commission was requested to suspend Southern Bell's proposed tariff revisions pending investigation and hearing, except for those tariff revisions regarding reduced charges for blocking 976 and 900 calls.

By Order entered in this docket on January 20, 1988, the Commission instituted an investigation to consider Southern Bell's proposed 976 service tariff filing. By that Order, the Commission suspended Southern Bell's proposed tariff filing, except for that part of the filing which provided for reduced charges for blocking 976 and 900 calls. By Order dated April 8, 1988,

the Commission required free blocking for 976 calls, and Southern Bell subsequently filed tariffs consistent with that Order.

The Commission concluded that good cause existed to schedule a hearing to consider the following revisions proposed by Southern Bell to its 976 tariff as set forth in the Company's General Subscriber Service Tariff:

Section A13 - Third Revised Page 36.1
Second Revised Page 36.2
Second Revised Page 36.3

After various motions and interim Orders by the Commission, the hearing in this matter was duly commenced at 10:30 a.m on November 9, 1988.

Southern Bell presented Mr. Eddie Cooper, the Company's Manager responsible for 976 service rate and tariff matters, to testify in support of its revisions and policy positions regarding the 976 service. Omnicall presented the testimony of Dr. Jeffrey Leiter and Mr. Danny A. McGinnis in support of its positions; Continental Entities, Inc., presented the testimony of Mr. Timothy D. Johnson in support of its positions; and the Public Staff presented the testimony of Ms. LuAnne Lenz in support of its positions. Neither the Department of Justice nor AT&T Communications presented any witnesses.

FINDINGS OF FACT

1. This matter is a tariff filing by Southern Bell Telephone and Telegraph Company, a certificated telecommunications utility, to revise certain terms of its tariff for 976 service. The Commission has jurisdiction to hear and resolve such matters under G.S. 62-2, G.S. 62-32, and G.S. 62-134.

2. 976 service is a tariffed service through which a person can call a telephone number and receive a recorded or computer generated message provided by a vendor subscribing to 976 service. There is a "per-call" charge, set by the 976 vendor (Provider) for this service. In addition to transporting the call, Southern Bell performs the billing and collection function for the Provider, for which Southern Bell is paid a tariffed rate.

3. Some Providers who subscriber to 976 service use the service in a manner that deviates from the intent of the 976 service tariff, frequently resulting in customer billing disputes and adjustments and other types of complaints. The handling of these billing disputes and complaints has a direct financial and operational impact on Southern Bell. The public perception of 976 service is suffering because of these types of complaints which in turn can impair the marketability of the service. The misuse of the service can harm Southern Bell's public image.

4. Live bridging and referrals to live bridge programs through the use of personal identification numbers (PINs) or other proof of having made a 976 call have been responsible for many of the problems and complaints suffered by Southern Bell.

5. Collection of political and charitable contributions and billing and collection for other goods and services through the 976 service can cause undue

complexities and problems for Southern Bell in administering 976 service and is inconsistent with the purpose of the service.

6. 976 service was designed and intended simply as a service to provide a recorded message to the caller for which Southern Bell would bill the caller on behalf of the information Provider. It was not designed to permit callers to leave their recorded messages. The recording of caller messages to a 976 service causes some of the same misuse and abuse problems as the live bridge and live bridge referral programs and such use is outside the scope of the offering.

7. Southern Bell is not obligated to provide billing and collection service for programs or information with which it chooses not to be associated.

8. The Commission's decision to allow the tariff revisions to go into effect does not constitute state action. There are therefore no constitutional or other legal barriers which would prohibit Southern Bell's proposed tariff revisions from becoming effective. There is no unreasonable discrimination in the proposed revisions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This is a jurisdictional matter, uncontested by the parties.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Witness Cooper testified that 976 service is a tariffed service through which a person can call a telephone number and receive a recorded or computer generated message provided by a vendor subscribing to 976 service. There is a "per-call" charge, set by the 976 vendor for this service. In addition to transporting the call, Southern Bell performs the billing and collection function for the Provider, for which Southern Bell is paid a tariffed rate.

Witness Cooper stated that 976 service was first tariffed in North Carolina in January 1985. Since that time, both the number of information Providers and the total number of programs being offered have grown. Services such as information regarding job opportunities, mortgage or automobile interest rates, legal matters, investment options, taxes, and health related issues can be offered through 976 service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Witness Cooper testified that a few information Providers are using 976 service in a manner which deviates from the intent and undertaking of Southern Bell when it offered its 976 service. He stated that these deviations have resulted in customer billing disputes and other types of complaints. He stated that the handling of these billing disputes and complaints has a direct financial and operational impact on Southern Bell. Moreover, the public perception of 976 service is suffering because of complaints which in turn can impair the marketability of the service. Finally, the misuse of the service causes concern for Southern Bell's public image. While optional free blocking of 976 service has undoubtedly helped reduce the number of complaints arising from use of the service, it has not eliminated the problems caused by misuse of the service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 4 AND 5

Live bridge programs are instances where, rather than merely providing a recorded announcement to the caller, the 976 Provider either directly connects the caller to a live conversation with one or more individuals or refers the called to another number with a means to access a live conversation on the other number. Mr. Cooper testified that live bridge type service was responsible for most of the complaints received and the billing adjustments processed by Southern Bell for its 976 service. For example, during the 12-month period of September 1987 through August 1988, over 60,000 of the approximately 90,000 976 message billing adjustments processed by Southern Bell were for live bridge programs. During this 12-month study period, in the case of one Provider, Omnicall, Inc., 98% of its 61,901 adjustments were for its live bridge type programming.

Omnicall, Inc., argued that a prohibition of live bridges and referrals to live bridges on 976 service would eliminate these types of information services in North Carolina. The Commission does not agree. Southern Bell's proposed tariff revision would merely require the information Providers who provide such programming to implement alternative billing systems. The record indicates that such alternative billing services are available. Omnicall, Inc., is free to use Southern Bell's network for any lawful purpose, but the Commission concludes that Southern Bell should not be compelled to make available its billing and collection resources and be compelled to bill its ratepayers on behalf of Omnicall where such programming causes Southern Bell undue expense and hardship.

Mr. Cooper testified that 976 information Providers should not be allowed to require proof from a caller that a 976 call was made. As in the case of live bridge programming, the contents of messages or conversations which take place on subsequent calls are not subject to prior script approval by Southern Bell. As a result, the Company is unaware of the content of these calls until complaints are received, and because these calls are associated with the 976 service, Southern Bell becomes associated with the complaint and suffers the same type billing adjustment and complaint resolution problems as with live bridge programs. The Commission agrees that the proposed revisions to clearly prohibit live bridge or referrals to live bridges and proof of call requirements are reasonable and should be permitted.

Witness Cooper testified that the Company's proposed revision clarifies the prohibition for the use of 976 service as a device to bill for other services or goods, or as a collection mechanism for such things as charitable or political contributions. He stated that the use of 976 service to collect charitable and political contributions was not an intended use of 976 service as contemplated by the tariff. This use takes advantage of the billing system created by 976 service and does not provide information to the calling party.

Mr. Cooper stated that substantial legal and ethical questions are raised by the use of 976 service for the collection of charitable and political contributions. On the one hand, Southern Bell does not wish to be placed in the position of having to determine what are and what are not legitimate nonprofit organizations for tax and other purposes. On the other, Southern Bell may be perceived as endorsing an organization which uses 976 services as a billing device when, in fact, Southern Bell in no way intends to do so. There

is also the overall issue of Southern Bell's obligation and ability to collect unpaid sums which are intended as donations and which are not given in consideration for information. Finally, there are issues which affect the reporting, deductibility, and other facts of political and charitable contributions. He stated that such issues could burden the Company's resources in ways never intended in administering the 976 service.

In light of these problems and the fact that there are numerous alternative methods for legitimate fund raising already in common use, the loss of this one method will not be a burden for fund raisers. For all of these reasons, Southern Bell proposes to clearly state a complete prohibition on the use of 976 service as a means of collecting for goods or other services and political and charitable contributions. The Commission concludes that these revisions are reasonable and should be allowed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Witness Cooper stated that many of the concerns and problems caused by live bridge type programs are also presented by the recording of callers' messages to 976 programs. He testified that there have been instances where callers have left the names and telephone numbers of other persons without those persons' knowledge or consent. This has caused unwanted complaints. Recording of callers' messages on the 976 service exceeds the undertaking of Southern Bell in offering this service. The Commission believes the Company should be permitted to limit its undertaking by exercise of its business judgment in determining the scope of its service offering. The Commission agrees that the revision to clearly prohibit recording of callers' messages on the 976 service is reasonable and should be allowed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Southern Bell contends it should not be required to provide billing and collection services for program matter or information with which it chooses not to be associated due to its concern to protect its reputation and good will. Since Southern Bell bills and collects for 976 service from its subscribers, the Company is associated with the various programs and the 976 information Providers. Therefore, in order to limit the potential for abuse and protect its own image, Mr. Cooper stated that Southern Bell should be permitted to disassociate itself from 976 type programs that generate complaints from communities in which Southern Bell operates or which harm the Company's corporate image. Concern for its corporate image is a legitimate business concern of Southern Bell.

The Commission agrees that since Southern Bell is closely related to the 976 information provided by virtue of its billing and collection activities to its ratepayers for these calls, this proposed revision is reasonable and should be allowed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence shows that Southern Bell is concerned about its own reputation and the future of 976 service, and that without clarifying the intent of the 976 tariff, there may be detrimental effects upon both the 976 service itself and Southern Bell's reputation. Southern Bell has taken the

opportunity to propose a tariff change specifically designed to disassociate itself from live bridge referrals or random group conferencing services.

As the direct billing agent for these live conversations and group conferencing services, Southern Bell proposed these tariff revisions to alleviate detrimental impacts to its operations and administration of the service and harm to its reputation. This is a perfectly legitimate business decision by Southern Bell. See Carlin Communications, Inc v. Southern Bell Telephone and Telegraph Company, 802 F2d 1352 (11th Cir. 1986).

The Commission's decision to allow the tariff revisions to go into effect does not constitute state action and there are therefore no constitutional or other legal impediments to prevent Southern Bell's proposed tariff revisions from becoming effective.

A. Constitutional Issues. The Fourteenth Amendment protects only against deprivations of constitutional rights by a state. Shelly v. Kraemer, 334 U.S. 1 (1948). State action is also a prerequisite to violation of the free speech provision of the North Carolina Constitution. See, North Carolina Constitution, Article I, Section 14. Thus, where no state action exists, there can be no violation of the First Amendment or the North Carolina Constitution.

Where the challenged action is that of a state regulated utility, the existence of state action is determined by whether or not there is a sufficiently close nexus between the state and the challenged action so that the action of the utility may be fairly regarded as that of the state itself. Jackson v. Metropolitan Edison Co., 419 U.S. 345, 352 (1974). The Eleventh Circuit has specifically held, in a case involving Southern Bell's 976 service in Florida, that where a telephone utility initiates a tariff proposal which is approved and subsequently challenged on First Amendment grounds, the mere act of authorization and approval of the tariff provision by the state regulatory authority does not create a nexus between the state and the proposed tariff provision sufficient to create state action. Carlin Communications, Inc. v. Southern Bell Telephone and Telegraph Company, 827 F2d 1291 (9th Cir. 1987).

The Eleventh Circuit stated that the mere fact that the practice complained of was authorized by a state regulatory body is insufficient to establish state action unless the regulating authority has "put its own weight on the side of the proposed practice by ordering it." Carlin v. Southern Bell, supra at 1358. The Court then ruled that the Florida Public Service Commission had not "put its weight on the side of the proposed practice" since Southern Bell had initiated the disputed tariff proposal and since the Florida Commission's ordering of further study of Southern Bell's proposal was "merely a response to the filing of the proposed tariff as part of [the Florida Commission's] standard procedures for tariff approval and not an independent initiative on its part." Id. at 1358. Similarly, here, Southern Bell has initiated the tariff revisions and the Commission is simply allowing them to go into effect. The Commission has not "put its own weight on the side of the proposal by ordering it." Id.

The Carlin holding is fully dispositive of the legal issue in the present matter. Southern Bell, in the exercise of its own business judgment, proposed a tariff modification to prohibit referrals from 976 numbers to live voice bridges. The testimony of Mr. Cooper shows that Southern Bell decided

independently to file the tariff in question based on its experience with the service and its perception that misuse of the service can be detrimental to the Company's image.

Furthermore, throughout the proceedings before the Commission, it has been Southern Bell, acting upon its own judgment, which has continued to seek these tariff changes. Southern Bell is simply seeking the Commission's authorization to implement the Company's proposals. Under these facts, the law is well settled that there is not state action.

Omnicall argues that Southern Bell's intent is to deny the public access to Omnicall's information service. Southern Bell does not prohibit otherwise lawful free speech on its telephone network. To the contrary, the Company has merely sought a prohibition against live bridges in connection with its 976 service. Omnicall is free to use the Company's network so long as Southern Bell, through its 976 service, does not have to bill or collect for such calls on behalf of Omnicall. Thus, Omnicall may still offer its live conferencing service to the public over Southern Bell's networks so long as it does so independent of Southern Bell's 976 service. The tariff provisions at issue in the present docket, as well as in Carlin and Jackson, do not single out specific groups for special treatment by the utility but instead contain regulations applicable to all utility customers.

Southern Bell's decision to propose tariff language prohibiting live bridging or referrals to live bridges on its 976 service was motivated by the desire to not be associated with messages which it believed to be injurious to its reputation. This is a perfectly legitimate business decision. As stated in Carlin, supra, "a private business is free to choose the content of messages with which its name and reputation will be associated and such a choice is not the exercise of a public function." 802 F.2d at 1361.

The decision to terminate access to such group conferencing services through 976 service is therefore a legitimate business decision by Southern Bell. The Commission finds no state action or other basis for constitutional claims argued by intervenors. Thus, these contentions are rejected.

B. Discrimination Issues. Intervenor Omnicall argues that Southern Bell's tariff ban on live bridging and referrals to live bridges through 976 unfairly discriminates against Omnicall in favor of other 976 Providers. Omnicall also claims that Southern Bell's proposed ban discriminates unjustly in favor of AT&T's 700/900 services, which Omnicall argues are similar to its own 976 service. These claims are without merit.

G.S. 62-140 does not prohibit all discrimination, but, instead prohibits unreasonable discrimination. Southern Bell's tariff provision banning live bridging and referrals to live bridges does not constitute unreasonable discrimination against one group of service Providers; this provision applies equally to all subscribers. The Company's proposal does not discriminate against any person or identifiable class of persons. It does prohibit certain practices. Omnicall can point to no 976 Provider that will be permitted to do what Omnicall is prohibited from doing under the proposed tariff. Furthermore, Omnicall, like all other subscribers, may still offer otherwise proper 976 services that do not refer callers to live conference lines.

There is sufficient evidence before the Commission to treat live bridging type programs differently from other 976 programs. Witness Cooper testified that 98% of the billing adjustments required to be made for Omnicall's 976 service resulted from Omnicall's live bridging programs. This billing adjustment problem alone is sufficient justification for the ban on live bridge referrals proposed by Southern Bell.

There are also substantial differences between Omnicall's live bridge referral service and AT&T's 700/900 services that justify differences in treatment between these services. First, no random teleconferencing is permitted to occur on AT&T's 900 service network. Another significant difference between 976 service and AT&T services is that 976 service is offered directly by Southern Bell. Further, 976 services are billed on the Southern Bell portion of the telephone customer's bill. On the other hand, billing for AT&T services appears on the AT&T Portion of the monthly telephone bill. Since 976 services are billed directly by Southern Bell, there is a more significant impact on the image of Southern Bell from 976 services than there is from the billing done on behalf of AT&T. Regarding separate page billing, 976 service was not designed and offered under such an arrangement, and witness Cooper stated that it is not feasible and is extremely costly to provide separate billing identification pages for 976 service Providers in Southern Bell's bill. There are further differences. Unlike AT&T's 900 service, 976 service is a service provided by Southern Bell over its own network. Thus, the public closely associates Southern Bell with 976 service while there is no similar association between Southern Bell and AT&T services. Omnicall's suggestion that Southern Bell could resolve its concerns regarding its business reputation by changing its billing format, therefore, would not only interfere with the Company's management decisions of how the service is to be offered, but it would require Southern Bell to expend unnecessary sums. More importantly, it would not sever the publicly perceived linkage between Southern Bell and 976 service.

There are other differences between AT&T's services and Omnicall's. As a regulated carrier, AT&T provides the long distance network over which Providers can be accessed by the Public. Omnicall, however, does not supply a network for information but rather provides the information itself. Thus, if AT&T were to enter the Provider market by using Southern Bell's 976 service, it would be required to comply with the tariff provisions banning live bridging and live bridge referrals in exactly the same manner as Omnicall. Furthermore, although Southern Bell has no control over the type of services provided by AT&T over its 700 and 900 networks, the fact is that no services similar to Omnicall's are offered over AT&T's 700 and 900 services. Finally, AT&T, unlike Omnicall, is a public utility, regulated by both state and federal authorities.

The U.S. District Court in Georgia considered the discrimination claims of Omnicall, and rejected those claims. See, Omnicall, Inc. v. P.S.C. of Ga., et al., U.S. Dist. Ct. N.D. Ga., Docket No. 1:88-1536 (1988). Affirmed per curiam, Omnicall, Inc. v. P.S.C. of Ga., et al., (11th Cir. Dec. 29, 1988, unpublished Opinions). See also, Omniphone, Inc. v. Southwestern Bell Tel., 742 S.W.2d 523, 527 (Tex. Ct. App., 1988).

The differences discussed hereinabove are more than sufficient to meet the reasonable discrimination tests set forth under North Carolina decisions. (Substantial differences in service or conditions justify a difference in

rates.) State ex rel. Util. Comm. v. Nello Teer Co., 266 N.C. 366, 146 S.E.2d 511 (1966); State ex rel. Util. Comm. v. Bird Oil Co., 302 N.C. 14, 273 S.E.2d 232 (9181). Omnicall's live bridge service is simply outside the undertaking and scope of the of the service offered by Southern Bell under its 976 tariff.

IT IS, THEREFORE, ORDERED that the suspension heretofore imposed by this Commission be dissolved and the revisions proposed by Southern Bell to its 976 tariff be allowed to go into effect upon the date of this Order. The Company is allowed to file tariffs effective as of this date.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of February 1989.

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

Commissioner William W. Redman, Jr., did not participate in this decision.

DOCKET NO. W-354, SUB 72
DOCKET NO. W-962

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-354, SUB 72

In the Matter of
Application by Carolina Water Service, Inc., of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for a Certificate of Public Convenience and Necessity to Furnish Water and Sewer Utility Service in Riverpointe Subdivision, Mecklenburg County, North Carolina, and for Approval of Rates

and

DOCKET NO. W-962

In the Matter of
Application by Riverpointe Utility Corporation, 2335 Sanders Road, Northbrook, Illinois 60062, for a Certificate of Public Convenience and Necessity to Furnish Water and Sewer Utility Service in Riverpointe Subdivision, Mecklenburg County, North Carolina, for Approval of Rates, and for Approval to Transfer 100% of the Stock of Riverpointe Utility Corporation to Carolina Water Service, Inc., of North Carolina

ORDER GRANTING FRANCHISE, APPROVING STOCK TRANSFER, AND APPROVING RATES

HEARD: Friday, September 15, 1989, Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, at 9 a.m.

BEFORE: Chairman William W. Redman, presiding; and Commissioners Sarah Lindsay Tate, Julius A. Wright, Robert O. Wells, Charles H. Hughes, and Laurence A. Cobb

APPEARANCES:

For Carolina Water Service, Inc., of North Carolina:

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

For the Public Staff:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff--North Carolina Utilities Commission, 430 North Salisbury Street, Raleigh, North Carolina 27611

BY THE COMMISSION: On March 16, 1989, Carolina Water Service, Inc., of North Carolina (Applicant or CWS), filed an application with the Commission

seeking a water and sewer utility franchise for Riverpointe Subdivision in Mecklenburg County, North Carolina, and for approval of rates.

On August 14, 1989, at the Commission Conference, the Public Staff presented this matter for the Commission's consideration. At said conference the Public Staff expressed its concerns that the Applicant's acquisitions of the water and sewer utility systems may constitute Contribution in Aid of Construction (CIAC). In addition, the Public Staff recommended approval of the application.

By Order issued on August 28, 1989, the Commission scheduled a hearing on this matter.

The hearing was held as scheduled. Jim Camaren, Vice President of Business Development, appeared for CWS and testified in support of the application. Public Staff witness George Dennis stated his concerns with the potential tax liabilities associated with the acquisition by CWS and its ability to meet these liabilities. The Public Staff recommended that the franchise be granted to CWS.

On September 25, 1989, CWS filed a letter which amended its application as follows:

1. The franchise should be issued to and will remain in the name of Riverpointe Utility Corporation.

2. CWS requested that the Commission approve CWS's approval of 100% of the stock of Riverpointe Utility Corporation.

Based on the information presented at the Commission conference and the hearing, the Commission is of the opinion that the water and sewer franchise should be granted and the rates as filed approved. In making this decision, the Commission points out that on new franchise applications like this one, the Commission must rely heavily on the recommendations of both the Public Staff and the Attorney General. As pointed out above, the Public Staff has recommended that this application be approved. The Attorney General, although in attendance at the conference in which this matter was presented, made no recommendations.

Furthermore, in granting this franchise, the Commission emphasizes that the granting of this franchise does not constitute prior approval of any method other than the full gross-up method with respect to the collection of taxes associated with CIAC.

The Commission also reaffirms the position taken in its Order of August 26, 1987, which stated in part:

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

and

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

and its Order of January 26, 1988, which stated, in part:

"That 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."

IT IS, THEREFORE, ORDERED as follows:

1. That Riverpointe Development Corporation be, and hereby is, granted a Certificate of Public Convenience and Necessity to provide water and sewer utility service in Riverpointe Subdivision, Mecklenburg 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, for Riverpointe Development Corporation in Riverpointe Subdivision, with the exception of connection fees, shall be the same rates approved by the Commission in Carolina Water Service's last general rate case in Docket No. W-354, Sub 69. The connection fees approved for Riverpointe Subdivision shall be $300 per tap for water and $300 per tap for sewer as agreed to in the purchase agreement between the Applicant and the Developer filed as an exhibit with the application. These connection fees are approved in lieu of the uniform tap-on fees and the plant modification fees approved in Docket No. W-354, Sub 69.

4. That 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 granting of this franchise shall not be deemed to constitute prior approval of any method other than the full gross-up method with respect to collection of taxes associated with CIAC.

5. That within 60 days of the date of this Order, CWS shall complete the bond, attached hereto as Appendix C, and deposit the appropriate security in the amount of $20,000 with United Carolina Bank, Attention: Sandra Pate, 3605 Glenwood Avenue, Post Office Box 17389, Raleigh, North Carolina 27612.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of October 1989.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A

DOCKET NO. W-962
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By These Presents, That
RIVERPOINTE DEVELOPMENT CORPORATION
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide water and sewer utility service
in
RIVERPOINTE SUBDIVISION
Mecklenburg County, North Carolina

subject to such order, 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 3rd day of October 1989.

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

APPENDIX B

SCHEDULE OF RATES
of
RIVERPOINTE DEVELOPMENT CORPORATION
for providing water and sewer utility service in
RIVERPOINTE SUBDIVISION
Mecklenburg County, North Carolina

WATER RATE SCHEDULE

METERED WATER RATES
Residential:

A. Base facility charge: $8.00 per dwelling unit. This $8.00 facility charge shall also apply where the service is provided through a master meter and each invididual dwelling unit is being billed individually.
B. Base facility charge: $7.30 per month per dwelling unit when service is provided through a master meter and a single bill is rendered for the master meter, as in condominium complexes.
C. Commodity charge: $2.30 per 1,000 gallons for all metered water usage.
D. Flat rate for unmetered single-family residence: $15.50
Flat rate for unmetered commercial customers: $15.50 per single family equivalent.

Commercial and other:

A. Base facility charge:

5/8" x 3/4" meter	$ 8.00
1" meter	$ 20.00
1-1/2" meter	$ 40.00
2" meter	$ 64.00
3" meter	$120.00
4" meter	$200.00

B. Commodity charge: $2.30 per 1,000 gallons, or 134 cubic feet

Availability Rates: Not applicable

Connection Charge (tap on fee): $300
Meters larger than 5/8" Actual cost of meter and installation.

Plant Impact Fee: Not applicable

Tap and Plant Impact Fee: The Tap on Fee and Plant Impact Fee are subject to the Gross Up Multiplier provisions of the North Carolina Utilities Commission, Docket No. M-100, Sub 113.

New Water Customer Charge: $22.00

Reconnection Charge:
If water service cutoff by utility for good cause: $22.00

If water service discontinued at customer's request: $22.00
(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected.)

SEWER RATES SCHEDULE

Residential:
Flat rate per month per dwelling unit: $20.50

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

Commercial and Other: (Metered-Commercial and other nonresidential)
100% of water service subject to a minimum rate of $20.50 per month. Customers who do not take water service will pay $20.50 per single-family equivalent.

New Water and Sewer Customer Charges: New Sewer Customer Charge: $16.50
(If customer also receives water service, this charge will be waived.)

Connection Charges (tap on fee): $300.00

Plant Impact Fee: Not applicable.

Tap and Plant Impact Fee: The Tap on Fee and Plant Impact Fee are subject to the Gross Up Multiplier provisions of the North Carolina Utilities Commission, Docket No. M-100, Sub 113.

Reconnection Charges:

If sewer service is cutoff by utility for good cause, the actual cost of disconnection and reconnection will be charged. The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish this estimate to customer with cutoff notice.

This charge will be waived if customer also receives water service from Riverpointe Development Corporation.

Bills Past Due: 21 days after billing date.

Bills Due: On billing date.

Finance Charge For Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Charge for Processing of NSF Check: $7.00

Billing Frequency: Bills shall be rendered bi-monthly in all service areas.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-962 on this the 3rd day of October 1989.

APPENDIX C

BOND

_____ of _____,
(Name of Utility) (City)
_____, as Principal, is bound to the State of North
(State)
Carolina in the sum of _____
_____ Dollars ($_____)
and for which payment to be made, the Principal by this bond binds himself/it or his/its successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission relating to the operation of a _____
(water and/or
_____ utility service in _____
sewer) (service area, location, county)
_____, and

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in G.S.§62-110.3, and

WHEREAS, the Principal has delivered to the Commission _____
_____
(description of security)
with an endorsement as required by the Commission, and

WHEREAS, the appointment of an emergency operator, either by the Superior Court in accordance with North Carolina General Statutes §62-118(b), or by the Commission with the consent of the owner, shall operate to forefeit this bond, and

WHEREAS, this bond shall become effective on the date executed by the Principal and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW, THEREFORE, the Principal consents to the conditions of this Bond and agrees to be bound by them.

This the _____ day of _____ 19___.

_____
(Name)

NORTH CAROLINA UTILITIES COMMISSION DOCKET NO. W-962.

DOCKET NO. W-720, SUB 96

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Mid South Water Systems, Inc., Post Office Box 127, Sherrills Ford, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water and Sewer Utility Service in Bradfield Farms Subdivision, Phase II, in Mecklenburg and Cabarrus Counties, North Carolina, and for Approval of Rates	)	ORDER GRANTING FRANCHISE AND APPROVING RATES

HEARD: Thursday, September 14, 1989, Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, at 9 a.m.

BEFORE: Chairman William W. Redman, Jr., presiding, and Commissioners Sarah Lindsay Tate, J. A. Wright, Charles H. Hughes, and Laurence A. Cobb

APPEARANCES:

For the Applicant:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605

For the Public Staff:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff--North Carolina Utilities Commission, 430 North Salisbury Street, Raleigh, North Carolina 27611

BY THE COMMISSION: On July 10, 1989, Mid South Water Systems, Inc. (Mid South or Applicant), filed an application with the Commission seeking to acquire a water and sewer utility franchise for Bradfield Farms Subdivision, Phase II, in Mecklenburg and Cabarrus Counties, North Carolina, and for approval of rates. Bradfield Farms Subdivision is a new subdivision being developed by John Crosland Company.

On August 7, 1989, Carolina Water Service, Inc., of North Carolina (CWS) filed a Motion to Intervene as Amicus Curiae.

On August 14, 1989, at the Commission Conference, the Public Staff presented this matter for the Commission's consideration. At said conference, the Public Staff expressed its concerns that the Applicant's acquisition of the water and sewer utility systems may constitute Contribution in Aid of Construction (CIAC). In addition, the Public Staff recommended approval of the application.

CWS, through its attorney, expressed its concerns with Mid South being granted the franchise for Bradfield Farms Subdivision.

By Order issued on August 28, 1989, the Commission scheduled a hearing on this matter, required public notice, and allowed CWS limited intervention into this matter for the purpose of filing an amicus curiae brief.

The hearing was held as scheduled. Jerry Tweed, Executive Vice President of Mid South, testified in support of the application. Public Staff witness George Dennis, stated his concerns with the potential tax liabilities associated with CIAC of Mid South and its ability to meet these liabilities. The Public Staff recommended that the franchise be granted to Mid South.

Based on the information gathered from the Commission conference, the hearing, and the Commission files in this matter, the Commission is of the opinion, and so finds and concludes, that the water and sewer franchises should be granted and the rates approved as filed. In making this decision, the Commission points out that on new franchise applications like this one, the Commission must rely heavily on the recommendations of both the Public Staff and the Attorney General. As pointed out above, the Public Staff has recommended that this application be approved. The Attorney General, although in attendance at the conference in which this matter was presented, made no recommendations.

Furthermore, in granting this franchise, the Commission emphasizes that the granting of this franchise does not constitute prior approval of any method other than the full gross-up method with respect to the collection of taxes associated with CIAC.

The Commission also reaffirms the position taken in its Order of August 26, 1987, which stated in part:

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

and

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

and its Order of January 26, 1988, which stated, in part:

"That 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."

IT IS, THEREFORE, ORDERED as follows:

1. That Mid South be, and hereby is, granted a Certificate of Public Convenience and Necessity to provide water and sewer utility service in Bradfield Farms - Phase II, Mecklenburg and Cabarrus Counties, North Carolina.

2. That this franchise is for Phase II only. Mid South must get Commission approval before extending its mains into any other phase of Bradfield Farms Subdivision.

3. That Appendix A, attached hereto, shall constitute the Certificate of Public Convenience and Necessity.

4. That the rates approved for Mid South in Bradfield Farms Subdivision, Phase II, shall be the same rates approved in Mid South's last general rate case in Docket No. W-720, Sub 94, with the exception of connection fees. Mid South is not proposing to charge connection fees since the Developer is paying for installation of the utility systems.

5. That 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 granting of this franchise shall not be deemed to constitute prior approval of any method other than the full gross-up method with respect to collection of taxes associated with CIAC.

6. That within 60 days of the date of this Order, Mid South shall complete the bond, attached hereto as Appendix B, and deposit the appropriate security in the amount of $20,000 with United Carolina Bank, Attention: Sandra Pate, 3605 Glenwood Avenue, Post Office Box 17389, Raleigh, North Carolina 27612.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of October 1989.

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

APPENDIX A

DOCKET NO. W-720, SUB 96
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By These Presents, That
MID SOUTH WATER SYSTEMS, INC.
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide water and sewer utility service
in
BRADFIELD FARMS SUBDIVISION, PHASE II
Mecklenburg and Cabarrus County, North Carolina

subject to such order, 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 3rd day of October 1989.

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

APPENDIX B

BOND

_____ of _____,
(Name of Utility) (City)
_____, as Principal, is bound to the State of North
(State)
Carolina in the sum of _____
_____ Dollars ($_____)
and for which payment to be made, the Principal by this bond binds himself/it or his/its successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission relating to the operation of a _____
(water and/or

_____ utility service in _____
sewer) (service area, location, county)
_____, and

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in G.S.§62-110.3, and

WHEREAS, the Principal has delivered to the Commission _____
_____
(description of security)
with an endorsement as required by the Commission, and

WHEREAS, the appointment of an emergency operator, either by the Superior Court in accordance with North Carolina General Statutes §62-118(b), or by the Commission with the consent of the owner, shall operate to forefeit this bond, and

WHEREAS, this bond shall become effective on the date executed by the Principal and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW, THEREFORE, the Principal consents to the conditions of this Bond and agrees to be bound by them.

This the _____ day of _____ 19___.

_____
(Name)

NORTH CAROLINA UTILITIES COMMISSION DOCKET NO. W-720, SUB 96

DOCKET NO. W-720, SUB 73
DOCKET NO. W-720, SUB 90

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carl Santinelli, 401 Claudette Drive, Gastonia, North Carolina 28052, and Other Residents of Fleetwood Acres Subdivision, Gaston County, North Carolina Complainants vs. Mid South Water Systems, Inc. Respondent and Application by Mid South Water Systems, Inc., Post Office Box 127, Sherrills Ford, North Carolina, for Authority to Discontinue Water Utility Service in Fleetwood Acres Subdivision, Gaston County, North Carolina	FINAL ORDER REQUIRING IMPROVEMENTS

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, July 17, 1989, at 2 p.m.

BEFORE: Chairman William W. Redman, Jr., Presiding; Commissioners Sarah Lindsay Tate, Ruth E. Cook, J. A. "Chip" Wright, Robert O. Wells, and Charles H. Hughes

APPEARANCES:

For the Complainants:

Vickie L. Moir, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the Respondent:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605-2547

BY THE COMMISSION: This matter was initiated on September 11, 1987, by the filing of the complaint of Carl Santinelli and other residents of Fleetwood Acres No. 2 Subdivision (Fleetwood Acres) against Mid South Water Systems, Inc. (Mid South or Company). The complaint listed water outages beginning June 6, 1987, and requested that a hearing be held to determine a deadline for the making of improvements. A hearing was held on December 10, 1987, at which time Mr. Santinelli and others testified of problems with the water service provided by Mid South. On April 28, 1988, the Hearing Examiner issued a Recommended Order requiring that improvements be made by Mid South. On June 8, 1988, Mid South filed an application to discontinue water service in Fleetwood Acres,

stating that it would be prohibitively expensive to make the improvements that were needed to the system.

At the close of the hearing in these dockets on August 23, 1988, the Hearing Examiner ordered that a customer poll be sent to each customer in Fleetwood Acres to determine their preference regarding hooking on to the City of Gastonia and/or on how the cost of improvements should be handled. By Order issued on October 18, 1988, the customer poll was served on each resident in Fleetwood Acres.

On April 13, 1989, the Commission issued an Order which scheduled a meeting with the parties involved in this matter and the representatives from the City of Gastonia.

On May 19, 1989, the Hearing Examiner issued a Recommended Order in these dockets requiring Mid South to make all improvements necessary to obtain DHS approval of its water system serving Fleetwood Acres including the following:

1. Installation of a new well house,
2. Installation of a new pressure tank,
3. Installation of caustic feed equipment,
4. Installation of manganese removal filters with appropriate backwash, and
5. Replacement of undersized and/or inadequate water mains.

The Recommended Order of May 19, 1989, further provided that Mid South was required to obtain DHS approval for its system in Fleetwood Acres within six months from the date of the Order.

On June 5, 1989, Mid South filed "Exceptions and Motion for Oral Argument" to the aforesaid Recommended Order. By Order entered on June 8, 1989, oral argument on exceptions filed by Mid South was scheduled on Monday, July 17, 1989.

The oral argument was held as scheduled and the Respondent and the Public Staff presented arguments.

Based upon the record in this proceeding and the arguments of the parties on July 17, 1989, the Commission notes that Mid South has addressed some of the problems associated with the system in Fleetwood Acres. Specifically, according to the testimony offered at the hearings, Mid South has added a master flow meter and chlorine feed equipment to the system. Further, it appears that Mid South has poured a concrete slab around the well house and that the well house facility has been repaired and winterized. Also, a air-water volume control has been installed on the storage tank.

The testimony and record in this proceeding further reflect that the residents of the Fleetwood Acres system have experienced an unusually large number of water outages. Witness Santinelli testified at the hearing held on August 23, 1988, that during the last six or seven months there have not been any water outages. This is apparently due to the installation of the air-water volume control mechanism.

The Commission concludes that Mid South has made certain improvements to the operation and reliability of the water system at Fleetwood Acres. However, the most significant problem related to this system still remains; that is, the presence of excessive manganese and low pH of the water.

All of the testimony and evidence in this proceeding, including that of Mid South witness Tweed, indicates that there has been and continues to be a problem with excessive manganese and low pH in the water. The evidence further reflects that nothing has been done to attempt to alleviate these problems.

Jim Adams with the Division of Health Services testified at the August 23, 1988, hearing concerning the poor quality of water being provided to the residents of Fleetwood Acres. He stated that the water has a pH below the DHS minimum allowable limit of 6.5. This low pH causes corrosion in the distribution lines as well as in the customers' own plumbing systems and results in leaks, blue/green stains, and bitter tasting water. Witness Adams testified that the water in Fleetwood Acres has a very high concentration of manganese - ten times the current established limits. High manganese causes the water to stain fixtures and to have an unpleasant taste.

Based upon the foregoing, the Commission concludes that Mid South should be required to immediately begin to make the necessary improvements to the Fleetwood Acres water system in order to eliminate the manganese problem and low pH of the water. In so concluding, the Commission notes that these problems have persisted for a long period of time and are by far the most significant concern of the residents of Fleetwood Acres.

Insofar as the five needed improvements required by the Hearing Examiner in his Recommended Order of May 19, 1989, are concerned, the Commission concludes from the testimony offered in these proceedings that the problems associated with numbers 1 and 2 have been substantially corrected. In that regard, the Commission notes that the well house has been repaired and a concrete slab poured. Also, an air-water volume control has been installed on the tank which appears to have significantly improved the number of water outages.

Improvements numbers 3 and 4 have been addressed hereinabove and require no further discussion.

Improvement number 5 as cited by the Hearing Examiner required the replacement of any undersized and/or inadequate water mains. The Commission acknowledges that this is one of the improvements necessary to bring the system into compliance with DHS standards. Exhibit no. 1, attached to the application by Mid South seeking authority to discontinue service in Fleetwood Acres, sets forth the estimated costs of upgrading the system to meet DHS standards. It appears from said exhibit that of the total costs of $83,200 to upgrade the system, the required expenditure to replace the mains would be approximately $37,000. While the Commission recognizes the importance of bringing this system, as well as any other systems up to DHS standards, the Commission also concludes that the quality of water is the most significant and immediate problem in need of correction at this time. The Commission notes that Mid South has invested approximately $5,000 for improvements in this system and the cost estimates shown on exhibit no. 1 mentioned above for the installation of

caustic feed equipment, filtering equipment, and backwash disposal total $22,700.

In view of the expenditures already made by Mid South, together with the amount of investment which may be required to make the necessary improvements to eliminate the manganese problem and low pH of the water, the Commission concludes that an additional expenditure of $37,000 to replace the mains is not warranted at this time. In reaching this conclusion, the Commission has carefully considered the evidence in this matter and has carefully considered the need to correct the most immediate and significant problems of the residents. Accordingly, the Commission will not require Mid South to replace any undersized mains at this time. Nevertheless, the Commission reserves the right to revisit this issue in future proceedings if it appears that the water mains in question are the cause of continued service problems of a significant nature once the Company has completed all of the improvements required by this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That Mid South is hereby required to immediately begin to make the necessary improvements in order to eliminate the manganese problem which exits in the Fleetwood Acres water system as well as the installation of caustic feed equipment in order to treat the low pH of the water. Such improvements should be completed as soon as possible.

2. That Mid South is required to file monthly progress reports with the Commission concerning the improvements specified in ordering paragraph 1 above, the first report being due within thirty days from the date of this Order.

3. That the Recommended Order of May 19, 1989, except as modified herein, is hereby affirmed and adopted as the Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of August 1989.

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

DOCKET NO. W-89, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Hensley Enterprises, Inc., Post Office Box 8, Lowell, North Carolina, for Authority to Increase Rates for Water Utility Service in Its Service Areas in Gaston County, North Carolina	)	FINAL ORDER OVERRULING EXCEPTIONS AND SUSPENDING RATE INCREASE

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 12, 1989, at 2:00 p.m.

BEFORE: Chairman Robert O. Wells, Commissioners Edward B. Hipp, Ruth E. Cook, J.A. "Chip" Wright, William W. Redman, Jr., and Charles Hughes

APPEARANCES:

For the Applicant:

Charles F. Powers III, Parker, Sink and Powers, Attorneys at Law, Post Office Box 1471, Raleigh, North Carolina 27602

For the Intervenors:

David T. Drooz, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On September 27, 1988, Hensley Enterprises, Inc., (Applicant) filed an application with the Utilities Commission for authority to increase its rates for providing water utility services in all its service areas in North Carolina. By Order of October 20, 1988, the Commission declared the application to be a general rate case pursuant to G.S. 62-137, suspended the proposed rates, scheduled a hearing on the application, and required that public notice be given to all customers affected.

The hearing was held before Hearing Examiner Rudy Shaw in Gastonia on February 23, 1989. At the hearing, a motion to intervene filed by customer John Vaughn was allowed by bench ruling. Both the Applicant and the Public Staff presented testimony and exhibits. At the close of the hearing, the Applicant moved for emergency rate relief.

By Order of March 1, 1989, the Hearing Examiner entered an Interlocutory Order Granting Interim Rates. By this Interlocutory Order, the Hearing Examiner allowed the Applicant to collect as interim rates the rates proposed by the Public Staff at the hearing subject to refund with interest of any

portion of the interim rates not ultimately approved by the Commission's final order in this docket. The interim rates approved by the Interlocutory Order are as follows:

Flat Rate:	$15.50/month
Metered Rates:	
Base facility charge/month	$ 6.30 (minimum charge)
Usage charge	$ 1.36/1,000 gallons

Subsequently, the Hearing Examiner issued his Recommended Order Granting Partial Rate Increase on April 26, 1989. The Recommended Order approved flat rates and metered rates at the levels recommended by the Public Staff, which are the same as the interim rates previously approved by the Hearing Examiner.

On May 10, 1989, the Applicant filed Exceptions to the Recommended Order and requested oral argument. On May 11, 1989, intervenor John Vaughn filed an Exception to the Recommended Order. By Order of May 19, 1989, the Commission scheduled an oral argument on the exceptions at the time and place indicated above.

The oral argument was held as scheduled. The Applicant and the Public Staff presented arguments. Intervenor John Vaughn did not appear.

On the basis of the oral argument and on the basis of the record as a whole herein, the Commission finds good cause to decide the exceptions filed by the parties as follows:

In the Applicant's last general rate case, Docket No. W-89, Sub 28, an issue was raised as to control of certain well sites. The Applicant's witness Hensley agreed through counsel to transfer control of the well sites to the Applicant utility and the Hearing Examiner issued an Order on February 25, 1987, requiring the transfer to be completed within 30 days. Witness Hensley and his wife, who own the well sites as individuals, subsequently entered into a Lease Agreement with the Applicant utility on December 31, 1987. This lease was filed with the Applicant's exceptions in the present case. The lease covers "all those certain tracts or parcels of real property currently used by the Lessee as well lots." The lease is for a period of five years with an option to renew for one additional term of five years. In the present case, the Public Staff recommended and the Hearing Examiner held that the Applicant utility should have control of the well sites in the form of a deed, not merely a lease. The Hearing Examiner expressed concern that the utility's control could be endangered if the Hensleys were no longer alive when the current lease expires. On the other hand, the Hearing Examiner noted that a fee simple determinable deed, with reversion only upon Commission approved abandonment of utility service, would protect the Hensleys' personal interest in the property should the property no longer be needed for utility purposes. The Applicant's Exceptions 1, 2 and 3 relate to this ruling. Applicant argues that the lease provides sufficient control to the utility. The Commission does not agree. The lease does not particularly describe the well sites involved and provides no control beyond 10 years. The Commission overrules Applicant's Exceptions 1, 2 and 3 and affirms the Hearing Examiner's reasoning on this issue..

Applicant's Exceptions 4 and 5 relate to the Hearing Examiner's decision deducting certain land from his calculation of the Applicant's original cost

rate base. The Commission notes, and the Applicant conceded during oral argument, that rates in this case were appropriately set on the operating ratio methodology, not on the rate base methodology. The Commission therefore concludes that the Applicant is not prejudiced by the rate base ruling to which it objects. The Hearing Examiner specifically found that his ruling with respect to the inclusion of land in rate base could be reexamined in any future rate case. The Commission agrees and the Commission overrules the Applicant's Exceptions 4 and 5.

Applicant's Exception 6 relates to the level of rates approved. The Recommended Order specifically required the Applicant to interconnect its Country Acres Subdivision with the Southgate Subdivision served by another utility, Ruff Water Company. The Recommended Order further required that the Applicant purchase water for Country Acres from Ruff and disconnect the Applicant's wells in Country Acres, which the evidence showed to be inadequate. The Applicant asserts that it must pay Ruff $1.85 per one thousand gallons for the water it purchases from Ruff and that this additional expense was not taken into account in the computation of rates. The Commission overrules the Applicant's Exception 6. The purchase from Ruff was not an expense during the test year or through the close of the hearing herein. Further, the disconnection of the Applicant's wells in Country Acres will undoubtedly result in some unquantified savings to the Applicant, and the Commission therefore does not have sufficient evidence before it to determine in this case what net additional expense will result from the purchase from Ruff.

Although the Public Staff did not file exceptions to the Recommended Order, the Public Staff cited intervenor Vaughn's exception, which notes the Applicant's violations of Division of Health Services' standards and argues that no rate increase should be allowed. In his Evidence and Conclusions for Finding of Fact No. 5, the Hearing Examiner cited the complaints of customers who testified at the hearing and recounted the long history of the Applicant's inadequacies and failures. The Hearing Examiner concluded that many of the Applicant's customers suffer from poor water utility service and that "it is clear that much of the inferior service provided by Hensley is a result of bad management." He found that all of the Applicant's 34 water systems are out of compliance with the Division of Health Services' regulations and that "major defects in Hensley Enterprises' systems and operational procedures have existed for many years despite strong encouragement from the Commission for improvements." The Hearing Examiner required certain items to be performed by the Applicant by specific dates as follows:

Date		Item
May 1, 1989	-	Begin filing progress reports on upgrading of systems on a bimonthly basis
May 1, 1989	-	Perform feasibility study on the installation of water softening equipment in Country Meadows and file report
May 1, 1989	-	Check on problem of air in lines at Silverstone and file report
June 1, 1989	-	Install proper chlorination in all systems and file report

June 1, 1989 - Perform pressure checks in the afternoon at the residence(s) of one or more customers in Country Meadows who complained about pressure problems and file report

June 1, 1989 - File report which gives a time schedule for making the improvements in all 34 subdivisions as noted in Public Staff witness Cross Exhibit 1

At the oral argument, the Public Staff argued that none of these steps have in fact been taken. The Applicant took the position that the steps have not been taken since the Recommended Order was stayed by the filing of exceptions.

The Commission is particularly troubled by the Applicant's history of noncompliance with the Commission's own orders. The Applicant has filed rate cases on a regular basis since 1978. The Applicant has taken full advantage of the rate increases allowed by the Commission, but has repeatedly failed to comply with the Commission's directives regarding improvements to water quality and service. The Commission does not believe that another rate increase should be allowed into effect until the Applicant recognizes our authority to insure adequate utility service as well as our authority to adjust utility rates. To that end, the Commission, on the basis of party Vaughn's Exception and the Commission's authority under G.S. 62-30, 62-32 and 62-78, finds good cause to order as follows: The interim rates approved herein by the Hearing Examiner's Interlocutory Order of March 1, 1989, shall remain in effect through June 30, 1989. The interim rates shall cease to be effective as of July 1, 1989. The rate increase approved by the Hearing Examiner's Recommended Order of April 26, 1989, shall be held in abeyance and shall not become effective until (1) the Applicant completes the chlorination, reports, and studies cited above, (2) the Applicant files a motion in this docket providing proof of such and asking that the rate increase be allowed into effect, and (3) the Commission issues a further order allowing the rate increase to become effective.

IT IS, THEREFORE, ORDERED as follows:

1. That the Exceptions to Recommended Order filed by the Applicant on May 10, 1989, should be, and the same hereby are, overruled and denied;

2. That the Exception filed by intervenor John Vaughn on May 11, 1989, should be, and hereby is, denied except as hereinafter ordered as to the effective date of the rate increase approved herein;

3. That the interim rates approved herein by the Hearing Examiner's Interlocutory Order of March 1, 1989, shall remain in effect through June 30, 1989, and shall cease to be effective as of July 1, 1989;

4. That the rate increase approved by the Hearing Examiner's Recommended Order of April 26, 1989, shall be held in abeyance and shall not become effective until the Applicant completes the following chlorination, reports, and studies:

Begin filing progress reports on upgrading of systems on a bimonthly basis

Perform feasibility study on the installation of water softening equipment in Country Meadows and file report

Check on problem of air in lines at Silverstone and file report

Install proper chlorination in all systems and file report

Perform pressure checks in the afternoon at the residence(s) of one or more customers in Country Meadows who complained about pressure problems and file report

File report which gives a time schedule for making the improvements in all 34 subdivisions as noted in Public Staff witness Cross Exhibit 1

Upon completion, the Applicant shall file a motion in this docket providing proof of such and asking that the rate increase be allowed into effect and the Commission will issue a further order allowing the rate increase to become effective; and

5. That the Recommended Order of April 26, 1989, as herein modified as to the effective date of the rate increase, should be, and hereby is, affirmed and adopted as the Order of the Commission.

6. That a copy of the Notice to Customers attached hereto shall be mailed or hand delivered to all of the Applicant's customers in conjunction with the next regularly scheduled billing process after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of June 1989.

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

Commissioner Hipp concurring in part and dissenting in part.

DOCKET NO. W-89, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Hensley Enterprises, Inc., Post Office Box 8, Lowell, North Carolina, for Authority to Increase Rates for Water Utility Service in Its Service Areas in Gaston County, North Carolina	))))))	NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has granted Hensley Enterprises, Inc., an increase in its rates and charges for water utility service in its service areas in Gaston County, as shown below.

However, the Utilities Commission has further ordered that the interim rates previously approved by Order of March 1, 1989, shall cease to be

effective as of July 1, 1989, and that the rate increase shown below shall be held in abeyance and shall not become effective until Hensley Enterprises, Inc., installs proper chlorination in all systems and files certain reports and studies as required by the Utilities Commission. At that time, Hensley Enterprises, Inc., may file a motion with the Utilities Commission asking that the following rates and charges be allowed into effect.

Metered Rates:

Base facility charge	$6.30 (minimum charge)
Commodity charge	$1.36/1,000 gallons

Flat Rate: $15.50/month

Bulk Rate: $ 1.36/1,000 gallons

Tap on Fee (Connection Charge):

For 3/4-inch line	$500 (includes gross up for taxes)
For other than 3/4-inch	Actual cost of making connection

Reconnection Charge:

If water service cut off by utility for good cause:	$15.00
If water service cut off by utility at customer's request:	$15.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Customer Deposit: 2/12 of estimated annual charge or in accordance to Rule R12-2.

Return Check Charge: $15.00

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of June 1989.

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

HIPP, COMMISSIONER, CONCURRING IN PART AND DISSENTING IN PART. I concur in the basic Order of the majority overruling exceptions and affirming the Recommended Order of April 26, 1989, but I dissent from the majority's decision providing that the interim rates shall cease to be effective as of July 1, 1989.

I concur with the majority's concern which was fully shared by the Recommended Order that the applicant's service complaints must be remedied and the quality of service at all subdivisions be brought up to the standards required by the Commission and the Division of Health Services.

The interim (and final) rates of $15.50 a month for flat rates and $6.30 minimum charge plus $1.36 per 1,000 gallons are below the predominant rates currently being approved for water systems of this size as necessary for the proper operations of such systems. To have these interim rates revert to the applicant's previously approved rates of $11.50 a month flat rate or $7.05 for the first 2,000 gallons and $1.50 per 1,000 gallons over 2,000 gallons further reduces the applicant's revenue beginning July 1, 1989, by $42,296 annually, which is below the revenues necessary for safe and proper operation of the water systems.

It will take some time to complete the reports and work required and secure a new date for the increase to become effective.

The purpose of the majority to withhold a return is well intended, but, in may opinion, the method chosen does not fit the result sought to be accomplished.

I agree that the rate increase should not become final until the requirements for improved service established in the Recommended Order and the majority Order are completed, but to cancel the interim rates will make it less possible to complete the improvements, and, in my view, it is not appropriate to withhold interim rates which were allowed on an emergency basis, which is to say that the revenues will be totally inadequate to support the standards of service to which the customers are entitled.

Edward B. Hipp

DOCKET NO. W-354, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc., of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Increase Rates for Water and Sewer Utility Service in Its Service Areas in North Carolina	)	ORDER APPROVING PARTIAL RATE INCREASE AND REQUIRING IMPROVEMENTS

HEARD IN: Meeting Room, Town Hall, Municipal Circle, Pine Knoll Shores, North Carolina, on October 21, 1988

Courtroom 305, Mecklenburg County Courthouse, Charlotte, North Carolina, on November 3 and 28, 1988

Commission's Board Room, Room 204, Buncombe County Courthouse, Asheville, North Carolina, on November 4, 1988

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 15, 16, and 22, 1988

Superior Courtroom, Second Floor, Craven County Courthouse, New Bern, North Carolina, on November 29, 1988

BEFORE: Commissioner William W. Redman, Jr., Presiding, and Commissioners Ruth E. Cook and Julius A. Wright

APPEARANCES:

For the Applicant:

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

For the Using and Consuming Public:

Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

Lorinzo Joyner and Lemuel Hinton, Assistant Attorneys General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27620

Robert E. Cansler, Assistant Attorney General, 205 Spruce Street, Suite 207, Asheville, North Carolina 28801

For Hound Ears Property Owners Association and Hound Ears Club Limited Partnership:

E. Lawrence Davis, III, Womble, Carlyle, Sandridge & Rice, Attorneys at Law, Post Office Drawer 831, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter was initiated with the filing of an application by Carolina Water Service, Inc., of North Carolina (Carolina Water Service, Applicant, or Company) on July 5, 1988, seeking authority to adjust and increase its rates and charges for providing water and sewer utility service in the majority of its service areas in North Carolina. By Order issued August 3, 1988, the Commission declared the matter to be a general rate case, suspended the proposed rates for a period of up to 270 days, set the matter for public hearing to begin on November 29, 1988, and required the Applicant to give public notice.

On August 11, 1988, the Applicant filed a Motion for an Interim Rate Increase in which it requested that its proposed rates be put into effect as interim rates, subject to refund, pending the outcome of a final order in this docket. On August 26, 1988, the Applicant filed additional information concerning its need for interim rates. On August 29, 1988, at the regularly scheduled Commission Staff Conference, the Commission heard arguments concerning the requested interim rates from the Public Staff, the Attorney General, and the Applicant.

The Attorney General filed its Notice of Intervention in this matter on August 19, 1988. The Public Staff's intervention is deemed appropriate pursuant to G.S.§ 62-15(d).

By Order issued September 1, 1988, the Commission granted the Applicant an interim increase of $1.00 per month per service (i.e., $1.00/month for water and/or $1.00/month for sewer) subject to refund. The Commission Order also advanced the hearing date from November 29, 1988, to November 15, 1988. On September 15, 1988, the Commission issued an Order establishing the date that the interim rates, approved in the Commission Order dated September 1, 1988, would become effective. The Applicant filed its required undertaking on September 30, 1988.

On October 5, 1988, the Attorney General filed a Motion requesting the Commission to schedule additional hearings in Asheville, Charlotte, and Pine Knoll Shores. The Attorney General indicated it had received several complaints and inquiries from consumers in these areas requesting hearings to be held in their areas. The Commission, on October 12, 1988, issued an Order scheduling public hearings in Pine Knoll Shores, Charlotte, and Asheville on October 21 and November 3 and 4, respectively.

Subsequent to the Commission Order of October 12, 1988, the Commission received requests for additional public hearings to be held in Asheville and Charlotte. By Order issued on October 28, 1988, additional public hearings were scheduled in Charlotte on November 28, 1988, and in Asheville on Friday evening, November 4, 1988.

The Commission also received a number of requests from customers asking for an additional hearing to be scheduled in the New Bern and Pine Knoll Shores area. By Order issued on November 17, 1988, the Commission scheduled a hearing to be held in New Bern on November 29, 1988.

On October 25, 1988, the Public Staff filed a motion for additional time to file its testimony. By Order issued on October 26, 1988, the extension was allowed. On November 1, 1988, the Public Staff filed the affidavit of Kevin O'Donnell, Staff Financial Analyst, and the testimony of Andy Lee, Utilities Engineer, and Linda Haywood, Staff Accountant.

On November 14, 1988, Hound Ears Property Owners Association and Hound Ears Limited Partnership filed its petition to intervene.

Prior to and during the course of the hearings, various other motions were made and Orders were entered relating thereto, all of which are matters of record. Additionally, pursuant to various Commission Orders or requests, also of record, various parties were directed or permitted to file and serve certain late-filed exhibits, either during or subsequent to the hearings held in this matter.

On December 29, 1988, and on January 5, 1989, the Public Staff filed late-filed exhibits with the Commission and requested that these exhibits be admitted into evidence. No party objected to the admission of these late-filed exhibits. By this Order, the Commission admits into evidence the late-filed exhibits filed by the Public Staff.

Public hearings were held as scheduled by the Commission for the specific purpose of receiving testimony from public witnesses. The following public witnesses appeared and testified at these hearings:

Pine Knoll Shores: Mayor Ken Hanan, Salvatore E. Franzo, Barry C. Humphreys, Henry J. Kraus, Paul B. Maxson, David E. Hasulak, Donald A. Kirkman, Paul Karnstedt, Eric Hassel, Donald G. Brock, J. R. Vakiener, C. S. Allen, Mayor Max Graff, Fred Laier, Mary Kanyha, Lois Minnoe, Robert Minnoe, Arthur S.Cleary, and Louis Rulon.

Charlotte: Lou Jean Heath, Hazel Mitchell, Joe Robbins, Rebecca Royce, David Evans, Elizabeth Huntoon, Emogene Pawley, Frank Crowe, Ann Robey, Steve Marlowe, Lynn Abee, David Gatewood, Wayne Bucksbaum, Robert Broome, Johnny H. Johnson, Gerry Calloway, Larry Anderson, Mike Buckley, Jody Pentland, Harry Lerner, Charles Rust, Carl Stansell, John Filliben, Jess Riley, Lewis Steavenson, Michael Francisco, Barbara Evans, Weit Segers, Deborah Elizabeth Forbes, Fenton North Gravely, Jr., Richard Enderby, John Witherspoon Barden, Rhonda Ballard, David Doane, Robert William Jones, Jr., Marvin Kramer, Holly Floan, Dennis Visintainer, Reverend Chauncey L. Mann, Reverend William T. Richardson, John Kempter, Robert Miller, James Tomberlin, and Laura Kennedy.

Asheville: Thomas MacQueen, Edward R. Hardin, Steven Reed, Howard Keyes, Jr., Perry Sweatmen, Rosa Shade, Glenda Tilson, Paula Revala, the Reverend William McLoughlin, Edna Owen, Gary Ramey, Art Boettcher, Tom Kelley, Nick Luquire, Douglas Warnell, Eugene Jackson, Oswell Spinks, Jim Wilson, Burley Tipton, James Hart, James Tanner, Becky Martin, Steve Clark, Joe Laughter, Jesse Ledbetter, Harley Shuford, Tim Erwin, Lucille Redmon, Donald Downs, John Zgavec, Haven Goforth, and Iona Young.

Raleigh: Ernest George, Grover Godwin, Edgar Sikes, Jr., Thomas MacQueen, Edward Hardin, Bruce Wisely, Clay Dulaney, L. Patten Mason, Joe Tharrett, Lois Minnoe, L. P. Zachary, Robert N. DuRant, and J. Allen Thomas.

New Bern: Philip W. Rader, Bob Morra, Murrell Van Blarcom, John Proctor, Fred Davis, and Wade Roach.

The Applicant presented the testimony and exhibits of the following witnesses: Patrick J. O'Brien, Vice President and Treasurer of Carolina Water Service; David H. Demaree, Vice President of Operations and Secretary of Carolina Water; and Carl Daniel, Vice President and Regional Director of Operations in North Carolina of Carolina Water. The Applicant also presented the rebuttal testimony of Patrick J. O'Brien and David H. Demaree.

The Public Staff presented the testimony and exhibits of Andy R. Lee, the Director of the Water and Sewer Division, and Linda Petrie Haywood, Staff Accountant. The Public Staff also introduced the Affidavit of Kevin W. O'Donnell, Financial Analyst.

Hound Ears Property Owners Association and Hound Ears Club Limited Partnership presented the testimony of Randy Carter, Chief Financial Officer of Hound Ears Club.

On January 18, 1989, the Applicant filed the Reply Brief of Carolina Water Service, Inc., of North Carolina. On January 25, 1989, the Public Staff filed its Motion to Reject Carolina Water Company's Reply Brief. The Motion of the Public Staff also responded to the matters addressed in the Reply Brief. The Commission is of the opinion that the Motion of the Public Staff should be denied.

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

FINDINGS OF FACT

1. Carolina Water Service, Inc., of North Carolina is a wholly owned subsidiary of Utilities, Inc., and is duly franchised by this Commission to operate as a public utility in providing water and sewer service to customers residing in its various North Carolina service areas.

2. Brandywine Bay Utility Company, Belvedere Utility Company, C.W.S. Systems, Inc., Queens Harbor Utility, and Watauga Vista Water Corporation are also wholly owned subsidiaries of Utilities, Inc., and are duly franchised by this Commission to operate as public utilities providing water and sewer service to customers residing in their various North Carolina service areas.

3. Carolina Water Service, Inc., Brandywine Bay Utility Company, Belvedere Utility Company, C.W.S. Systems, Inc., Queens Harbor Utility, and Watauga Vista Water Corporation are all operated under Carolina Water Service, Inc., of North Carolina. While these affiliated companies keep separate accounting records, all six utilities share operating personnel and common plant, including transportation and office equipment. Reference to Carolina Water Service, Company, or Applicant in this Order is to the joint operation of these six affiliated companies.

4. The Applicant in this proceeding is not requesting a rate increase for all its North Carolina service areas. The following service areas have been excluded by the Applicant: Wolf Laurel, Vander Systems (Eastgate, Tanglewood Estates, Tanglewood South), Rollingwood, Lakewood, Southern Plaza, Rita Pines, South Haven, Robin Lake, Foxfire, Hickory Hills, Bellwood, Watauga Vista, Queens Harbor, and Belvedere Plantation Subdivisions. As of December 31, 1987, there were 1,833 water customers and 131 sewer customers in these excluded service areas. Due to the recent acquisition of these systems, they were not included in this proceeding; however, the Commission expects these systems to be included in the Company's next general rate case proceeding.

5. The test period appropriate for use in this proceeding is the twelve month period ended December 31, 1987.

6. The Applicant has requested a rate increase in 71 of its service areas in North Carolina. As of the end of 1987, the Applicant was providing water utility service to 13,080 water customers and 5,738 sewer utility customers in these 71 service areas.

7. The Applicant, per application, has requested rates designed to produce additional gross annual service revenues of $940,649 based on the test

year ended December 31, 1987. Annualized revenues under present rates, according to the Applicant, were $3,775,988. The Applicant's present and proposed rates and the Public Staff's proposed rates are as follows:

APPLICANT'S PRESENT RATES

METERED WATER RATES
Residential

(A) Base facility charge: $7.00 per dwelling unit. This $7.00 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Base facility charge: $6.50 per month per dwelling unit when service is provided through a master meter and a single bill is rendered for the master meter, as in condominium complexes.

(C) Commodity charge: $2.00 per 1,000 gallons ($1.15 per 1,000 gallons in Beatties Ford Subdivision).

(D) Flat rate for unmetered single-family residences: $13.00

Commercial and Other (monthly charge)

(A) Base facility charge:

3/4" meter	$ 7.00
1" meter	17.00
1 1/2" meter	35.00
2" meter	56.00
3" meter	105.00
4" meter	175.00

(B) Commodity charge: $2.00 per 1,000 gallons, or 134 cubic feet. ($1.90 per 1,000 gallons in Beatties Ford System)

AVAILABILITY RATES - Monthly charge per customer: $2.00

Applicable only to customers in Carolina Forest and Woodrun Subdivisions, who are subject to said Availability Charges pursuant to contract.

TAP ON FEE - $100.00 for 5/8" meter. Meters larger than 5/8" - actual cost of meter and installation.

PLANT MODIFICATION AND EXPANSION FEE: $400 FOR 5/8" meter.

Multi-family or commercial customers - To be negotiated on basis of equivalence to a number of single-family customers, but not less that $400 (payable by developer or builder).

NEW WATER CUSTOMER CHARGE: $22.00

RECONNECTION CHARGE:

If water service cut off by utility for good cause: $22.00

If water service discontinued at customer's request: $22.00

(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected.)

SEWER RATES (Residential):

Flat rate/month/dwelling unit: $18.00
($14.00 in Beatties Ford System)

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

SEWER RATES (Commercial and Other):

125% of water service subject to a minimum rate of $18.00 per month. Customers who do not take water service will pay $18.00 per single-family equivalent. (Commercial rate in Trinity Park Apartments is 100% of water bill).

NEW WATER AND SEWER CUSTOMER CHARGE:

New Sewer Customer Charge: $16.50 (If customer also receives water service, this charge will be waived.)

TAP ON FEE:

Residential - $100.00/single-family dwelling unit
Commercial - Actual cost of connection

PLANT MODIFICATION AND EXPANSION FEE:

Single-family customer: $1,000

Multi-family or commercial customers: To be negotiated on basis of equivalence to a number of single-family customers, but not less than $1,000 (payable by developer or builder).

RECONNECTION CHARGE:

If sewer service cut off by utility for good cause: $33.00

(This charge will be waived if customer also receives water service from Carolina Water Service).

BILLS DUE: On billing date.

BILLS PAST DUE: 21 days after billing date.

FINANCE CHARGE FOR LATE PAYMENT: 1% per month for balance due 25 days after billing date.

CHARGE FOR PROCESSING OF NSF CHECK: $7.00

BILLING FREQUENCY:

Bills shall be rendered bimonthly in all service areas except Carolina Forest, Woodrun, Misty Mountain, Crystal Mountain, Ski Mountain, Pine Knoll Shores, Sugar Mountain, and High Meadows, where bills shall be rendered quarterly.

The Applicant is requesting approval of the following schedule of rates for water and sewer utility service in the service areas affected in this rate case:

APPLICANT'S PROPOSED RATES

METERED WATER RATES:
Residential:

A. Base facility charge: $8.00/dwelling unit.
This $8.00 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

B. Base facility charge: $7.50/month/dwelling unit
This charge shall apply when service is provided through a master meter and a single bill is rendered for the master meter, as in condominium complexes.

C. Commodity charge: $2.50/1,000 gallons.
($1.25 for untreated irrigation water in Brandywine Bay).

D. Flat rate for unmetered single-family residence: $15.50

Flat rate for unmetered commercial customers: $15/single-family equivalent

E. Rates in Rolling Hills Subdivision:

First 2,244 gallons	$2.085 (minimum charge)
All over 2,244 gallons	$ .93/1,000 gallons

The Company will, for the convenience of the owner, bill a tenant. However, all arrearages must be satisfied before service will be provided to a new tenant.

Commercial and Other:

A. Base facility charge:

3/4" meter	$ 8.00
1" meter	20.00
1-1/2" meter	40.00
2" meter	64.00
3" meter	120.00
4" meter	200.00

B. Commodity charge: $2.50/1,000 gallons (134 cubic feet)

AVAILABILITY RATES:

Monthly charge per customer: $2.00

Applicable only to customers in Carolina Forest and Woodrun Subdivisions, until such time as a tap is made to the system's main.

TAP ON FEE:

$100.00 for 5/8" meter.

Meters larger than 5/8" - Actual cost of meter and installation.

PLANT MODIFICATION AND EXPANSION FEE:

$400 for 5/8" meter.

Multi-family or commercial customers - To be negotiated on basis of equivalence to a number of single-family customers, but not less than $400 (payable by developer or builder).

NEW WATER CUSTOMER CHARGE: $22.00

RECONNECTION CHARGE:

If water service cut off by utility for good cause: $22.00
If water service discontinued at customer's request: $22.00

(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected.)

SEWER RATES:

Residential - Flat rate/month/dwelling unit: $22.50

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit).

Commercial and Other - 130% of water service subject to a minimum rate of $22.50 per month. Any customer who does not have any water service will pay $22.50 per single-family equivalent.

NEW SEWER CUSTOMER CHARGES: $16.50

(If customer also receives water service, this charge will be waived.)

TAP ON FEE: Residential - $100.00 per single-family dwelling unit
Commercial - Actual cost of connection

PLANT MODIFICATION AND EXPANSION FEE: Single-family customers - $1,000 ($1,456 in Brandywine Bay Subdivision).

Multi-family or commercial customer - To be negotiated on basis of equivalence to a number of single-family customers, but not less than $1,000 (payable by developer or builder).

RECONNECTION CHARGE:

If sewer service cut off by utility for good cause: Actual cost of disconnection and reconnection. The utility will itemize the estimated cost of disconnecting and reconnecting service. This estimate will be furnished to the customer on the cut off notice.

This charge will be waived if customer also receives water service from Carolina Water Service.

BILLS DUE: On billing date.

BILLS PAST DUE: 21 days after billing date.

FINANCE CHARGE FOR LATE PAYMENT: 1% per month for balance due 25 days after billing date.

CHARGE FOR PROCESSING OF NSF CHECK: $7.00

BILLING FREQUENCY:

Bills shall be rendered bimonthly in all service areas except Carolina Forest, Woodrun, Misty Mountain, Crystal Mountain, Ski Mountain, Pine Knoll Shores, Bear Paw, Hound Ears, Corolla Light, Sugar Mountain, and High Meadows Subdivisions, where bills shall be rendered quarterly. Availability charge in Carolina Forest and Woodrun Subdivisions will be billed semi-annually.

PUBLIC STAFF'S PROPOSED RATES

RESIDENTIAL:

A. Base facility charge: $7.50 per dwelling unit. This $7.50 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

B. Base facility charge: $6.75 per month per dwelling unit when service is provided through a master meter and a single bill is rendered for the master meter, as in condominium complexes.

C. Commodity charge: $2.3175 per 1,000 gallons for all metered water usage.

D. Flat rate for unmetered single-family residence: $15.50
Flat rate for unmetered commercial customers: $15.50 per single family equivalent.

COMMERCIAL AND OTHER:

A. Base facility charge: $7.50 all size meters.

B. Commodity charge: $2.3175 per 1,000 gallons.

AVAILABILITY RATES: $2.00 per month applicable to property owners in Carolina Forest and Woodrun Subdivisions in Montgomery County.

TAP ON FEE: $500.00 unless specified different by contract approved by Commission.

NEW WATER CUSTOMER CHARGE: $22.00

RECONNECTION CHARGE:

If water service cut off by utility for good cause: $22.00

If water service discontinued at customer's request: $22.00
(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected.)

SEWER RATES :

Residential (flat rate): $20.25/dwelling unit

Commercial and other (metered):

Base service charge: $7.50/month
Commodity charge: $3.2829/1,000 gallons

RECONNECTION CHARGE:

If sewer service is cut off by utility for good cause, the actual cost of disconnection and reconnection will be charged. The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish this estimate to customer with cut-off notice.

This charge will be waived if customer also receives water service from Carolina Water Service.

NEW SEWER CUSTOMER CHARGE: $16.50

(If customer also receives water service, this charge will be waived.)

TAP ON FEE:

Residential: $1,100 per single-family unit except for Brandywine Bay where fee is $1,556.

Commercial: $1,100 per 400 gallons of design flow capacity utilized by the commercial customer with $1,100 minimum. Commercial design flow to be based on North Carolina Department of Natural Resources and Community Development's Division of Environmental Management Design Standards.

BILLS DUE: On billing date.

BILLS PAST DUE: 21 days after billing date.

FINANCE CHARGE FOR LATE PAYMENT: 1% per month for balance due 25 days after billing date.

CHARGE FOR PROCESSING OF NSF CHECK: $7.00

BILLING FREQUENCY:

Bills shall be rendered bi-monthly in all service areas except Carolina Forest, Woodrun, Misty Mountain, Crystal Mountain, Ski Mountain, Pine Knoll Shores, Sugar Mountain, High Meadows, Bear Paw, Hound Ears, and Corolla Light, where bills shall be rendered quarterly. Availability charge in Carolina Forest and Woodrun will be billed semi-annually.

8. The Commission approved an interim increase of $1.00/month per service (i.e., $1.00/month for water and/or $1.00/month for sewer) subject to refund effective for service rendered on and after September 15, 1988.

9. The plant acquisition of the High Meadows water system should be excluded from the Company's rate base as set forth in the Commission's Final Order in the Company's last general rate case. The plant acquisition of the Chapel Hills water system should be included in rate base in this proceeding.

10. The Applicant added a new well and an elevated storage tank in Cabarrus Woods in 1988 at the cost of $22,880 and $187,853, respectively. The entire investment in the new well should be excluded from rate base because the well was not used and useful prior to the close of the hearing. The elevated storage tank will benefit all customers in Cabarrus Woods, including the 261 customers who were served at the end of the test year, by providing a more constant level of water pressure, the possibility of fire protection, and additional storage capacity in case of a breakdown within the system. However, only a portion ($78,898) of investment of the elevated storage tank should be allowed in rate base.

11. The Company proposes to include in rate base $324,789 for a 150,000 gallon per day sewage treatment plant serving the Brandywine Bay Subdivision. Only $97,437 of this investment should be allowed in rate base.

12. The Applicant's sewage treatment plant expansion in Cabarrus Woods was not completed and used and useful as of the end of the test year, was not

needed to serve the existing customers at the end of the test year, and should be excluded from rate base.

13. The Applicant's 500,000 gallon per day expansion of the sewer plant in the Danby/Lamplighter Subdivision was not needed to serve the existing customers at the end of the test year and should be excluded from rate base.

14. The Applicant's reasonable allowance for working capital is $277,121, consisting of a cash requirement of $327,944, prepayments of $1,228 less average tax accruals of $52,051.

15. The Company's reasonable original cost rate base used and useful in providing water and sewer service within the State of North Carolina is $8,050,011. The rate base consists of plant in service of $28,870,605, deferred charges of $258,328, and an allowance of working capital of $277,121, reduced by accumulated depreciation of $2,044,843, plant acquisition adjustment of $1,123,298, advances in aid of construction of $316,950, excess book value of $1,854,024, contributions in aid of construction of $15,614,993, customer deposits of $65,086, and net deferred taxes of $336,849.

16. The Applicant's gross service revenues for the test year under present rates, after accounting and pro forma adjustments, are $3,775,988. Such gross service revenues are $4,690,277 after giving effect to the Company's proposed rates and are $4,439,058 under the rates approved herein.

17. The reasonable level of test year operating revenue deductions for the Company after normalized and pro forma adjustments is $3,209,517.

18. The reasonable capital structure for use herein is as follows:

Long-term debt	50.00%
Common equity	50.00%
Total	100.00%

19. Based on the foregoing, the Applicant should be allowed an increase in annual gross service revenues of $663,070. This increase will allow the Applicant the opportunity to earn an 11.60% overall rate of return on its rate base which the Commission finds to be reasonable in this proceeding.

20. It is appropriate to defer ruling at this time on whether Carolina Water Service should be required to refund to its ratepayers the deferred revenues related to the Tax Reform Act of 1986 (TRA-86) that have been collected and reflected in the deferred account.

21. The Company should continue to charge rates based upon the principle of a uniform, statewide rates structure.

22. The Applicant is not uniformly charging the tap on fees and plant modification and expansion fees approved in its last rate case.

23. In Rolling Hills Subdivision in Forsyth County, the Applicant is charging rates that are not approved.

24. It is appropriate to maintain a distinction between tap fees and plant modification and expansion fees and also appropriate to change the name of plant modification and expansion fees to plant impact fees.

25. It is inappropriate to adopt a fixed base facilities charge for commercial and other nonresidential customers at this time.

26. The majority of the Company's service areas are metered which allows customers in those areas to lower their bills by reducing consumption. However, approximately 1,100 of the Applicant's customers, including the residential customers in the Hound Ears Subdivision, are unmetered and do not have the ability to reduce their bills by reducing their consumption. All the Company's customers should be metered.

27. The Company is providing adequate water and sewer utility service in the majority of its service areas; however, significant service problems exist in several service areas as addressed in finding of fact No. 28.

28. The Applicant is not providing adequate water utility service to customers residing in the following service areas: Cabarrus Woods, Courtney, Danby, Forest Ridge/Forest Crossing, Emerald Point, Mt. Carmel, Lee's Ridge, and Bent Creek Subdivisions. Significant water service problems exist in these service areas and need correcting. The Commission will order the Company to make improvements in these service areas. Because of the length of time that these problems have existed in the Mt. Carmel, Lee's Creek, and Bent Creek Subdivisions, the Commission has deferred any rate increase in these subdivisions until improvements have been made.

29. The Applicant should be allowed an increase in its annual gross service revenues for water of $457,542 and of sewer of $205,528. The rates contained in Appendix A will allow this increase, should enable the Applicant the opportunity to earn an 11.6% return on rate base, and is fair to the Applicant and its customers. Accordingly the rates set forth in Appendix A are approved as the proper rates in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, 4, 5, 6, AND 7

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 the Applicant's witnesses. These findings of fact are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are essentially uncontroverted.

Carolina Water Service has requested a rate increase for 71 of its North Carolina water and sewer systems. A number of its other North Carolina systems, however, have been excluded from this request. The systems that have been excluded, listed by parent Company, are as follows:

Carolina Water Service, Inc., of North Carolina systems:
Wolf Laurel
Vander Systems (Eastgate, Tanglewood Estates, Tanglewood South)

C. W. S. Systems (referred to as Genoa Systems):

Rollingwood	Lakewood	Bellwood
Fox Fire	Rita Pines	Southern Plaza
Hickory Hills	Robin Lake	South Haven

Watauga Vista Water Corporation:
Watauga Vista

Queens Harbor Utility, Inc.:
Queens Harbor

Belvedere Utility Company:
Belvedere Plantation

As of December 31, 1987, the Applicant provided utility service to 13,080 water customers and 5,738 sewer customers in the 71 service areas included in this application. There were 1,833 water customers and 131 sewer customers in the excluded service areas.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The Commission by Order issued on September 1, 1988, granted Carolina Water Service an interim increase of $1.00/month/service (i.e., $1.00/month for water and $1.00/month for sewer) subject to refund. The Commission by Order issued on September 15, 1988, made this interim increase effective for service rendered on and after September 15, 1988.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact is contained in the testimony and exhibits of Company witness O'Brien and Public Staff witness Haywood. Further evidence is found in the Commission's Final Order as well as the testimony and exhibits of Company witness O'Brien and Public Staff witness Jacome in Docket No. W-354, Sub 39, the Company's last general rate case.

The Public Staff is proposing for the plant acquisition adjustment (PAA) a credit balance of $1,140,007, while the Company is proposing a credit balance of $1,111,463. The difference of $28,544 relates to the debit plant acquisition adjustments for the High Meadows and Chapel Hills systems. Although, in the Company's last general rate case, the Commission disallowed the plant acquisition adjustments related to the High Meadows and Chapel Hills systems, Company witness O'Brien testified that Carolina Water Service wants to revisit the adjustment in this proceeding.

Company witness O'Brien testified that the Commission, in its Order in Docket No. W-354, Sub 39, had disallowed the plant acquisition adjustments related to the High Meadows and Chapel Hills systems because the Company had failed to present sufficient information to justify allowance of these adjustments. Witness O'Brien presented additional information in this docket which he maintains warrants inclusion of these debit PAAs in rate base.

Witness O'Brien testified that the benefits to the ratepayers resulting from the Chapel Hills acquisition outweigh the cost of including the debit PAA (purchase price exceeds net original cost) in rate base. Carolina Water

Service purchased the Chapel Hills system in November 1984, for $23,500. At that time, there were 82 customers on line. Therefore, the cost was $287 per customer. The rate base for all Carolina Water Service water customers at December 31, 1984, was $477 per customer. Witness O'Brien stressed that the purchase of the system, at less than $477 per customer, benefits all ratepayers.

Witness O'Brien stated that from an operations standpoint, whenever the Company's customer base can be increased without an incremental increase in fixed costs, all customers benefit by the increased efficiency. Such benefits arose with the Chapel Hills acquisition. The system and its customers were easily served by the Company's existing Sugar Mountain area personnel. The Company added no new billing or operating personnel as a result of this acquisition.

Witness O'Brien stated that the Chapel Hills system was violating both Health Department and Carolina Water Service operating standards at the time of acquisition. The former owner of the system was not acting to correct the various problems. By letter dated April 19, 1984, the Health Department had notified the former owner that the Department had noted several deficiencies in complying with rules governing public water supplies in North Carolina. The letter also requested immediate action in correcting the various problems. The former owner had not corrected the deficiencies at the date of closing. At the request of the seller, the purchase agreement stated that the facility was purchased "as is", and the agreement provided that modifications might be required to meet governmental requirements. Seven months elapsed between the Health Department's letter and the date of closing, indicating that the former owner was unwilling or unable to correct the deficiencies. Witness O'Brien testified that Carolina Water Service began correcting the deficiencies soon after taking over the ownership of the system. Witness O'Brien stated that the customers would not have enjoyed the benefits of the improved system without Carolina Water Service first purchasing the system.

Witness O'Brien testified that the Company had substantially improved the service to the Chapel Hills system. In addition to correcting the deficiencies noted by the Health Department, the Company painted the water tank and well house, rewired and replumbed the booster pumps, added chemical feed equipment, and made other modifications of a less significant nature to bring the system up to the Company's standards.

Witness O'Brien testified that the purchase price for the Chapel Hills system resulted from arm's-length bargaining. Initial correspondence between the buyer and the seller was dated around November 1983. The Company offered $15,000 for the system in December 1983. In August 1984, the Company offered $22,000 for the system, and the final purchase price was $23,500. The closing occurred in November 1984. This series of negotiations made clear that the transaction was conducted in an arm's-length manner.

Witness O'Brien likewise indicated that the debit PAA should be allowed for the High Meadows acquisition. The cost per customer of the High Meadows acquisition was less than the average rate base of Carolina Water Service as a whole. According to witness O'Brien, the debit PAA will cause a decrease for the entire Carolina Water Service group, and the High Meadows system is now part of that group. The Company acquired High Meadows for $30,000 or about

$204 per customer. This price is far below the $477 rate base per customer for the entire Carolina Water Service system. Consequently, the acquisition decreased the rate base on a per customer basis. In addition, the acquisition enabled the Company to utilize its personnel more efficiently and increased the customer base over which fixed costs are spread.

Witness O'Brien identified the necessary improvements that the Company made to the High Meadows system after acquisition. The Company undertook extensive improvements to the water supply system in High Meadows. These improvements included installing new well pumps, well controls, booster pumps, and chemical feed equipment. The Company also installed blow-off valves on dead end lines and meters at the wells. Witness O'Brien testified that the acquisition of High Meadows was at arm's-length. Initial contact between the parties occurred in November 1983. The parties reached an agreement and closed in April of 1984. Witness O'Brien testified that in all respects the transaction was one at arm's-length.

Public Staff witness Haywood, in her discussion of the debit PAA issue, testified that allowing the amortization expense to be included "above the line" and including unamortized debit plant acquisition adjustments in rate base have the effect of increasing the rate base by the excess purchase price, allowing the Company to recover the amortization of the excess purchase as an item of the cost of service, and allowing these excess dollars to earn a return. She testified that it is neither reasonable nor appropriate to penalize the ratepayers for the transfer of franchises by requiring them to pay more than once for the same net original cost of property used in providing public utility service.

The Commission has analyzed the debit PAA issue by reviewing the testimony on this subject in this case and the discussion of this issue in the Company's last case, Docket No. W-354, Sub 39. The Commission decided in Docket No. W-354, Sub 39 that the determination of whether to grant the debit PAA rate base treatment depends upon the facts of the particular acquisitions at issue. On cross-examination, witness Haywood stated that she took no issue with this concept and recognized that the Public Staff witness in the last case, Ms. Jacome, likewise had agreed that this analysis is appropriate.

In Docket No. W-354, Sub 39, the Commission refused to allow rate base treatment to the debit PAA for Chapel Hills and High Meadows because the Hearing Examiner concluded that the evidence in the record before him did not warrant inclusion of the debit PAA in rate base in that proceeding. The Commission, in Docket No. W-354, Sub 39, adopted the following criteria to be applied in determining rate base treatment for debit PAAs:

1. The benefits to ratepayers should outweigh the cost of inclusion in rate base of the excess purchase price,

2. System deficiencies would have gone unaddressed if not for the acquisition by the acquiring company; and

3. The acquisitions were a result of arm's-length bargaining.

Unlike the evidence offered in the Company's last case, the Company has now provided additional information to supply the facts not before the Hearing Examiner when this issue was first raised. The Commission determines that the evidence supplied by witness O'Brien indicates that the benefits to ratepayers outweigh the cost of inclusion in rate base of the excess purchase price of the Chapel Hills system, that the system deficiencies that clearly existed with this system would have gone unaddressed if not for the acquisition by the Company, and that the acquisition was the result of arm's-length bargaining.

With respect to the High Meadows system, the record is unclear in this proceeding as to whether the former owner of the High Meadows system did or did not intend or desire to make the needed improvements. The Commission also concludes that there was too little evidence presented by the Company as to whether the High Meadows acquisition was in fact the result of arm's-length bargaining and negotiated at a reasonable purchase price.

Based upon the foregoing, the Commission concludes that the debit PAA for the Chapel Hills system should be allowed, whereas, the debit PAA for the High Meadows system should not be allowed.

Accordingly, the Commission concludes that the appropriate credit balance for the plant acquisition adjustment is $1,123,298. This amount is calculated by beginning with the amount proposed by the Public Staff and making a debit adjustment of $17,029 as set forth in O'Brien Rebuttal Exhibit No. 7, less one year's amortization of $320.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence supporting this finding of fact comes from the testimony of Company witnesses O'Brien and Demaree and Public Staff witnesses Lee and Haywood.

The Company proposed to include in rate base $187,853 for an elevated storage tank and $22,880 for a new well in Cabarrus Woods Subdivision. The Public Staff has recommended that these items of plant in service be eliminated from rate base. The Public Staff has recommended exclusion of the well and elevated storage tank in Cabarrus Woods on the theory that these additions are not needed to serve the 261 customers that the Company served in the Cabarrus Woods area at December 31, 1987, the end of the test year in this case. Another reason used by the Public Staff for excluding this Cabarrus Woods plant, is that the Company did not require advancement or contribution of funds from developers. The Public Staff cites Commission Rule R7-16, which allows utilities to require advance funding from developers for plant expansion.

NEW WELL

Witness Demaree testified that the new well installed to provide service in Cabarrus Woods was needed by customers on the system at the end of the test year. Witness Demaree testified that although the capacity of the wells in service at the end of the test year was rated to service 288 homes, using the minimum State standard requirements, the actual capacity of these wells had fallen due to the reduction in the water table and the drought conditions. The actual capacity of the wells existing at the end of the test period would provide service only to 254 customers based on minimum State standards, not the

261 on line at December 31, 1987. Therefore, witness Demaree testified that the new Cabarrus Woods well was needed to provide adequate service to customers existing at the conclusion of the test year. Witness Demaree stressed the need to add the new well to the system because the water table is continuing to drop. The system should not be operated, according to witness Demaree, to meet only the minimum State standard. The new well has a capability of producing 200 gallons per minute. This new well will provide back-up service in case there is a failure of existing wells.

Under cross-examination, witness Demaree testified that the new well was not in service. Further, Public Staff Demaree Rebuttal Cross Examination Exhibit No. 7 indicated that design information submitted to the Division of Health Services on November 1, 1988, by a registered professional engineer shows that the rated pumping capacity of the two existing wells in Cabarrus Woods is 160 gallons per minute, not 140 gallons as testified to by witness Demaree. Witness Demaree also admitted that the Cabarrus Woods water system has been expanded beyond the 288 approved connection limit to 347 connections without obtaining approval from the Division of Health Services (DHS).

While the Commission is convinced of the need for an additional source of water at the close of the hearing, testimony clearly shows that the additional well was not on line and used and useful at the end of the hearing. The Company itself testified that it has expanded the system beyond that approved by DHS.

Based on the above, the Commission is of the opinion that the Company's $22,880 investment for the new well should not be allowed in this proceeding for the reason that the new well was not used and useful prior to the close of the hearing in this case. Plant still under construction at the end of the test period and at the close of the hearing is not property "used and useful" within the meaning of G.S. 62-133. State ex rel. Utilities Commission v. General Telephone Company., 281 N.C. 318, 189 S.E. 2d 705 (1972). Nor does the amount of the Company's investment in the new well qualify for inclusion in rate base as construction work in progress (CWIP) pursuant to G.S. 62-133. There has been no showing on the record in this case that the inclusion of any level of CWIP is in the public interest and necessary to the financial stability of Carolina Water Service.

ELEVATED STORAGE

Witness Demaree stated that the 250,000 gallon elevated storage tank was placed into service in Cabarrus Woods in October 1988. Witness Demaree testified that the Company had invested approximately $187,853 in the elevated tank and had obtained approximately $100,000 from a developer as a contribution in aid of construction. A primary factor motivating the Company to construct the tank in 1988 was the State requirement that a system with 300 connections be served by an elevated storage tank. Witness Demaree testified that, as of the date of the hearing, there were 318 customers in Cabarrus Woods. Witness Demaree stressed that under current regulations the system must have 120,000 gallons of elevated storage to serve the existing customers. Because there is a need for advanced planning, had the Company failed to begin steps to construct the tank in order to bring it on line about the time the 300th customer was added, the Company now would be in violation of State standards.

Witness Demaree testified that not only was the tank necessary to meet State standards, but that all customers within the Cabarrus Woods area benefited from the tank. The new tank will have the ability to provide a fire flow so that existing and new fire hydrants can be used. This fire flow will create the potential for reducing home insurance rates. The elevated storage tank will help reduce fluctuations in pressure. The tank will enable the Company to more adequately meet service demands during peak periods. Additionally, the elevated storage tank will provide greater reserve capacity so that service disruptions from main breaks and construction will be reduced.

The Public Staff did not contest that elevated storage was required once a water system reached 300 connections. Nor did the Public Staff contest that there were 318 customers on the Cabarrus Woods water system at the end of the hearing. The Public Staff's argument for disallowing the investment in the elevated storage was that it was needed in 1988 for expansion of the water system, but not to serve the 261 customers at the end of the test year.

The Commission concludes that while the elevated storage may not technically have been required to meet the demands of the customers at the end of the test year, it was clearly required to meet the demands of the customers at the end of the hearing. For the reasons set forth below, the Commission is of the opinion that some portion of the investment should be allowed in rate base. The 250,000 gallon elevated storage has the capacity to serve 625 connections (250,000 - 400). The Commission does not believe that the entire investment should be allowed in this proceeding. If the Commission were to allow the Company to recover that part of the investment attributed to 318 customers, it would also need to balance this investment with not only the revenues for the additional 57 customers (318 - 261) but also the expenses that these additional customers would have on the Company.

Based on the above discussion, the Commission is of the opinion that $78,898 [(261 - 625) x $187,853] should be allowed in this proceeding for the investment in the elevated storage tank. In making this decision, the Commission takes into consideration that the elevated storage, unlike the new well, was on line at the end of the hearing, and that the tank will provide the 261 end-of-test-year customers a more constant pressure, the possibility of fire protection, and additional storage in case of a breakdown within the system. Using the number of end-of-period customers in making this adjustment alleviates the problems of attempting to derive an appropriate level of expenses and revenues for any additional customers.

As a further comment on these matters, the Commission commends the Company in its efforts of bringing the tank on line with the addition of the 300th customer so the Company would not be in violation of the DHS standard. However, the Commission also puts the Company on notice that this same attitude should have been shown before adding customers beyond those approved by DHS.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is found in the testimony of Company witnesses O'Brien and Demaree and Public Staff witnesses Lee and Haywood.

Public Staff witness Lee testified that the 50,000 gallon per day treatment plant that existed when the Company acquired the Brandywine Bay

system in 1986 had sufficient capacity to serve the 111 customers on line at December 31, 1987.

Witness Lee's second reason for excluding the sewage treatment plant expansion is that the Company entered into an agreement when it acquired the Brandywine Bay system that obligated the Company to expand the sewage treatment plant without requiring contributions or advance funding from the previous owner or from developers. Witness Lee testified that the actual costs exceeded initial cost projections and argued that the ratepayers should not pick up this additional cost.

In rebuttal, Company witness Demaree testified that the 1986 purchase agreement between the Company and the prior owner of the Brandywine Bay system bound the Company to expand the sewage treatment plant at the Company's expense and that under the agreement construction was to begin immediately. Witness Demaree testified that the Public Staff wished the transfer to go through so that improvements to the sewage treatment plant could be made and that at the time the Company acquired the Brandywine Bay system the plant had reached capacity and was in danger of violating effluent standards. Witness Demaree stressed that the Commission approved the transfer to the Company with the concurrence of the Public Staff and with full knowledge of the obligations the Company was undertaking. Witness Demaree further testified that the cost of the expansion beyond the $250,000 estimate arose from additional requirements imposed by the North Carolina Department of Natural Resources which required a five-day and 30 day holding pond for sewage effluent. Witness Demaree testified that these holding ponds were not required prior to the estimate being proposed.

Witness Demaree indicated that witnesses and developers testified at the transfer hearing stressing the need to expand the utility system. He testified that the Company performed in good faith under the purchase agreement and expanded the sewage treatment facilities for the benefit of current and future lot owners. The existing plant was in desperate need of upgrading at the time of acquisition to meet mandated effluent limits. Witness Demaree stated that the Company eventually will recoup a portion of its investment through connection fees as customers attach to the system.

The Commission has carefully weighed the arguments of the Company and the Public Staff on whether the investment in the Brandywine Bay sewage treatment plant expansion should be included in rate base. Based upon this examination, the Commission determines that it is appropriate to include only a portion of the investment in rate base.

The Commission deems significant the events surrounding the transfer of the Brandywine Bay system to the Company in 1986. Developers and customers in the Brandywine Bay area complained at the hearing conducted at the time of the transfer that the capacity and state of repair of the sewage treatment plant were detrimental to the stability and growth of the Brandywine Bay area. The Public Staff joined in a motion with the Company that the Company be permitted to begin improvements to the sewage treatment plant prior to formal Commission approval of the transfer. Public Staff witness Lee testified at the transfer hearing in support of the transfer and cited as one of his reasons for Public Staff support the need to expand the sewage treatment plant.

The Commission also notes that Company witness Demaree stated that builders and developers are currently paying both water and sewer tap fees which are used to reduce plant investment. It is apparent that the Company performed in good faith under its purchase agreement in expanding the sewage treatment facilities for the benefit of current and future lot owners in Brandywine Bay.

However, the Commission notes that at the end of the test year, there were only 111 customers. The total capacity of the Brandywine Bay sewage treatment plant including the additions is 150,000 gallons and can serve approximately 375 customers. Witness Demaree testified that the original 50,000 gallon plant had been taken out of service to be refurbished. All test year customers are now being served by the new plant.

Based on the discussion above and the record in this matter, the Commission is of the opinion and so concludes that only 30% (111 - 375) of the $324,789, or $97,437, should be allowed into rate base in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding of fact is found in the testimony of Company witness Demaree and Public Staff witnesses Lee and Haywood.

Carolina Water sought to include in rate base its investment in the sewage treatment plant expansion in Cabarrus Woods. The Public Staff recommended that this investment be disallowed for two reasons: (1) the plant was not complete as of the end of the hearing and (2) the plant is not needed to serve the existing customers in Cabarrus Woods.

Public Staff witness Haywood testified that she disallowed the $188,160 cost of the sewage treatment plant expansion in Cabarrus Woods because this plant was not in service at the end of the hearing and therefore was not used and useful. The Public Staff also offered testimony showing that this plant was not needed to serve the existing customers of Cabarrus Woods.

By the Company's own testimony, the sewage plant expansion in Cabarrus Woods was not complete as of the end of the hearing and consequently was not used and useful. As the sewage plant expansion in Cabarrus Woods was not used and useful as of the close of the hearing, the Commission concludes that it would be improper as a matter of law to include it in rate base as plant in service.

Witness Demaree testified that the sewage treatment plant expansion in Cabarrus Woods was 95% complete and that this investment should be included in rate base. It was his position that the plant should be included because it will serve existing areas as well as new areas once it has been placed in service.

The Company argued that the investment should be allowed in rate base under G.S. § 62-133(b)(1) as construction work in progress. The statute provides that reasonable and prudent expenditures for construction work in progress may be included to the extent the Commission considers such inclusion in the public interest and necessary to the financial stability of the utility in question.

The Commission is of the opinion that, although the investment may have been reasonable and prudent in order to serve any new customers, there was not sufficient evidence to make a determination that the investment was in the best interest of the present customers or that the investment was necessary to the financial stability of the Company.

Based on the above discussion, the Commission concludes that the cost of the sewage treatment plant expansion in Cabarrus Woods Subdivision should be disallowed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact comes from the testimony of Public Staff witness Lee and Company witness Demaree.

Testimony given at the hearing indicated that the sewage treatment plant serving Lamplighter South, Danby, and Woodside Falls Subdivisions had been expanded from its present 150,000 gallons per day (gpd) to 650,000 gpd. The number of customers at the end of the test year on that system was 361.

Based on the 400 gallons per day per customer design criterion agreed upon by the Public Staff and the Company, the capacity of plant needed to serve the 361 customers existing at the end of the test year would be 144,400 gallons. The Commission, therefore, concludes that the 500,000 gallons per day expansion represents capacity not needed to serve the existing customers at the end of the test year.

The Commission is of the opinion that the plant investment for excess capacity not needed to serve customers in the Danby/Lamplighter Subdivision existing at the end of the test year should not be allowed in rate base in this proceeding. To do otherwise would violate the concept of matching investment, expenses, and revenues and would require customers existing at the end of the test year to pay for plant expansion not needed to serve them.

The Commission notes that the Company serves approximately 71 different areas across the state. Most of these areas are individual water and/or sewer systems which are not physically connected and do not serve areas that are contiguous. These systems vary in size and type of facilities. Most of them were constructed by developers or other utility companies and were later acquired by Carolina Water. Expansion of one system does not benefit customers of other systems.

Commission Rules R7-16 and R10-12 provide that the utility company may require developers and builders to provide funds in advance for expansion of water and sewer utility systems to serve new development. These rules allow for the developer to be reimbursed as tap on fees are collected from new customers. By establishing these rules, the Commission has recognized that water and sewer utility companies should not be required to expand their service areas and systems at their cost and risk or at the cost and risk of their existing customers. Any expansions of systems by this Company at its cost without acquiring advance funding from developers have been decisions made by Company management on behalf of its stockholders. The Commission concludes that any risks assumed by the Company in such expansions should be borne by the stockholders and not the existing customers.

The Commission therefore concludes that the investment to expand the sewage treatment plant from 150,000 gpd to 650,000 gpd should not be allowed in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence supporting this finding is contained in the exhibits of Company witness O'Brien and in the testimony and exhibits of Public Staff witness Haywood.

Company witness O'Brien and Public Staff witness Haywood determined the Company's working capital allowance by inclusion of a cash requirement consisting of one-eighth (1/8th) of total operating expenses excluding depreciation and taxes. Both parties also included prepayments of $1,228 and deducted average tax accruals of $51,613 to arrive at their recommended level of working capital. The differences between the parties arise from differences in the level of operation and maintenance expenses and general expenses.

Based upon the foregoing and the appropriate amount of operation and maintenance expenses and general expenses discussed elsewhere herein, the Commission concludes that the appropriate level of working capital in this proceeding is $277,121, consisting of a cash requirement of $327,944, prepayments of $1,228, less average tax accruals of $52,051. The tax accruals of $52,051 consists of payroll taxes of $13,799, property taxes of $10,003, and gross receipts taxes of $28,249.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Company witness O'Brien and Public Staff witnesses Haywood and Lee presented testimony regarding Carolina's reasonable original cost rate base.

The following table summarizes the amounts which the Company and the Public Staff contended in their respective proposed orders are the proper levels of rate base to be used in this proceeding.

	Company	Public Staff	Difference
Plant in service	$29,601,728	$ 28,674,215	$ (927,513)
Debit balance in deferred taxes	160,820	160,820	-
Accumulated depreciation	(2,034,052)	(2,031,288)	2,764
Plant acquisition adj.	(1,111,463)	(1,140,007)	(28,544)
Customer deposits	(65,086)	(65,086)	-
Advances in aid of construction	(316,950)	(316,950)	-
Contributions in aid of construction	(15,614,993)	(15,614,993)	-
Excess book value	(1,854,024)	(1,854,024)	-
Deferred taxes	(498,926)	(497,669)	1,257
Working capital	288,961	269,676	(19,285)
Deferred charges	366,316	224,673	(141,643)
Total Rate Base	$ 8,922,331	$ 7,809,367	$(1,112,964)

As this table shows, the Company and the Public Staff agreed on the amounts included for the debit balance in deferred taxes, customer deposits, advances in aid of construction, contributions in aid of construction, and excess book value. The Commission, therefore, concludes that these amounts are reasonable and proper for use in the determination of original cost rate base.

The first component of rate base on which the parties disagreed was plant in service. The Public Staff recommended an amount that was $927,513 below the Company's proposed amount of $29,601,728. This difference in plant in service is composed of the following items:

	Item	Amount
1.	Construction work in progress	$(188,160)
2.	Excess plant	(744,522)
3.	Common plant	5,169
4.	Total difference	$(927,513)

The first area of difference concerns construction work in progress (CWIP). The difference between the parties relates to the sewer treatment upgrade at Cabarrus Woods which the Public Staff also characterized as excess plant.

Public Staff witness Haywood testified that she removed $188,160 related to the expansion of the sewage treatment plant located at Cabarrus Woods subdivision. She further stated that based on discussions with witness O'Brien and information received from the Company at the Public Staff's request, this item would not be completed by the close of the hearing. When asked during cross-examination if she had applied the statutory test for determining whether construction work in progress should be included in rate base, witness Haywood replied that this adjustment was based on the utilization of the used and useful test and discussions with Public Staff witness Lee. Witness O'Brien admitted during cross-examination that this item was originally filed as plant in service and was intended to be treated as such. He further stated that on

the night before the hearing he had learned, upon advice of counsel, that this item could be treated as CWIP and could be properly included in rate base since this expenditure was prudent and there was a financial impact on the Company. He agreed, however, that almost any asset would have a financial impact upon the Company.

The Company originally assumed the entire amount of CWIP to be plant in service, thereby increasing original cost rate base. The Company did not, however, make adjustments to increase revenues, to increase deferred income taxes, or to reflect any cost savings which would accrue as a result of the actual CWIP becoming plant in service. As a result, the Company has not matched revenues, rate base, or related expense items.

The Commission is also aware of the test that is used to determine if CWIP is to be included in rate base. In order to properly include CWIP in rate base, the burden of proof lies with the Company. The Company must present evidence meeting both of the statutory tests. The Company must prove that the CWIP is both in the public interest and necessary to the financial stability of the Company. This the Company has not done and, therefore, the CWIP proposed by the Company cannot be considered as a component of rate base in this proceeding. The Commission also notes that based on the evidence presented at the hearing, the CWIP related to the Cabarrus Woods sewage treatment plant was not used and useful at the close of the hearing and, therefore, cannot be considered as plant in service. Thus, the Commission concludes that the $188,160 for the sewage treatment plant at Cabarrus Woods should be removed from CWIP and should not be included in the plant in service.

The next area of difference between the parties concerns excess plant. The difference consists of the following amounts:

Item	Amount
Brandywine Bay sewage treatment plant	$324,789
Drilling of well at Cabarrus Woods	22,880
Danby/Lamplighter subdivision expansion	209,000
Elevated storage tank at Cabarrus Woods	187,853
Total difference	$744,522

As discussed in the Evidence and Conclusions for Findings of Fact Nos. 10, 11, and 13, the Commission concludes that the following amounts should be allowed as plant in service rather than those proposed by the Company:

Item	Amount
Brandywine Bay sewage treatment plant	$ 97,437
Drilling of well at Cabarrus Woods	-
Danby/Lamplighter subdivision expansion	-
Elevated storage tank at Cabarrus Woods	78,898
Total	$176,335

Based on the foregoing, the Commission finds it appropriate to decrease the Company's amount of plant in service by $568,187 to reflect the proper disallowance of excess plant items.

The last item of difference between the Company and the Public Staff plant in service amounts relates to the exclusion of common plant in service. These items relate to other subdivisions, both water and sewer systems, which are not being considered in this proceeding. The common plant includes items which are utilized by all subdivisions in the entire Company. In their respective proposed orders, the Public Staff has excluded $117,396 related to the water plant and $44,977 related to the sewer plant whereas the Company has excluded $121,133 and $46,409, respectively. This results in a difference between the parties of $3,737 related to the water plant and $1,432 related to the sewer plant.

The Commission understands from witness Haywood's exhibits that the payroll expense amount was utilized in calculating the common plant allocated amounts. The Commission is also aware of the fact that the percentage derived from this calculation varies as the level of payroll expense changes. Therefore, upon consideration of the appropriate amount of payroll expense determined in the Evidence and Conclusions for Finding of Fact No. 17, the Commission concludes that the proper amount of exclusion of common plant is $102,895 related to the water plant and $39,423 related to the sewer plant. Accordingly, the amount proposed by the Company for plant in service should be increased by $18,238 for water plant and $6,986 for sewer plant.

Upon consideration of the foregoing adjustments, the Commission concludes that the appropriate amount for plant in service in this proceeding is $28,870,605.

The second area of difference as to rate base is the proper level of accumulated depreciation. This difference results from the parties' adjustments which modified the plant in service amount. The adjustments discussed above significantly affect the level of accumulated depreciation. Consistent with the Commission's previous finding relating to Carolina Water Service's plant in service and Finding of Fact No. 17, the Commission concludes that the proper level of accumulated depreciation for use in this proceeding is $2,044,843.

The third area of difference in rate base is the plant acquisition adjustment. The Commission has determined in the Evidence and Conclusions for Finding of Fact No. 9 that the proper amount to be included in original cost rate base is $1,123,298.

The next area of difference concerns the proper level of accumulated deferred income taxes (ADIT). This component of rate base was not discussed in great detail by the Public Staff at the hearing. Witness Haywood stated in her prefiled testimony that additional information had been requested of the Company by the Public Staff but was still outstanding at that time. The Public Staff was concerned about the fact that the Company had not reflected an adjustment to reduce rate base for the accumulated deferred state income tax. During cross-examination witness O'Brien attested to the fact that no state ADIT had been deducted from rate base for this proceeding. As a result, the income tax advantage which the Company has enjoyed through accelerated depreciation rates has not been credited to the ratepayers.

After the close of the hearing, the Public Staff received and reviewed the calculation provided by the Company related to the accumulated deferred state

income tax. Based on this exhibit (Public Staff Late-Filed Exhibit No. 3), the Commission concludes that the $36,547 amount proposed by the Public Staff, rather than the amount of $37,804 proposed by the Company, for purposes of this rate case only, as a deduction to rate base is both appropriate and reasonable. This amount is calculated as follows:

Year Ended	Book/Tax Difference [1]	Tax Rate		Amount	
12/31/86	$719,059	.4924	[2]	$354,065	[4]
12/31/87	315,398	.4420	[3]	139,406	[4]
Total ADIT using appropriate income tax rates				493,471	
LESS: ADIT - Federal				456,924	
Adjustment for ADIT - State				$ 36,547	[1]

[1] Provided by Company
[2] Federal - 46%; State - 6%
[3] Federal - 40%; State - 7%
[4] Difference times tax rate

Based on the foregoing, the Commission concludes that accumulated deferred state income tax should not be treated any differently from the federal portion of ADIT which was deducted from rate base. Therefore, the Commission finds this adjustment to be proper in amount and theory. Rate base will therefore be reduced by $36,547 to be equitable to ratepayers who should also enjoy the benefits resulting from accelerated depreciation and so that ratepayers will not pay a return on funds that are cost free. Accordingly, the Commission concludes that the proper net deferred tax level to include in rate base is $336,849.

The working capital allowance constitutes another area of difference. The Commission has determined in the Evidence and Conclusions for Finding of Fact No. 14 that the proper amount to be included in original cost rate base is $277,121.

The final component of rate base on which the parties differed is the proper level of deferred charges. The difference of $141,643 as set forth in each parties' respective proposed order is related to the unamortized balance of deferred charges and consists of the following amounts:

Item	Company	Public Staff	Difference
Unamortized balance of noncompliance fines	$ 12,398	$ -	$ (12,398)
Unamortized cost of Docket No. W-354, Sub 26	23,229	-	(23,229)
Unrecovered cost of Docket No. W-354, Sub 39	42,286	-	(42,286)
Unrecovered cost of 1985 miscellaneous regulatory matters	15,156	-	(15,156)
Unrecovered cost of Docket No. M-100, Sub 113 (Tax Docket)	12,370	9,896	(2,474)
Total estimated cost of current proceeding - Docket No. W-354, Sub 69	102,392	56,292	(46,100)
Total unamortized deferred balance	$207,831	$66,188	$(141,643)

The first major disagreement was related to noncompliance fines. The Public Staff proposed an adjustment of $12,398 for the removal of noncompliance fines which were included in deferred charges under a subcategory entitled "other." Public Staff witness Haywood testified that these fines were deducted as a result of her discussions with Public Staff witness Lee. She also stated during cross-examination that normally, for regulatory accounting, fines are not allowed as an expense. She further testified that these fines are similar to nuclear regulatory fines that are not an allowable expense for electric companies. Witness Haywood further stated that the noncompliance fines are not deductible for IRS purposes and that ratepayers should not be expected to pay for the Company's inability to meet regulatory deadlines. Witness Haywood stated that the Public Staff could not recall any rate proceeding in which the Commission had allowed in rate base an unamortized balance for deferred charges related to noncompliance fines.

When asked if it was more cost efficient or beneficial to the Company and to the customers if a settlement for less than the cost of the fines could be reached with the Division of Environmental Management (DEM), witness Haywood agreed that it was but added that the ratepayers should not be expected to pay any amount for regulatory fines.

On redirect examination, witness Haywood stated that she viewed the settlement for fines not as the settlement of a lawsuit, but as a settlement for fines, and that is why these fines were disallowed for ratemaking purposes.

The Attorney General submits that these costs should not be borne by Carolina Water Service ratepayers and supports the Public Staff's adjustment to reduce the amount of deferred charges for the cost associated with the noncompliance fines in rate base and the related amortization amount from expenses.

The Company contested the Public Staff's adjustment to deferred charges as they relate to what witness Haywood had classified as "fines." The Company

maintained that the deferred charges represent a settlement made to compromise disputed cases with the Division of Environmental Management of the Department of Human Resources and Community Development. The disputed cases arose when the Division of Environmental Management penalized the Company $22,000 for alleged violations of the NPDES permit for the Beatties Ford plant and $34,222 for violations of the NPDES Hemby Acres permit.

The Company's evidence disclosed that it undertook vigorously to contest the validity of the DEM fines. The Company instituted a contested case to challenge the basis for the fines. The Company alleged that the systems in question had a long history of noncompliance in the hands of former owners and that after acquisition the Company, with DEM knowledge and cooperation, was undertaking improvements to the plants to enable them to meet the permit compliance requirements. In the case of Hemby Acres, the Company received from DEM a special order by consent on January 2, 1987, to allow a continuation of the improvement program and received approximately one month later, on February 6, 1987, notice of the DEM's civil penalty. One of the justifications for the Hemby Acres fine was the DEM's earlier assessment of fines for the Beatties Ford plant even though the Company was contesting actively the validity of the Beatties Ford fine. The Company cited in its petitions many instances of other surrounding plants that had been out of compliance for a much longer period of time and had nevertheless escaped any penalty from DEM.

The Company's evidence also showed that on June 22, 1987, DEM and the Company entered into an agreement of settlement under which the Company and the DEM agreed to settle the dispute by the Company's payment of $9,972. This payment included a $3,000 payment for each contested case and reimbursement to DEM of approximately $4,000 for enforcement costs. Section 5 of the agreement specifically provided:

> "5. Settlement. This Agreement represents a settlement of disputed claims and is not to be deemed or construed as an admission of liability or of the truth of any fact by the DEM or Carolina Water Service."

Witness O'Brien testified that the Company settled the case in order to avoid the cost of a hearing and the procedures that would be necessary to fight the case through to conclusion. The Company spent $5,525 in legal fees prior to settlement. Company witness O'Brien classified the payments as a necessary cost of doing business that properly should be included as expenses in this proceeding. Witness O'Brien testified that the Company followed a procedure of attempting to bring the plants into compliance by attempting the least costly methods first. The Company avoids the alternative of paying whatever sums are necessary initially to bring the plants into compliance in order to avoid imposing these costs on the customers through rates.

The Commission has given careful consideration to the positions of the parties on this issue. For the reasons set forth hereafter, the Commission determines that it is appropriate for the Company to recover one half of the costs associated with the contested cases through rates. Despite her testimony to the contrary on redirect examination, witness Haywood was unaware of the nature of the dispute or the amount saved through the compromise. The Commission agrees with the Company that, under the facts of this case, the payments in settlement of the dispute with DEM and the costs associated with

the contested case are legitimate costs of undertaking utility business and should be recovered through rates. These payments are not fines. In this regard, the Commission notes that the North Carolina Supreme Court has addressed the issue of the recoverability of legal fees in contesting the reasonableness, if not the appropriateness, of assessing a penalty. In State ex rel. Utilities Commission v. The Public Staff, 317 N.C. 26 (1986) (the Glendale case), the court addressed some of the considerations that should be weighed in determining whether such legal expenses should be recovered through rates. Some of the factors include whether the legal fees are a reasonable and necessary expense for the utility to provide its service, the specific benefit the underlying legal proceeding will provide the ratepayers, whether the litigation expenses are incurred in good faith, the actual outcome of the litigation, and whether the legal expenses could have been avoided through prudent management.

By analogy, the Commission determines that the Company has made a convincing case for including one-half of the costs in question in rates in this case. By settlement of this case with DEM, the Company certainly avoided the substantial fines that the DEM had originally assessed and the costs that would have been expended to complete the contested case. No party has indicated that the costs were excessive or that the settlement was unwise. The Company obviously acted in good faith in attempting to bring the plants into compliance and in attempting to avoid the fines. Apparently, DEM recognized merit in the Company's position by agreeing to settle the dispute for payments substantially lower than the fines initially assessed and under terms that imposed no liability or fault upon the Company. The Commission agrees with the Company that it would have been unwise to incur the substantial expense that would have been necessary to bring the plants into immediate compliance rather than attempt to solve the problems in a more cost-effective manner even if it meant delaying the period within which the plants could be brought into compliance. The Commission notes that, unlike the Glendale case cited above, the Company was contesting not only the reasonableness of the amount of the fines but also the underlying basis upon which the fines were assessed in the first instance.

The Commission must also recognize, however, that the proceeding before DEM arose because of the Company's failure to fully comply with DEM requirements in the time and manner required by DEM. As the Company acknowledged in its petitions to DEM, there were "technical violations" of its permits which served as the basis for the DEM's actions in assessing the fines. On the other hand, the settlement agreement specifically states that DEM was willing to settle the dispute without requiring the Company to admit any liability or wrongdoing whatsoever. The dollar amounts agreed upon in the settlement were not denominated as "fines" and were considerably less than the fines that were originally assessed. The Company's settlement was the least costly method of bringing the plants into compliance, thereby directly benefitting all ratepayers. This issue has caused some difficulty for the Commission. Although the Company must bear part of the responsibility for the fines having been originally assessed, the Company acted prudently and in good faith in settling the cases with DEM. . The Commission is of the opinion that it is equitable and appropriate that these costs should be shared equally by the ratepayers and by the stockholders of the Company.

Based upon the foregoing, the Commission concludes that one-half of the settlement payments and costs incurred in presenting the Company's position should be included as deferred charges for purposes of this case.

Based on the foregoing, the Commission determines that the balance for deferred charges for this item should be $6,199.

The remaining differences of the unamortized balance in the deferred account concerns rate case and other regulatory related expenses.

The Company proposes to recover a pro rata portion of several items of regulatory expense through inclusion in operating revenue deductions in this case and to include the unamortized balance in rate base as deferred charges. The first item of regulatory expense relates to the balance of expense of a prior rate case the Company is amortizing over five years in accordance with the Commission's Order in Docket No. W-354, Sub 39. These rate case expenses arose from costs incurred by the Company in presenting its 1983-84 rate case, Docket No. W-354, Sub 26. The unamortized balance of these costs is $23,229, which the Company seeks to recover in rate base along with the inclusion of $11,612 in operating revenue deductions. The Company is amortizing these expenses pursuant to the Commission's Order in Docket No. W-354, Sub 39 over a five-year period, with amortization proposed to be complete in December 1990.

In its Order in Docket No. W-354, Sub 26, the Commission allowed the Company to recover its estimated rate case expense of $35,000 over an eight-year period. In the Company's next case, Docket No. W-354, Sub 39, the Company requested permission to amortize the $45,426 difference between the actual cost of the rate case and the budgeted $35,000 through rates established in that case. Public Staff witness Jacome agreed with the Company treatment. Witness Jacome reduced the amortization period for the $35,000 budgeted amount from eight to five years and likewise advocated that the additional $45,426 be recovered over the same five-year period. The Commission accepted this treatment. Because the Company has not yet recovered all of these costs through rates, the Company is requesting that this amortization continue in this case.

The Commission agrees with the Company in this regard, however, the Commission concludes that the unrecovered balance of $23,229 relating to the Sub 26 proceeding should be amortized over three years. Therefore, the appropriate amount of amortization expense to include in this proceeding is $7,743 which results in an unamortized balance of $15,486.

The next item of regulatory expense the Company seeks to recover is the unrecovered cost of the 1985 rate case, Docket No. W-354, Sub 39. The Company budgeted $30,000 as rate case expense in that case, and the Commission authorized amortization of that amount over a three-year period. The Company's actual rate case expense for the case was $72,286, resulting in costs not being recovered currently through rates of $42,286. The Company is seeking recovery of the $42,286 in this case over three years, or $14,095 as an expense in this case.

Public Staff witness Haywood testified that the Company had an opportunity to update rate case expenses related to the previous proceeding as it has done in this case.

The Attorney General is of the opinion that the Company's proposal to recover its unrecovered expenses associated with its rate cases in Docket No. W-354, Sub 26, as discussed previously, and Docket No. W-354, Sub 39, is, in effect, an unlawful true-up of its prior rate case expenses and should not be allowed. According to the Attorney General, if a utility is permitted to revisit and revise prior period expenses in subsequent rate cases, the Company has no incentive to exercise diligence in estimating its cost of service.

In this regard, the Commission agrees with the Public Staff's treatment; it would be improper to go back in time and allow these particular regulatory expenses which were incurred in 1985 and 1986 considering that in the last case the Commission had included in the cost of service what was believed, according to the evidence at that time, to be a fair and representative level of rate case expense which also reflected the update of previous rate case expenses.

Another item not included in deferred charges by the Public Staff relates to the unrecovered cost of 1985 miscellaneous regulatory matters. This category in the amount of $15,156 was updated by the Company on O'Brien Rebuttal Exhibit I. These were legal fees originally included by the Company in legal fees expense for the Docket No. W-354, Sub 39 rate case. In its update, the Company recategorized these costs as "deferred regulatory commission expense". Witness O'Brien presented rebuttal testimony stating that this unamortized balance should also be included in the rate case expense for this proceeding. Witness Haywood testified that after reviewing invoices for legal expenditures for Docket No. W-354, Sub 39, she found that a portion of these legal fees did not pertain to the 1985 rate case, which was used as an estimate for the current case. In fact, on O'Brien Rebuttal Exhibit 1, page 1 of 2, these costs are outlined, and it can be readily determined that these legal costs pertain to transfer and other types of applications that are not on-going and are not considered to be a part of this proceeding. At best, these costs should have been expenses in the years incurred and should not have been deferred and amortized over several years. The Commission concludes that these are not valid test year expenses and, therefore, they should not be included in rate base.

The Public Staff has agreed with the Company, in theory, that the unamortized balance related to Docket No. M-100, Sub 113 (the Tax Docket) should be included in rate base as a deferred charge. This expense was incurred during the test year. The Public Staff has also agreed that this expense should be amortized over a five-year period. However, the Public Staff has not agreed with the amount of the unamortized deferred balance. The Company included one-fifth or $2,474 of the total cost in the test year as an annualized operating expense. In addition, the Company included the entire amount of $12,370 in the unamortized deferred balance. It is the Public Staff's contention that if the Company is allowed one year's amortization as an operating expense, then it is only proper that the remaining portion ($12,370 - $2,474 = $9,896) be included in rate base.

The Commission is aware that the unamortized deferred balance related to the Tax Docket is only included in rate base because the costs were incurred during the test year. The Commission's policy is to allow a portion of a deferred expense as an operating deduction. Thus, only the remaining unamortized balance is included in rate base. If the entire amount were

allowed in rate base, as an unamortized balance, the Company would overrecover its cost, and the ratepayers would overpay. The Commission, therefore, finds $9,896 to be the proper amount of the unamortized deferred balance related to the Tax Docket to be included in rate base and allows the related amortization expense of $2,474 to be included in the cost of service.

The final portion of the unamortized deferred rate case expense balance presented in the Company's rebuttal testimony is the total cost of the current proceeding. The Public Staff accepted the increase in unamortized deferred rate case expense balance related to Water Service Corporation personnel, travel, mailing of customer notices, filing fees, and miscellaneous items. The total cost of these items, including $20,000 in legal fees proposed by the Public Staff, is $84,438. This amount was amortized over three years, resulting in an annualized rate case expense of $28,146. The Public Staff's unamortized deferred balance for this category was $56,292. The Company presented, on O'Brien Rebuttal Exhibit 1, an amount of $102,392. The only item on which the Public Staff disagreed was the legal fees, which are discussed in the Evidence and Conclusions for Finding of Fact No. 17. The $56,292 presented by the Public Staff represents an unamortized balance after one year's amortization is reflected as an operating expense. Again, the Company did not reflect the operating expense portion that it had taken as a deduction.

The Commission concludes that the unamortized deferred rate case expense balance should be reduced for the first year's annualized operating deduction. Based on the evidence and conclusions related to legal fees under the Evidence and Conclusions for Finding of Fact No. 17, the Commission concludes that the appropriate unamortized deferred balance for Docket No. W-354, Sub 69 rate case expense to be included in rate base is $68,262.

Based on the foregoing, the Commission concludes that the appropriate original cost rate base for use in setting rates in this proceeding is $8,050,011.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence for this finding of fact is found in the testimony and exhibits of the Company and the Public Staff. Both parties agreed on the level of gross service revenues under present rates. Therefore, the Commission concludes that the proper level of gross service revenues under present rates, after accounting and pro forma adjustments, is $3,775,988; under the Company proposed rates, $4,690,277; and, under the rates approved herein, $4,439,058.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence for this finding of fact is found in the testimony and exhibits of Company witnesses O'Brien and Demaree and Public Staff witnesses Haywood and Lee. The following chart sets forth the amounts proposed by the Company and the Public Staff in their proposed orders.

Item	Company	Public Staff	Difference
O&M expenses	$1,878,744	$1,798,774	$(79,970)
General expenses	840,695	761,713	(78,982)
Depreciation expenses	291,385	262,706	(28,679)
Taxes other than income	278,178	278,178	-
State income taxes	(6,026)	13,080	19,106
Amortization of ITC	(905)	(905)	-
Federal income taxes	(27,222)	59,083	86,305
Total operating revenue deductions	$3,254,849	$3,172,629	$(82,220)

The first difference, in the amount of $79,970, results from differences between the Company and the Public Staff as to the proper expense levels of (1) operator's salaries and wages ($85,023 decrease); (2) maintenance and repair ($3,100 decrease); and (3) operating expenses charged to plant ($8,153 increase) to be included in the cumulative level of operation and maintenance expenses. The operator's salaries and wages difference in the amount of $85,023 consists of five Public Staff adjustments as follows:

Line No.	Item	Amount
1.	6.5% wage increase for 1988	$(12,256)
2.	Excluded Charlotte supervisor	(26,000)
3.	Excluded Asheville operator	(10,500)
4.	Allocated 2.5 operators to contract systems	(21,513)
5.	Removed part-time operators' wages	(14,754)
6.	Total Public Staff Adjustments	$(85,023)

In regard to these first three salary adjustments, witness Haywood testified that the Company employees at December 31, 1987, are sufficient to provide service for the customers at the end of the test year and that it is also appropriate to use these employees' annualized salaries at December 31, 1987, adjusted to reflect a 6.5% salary increase for 1988. When asked during cross-examination how she arrived at the 6.5% increase, witness Haywood replied that she requested this information and it was provided to her by the Company. Witness Haywood stated that she requested the 1988 wage increase and that the Company provided an average increase of 6.0% for 1987 and 6.5% for 1988. The Public Staff is of the opinion that a 6.5% salary increase for 1988 appears generous in view of the average national wage increase of 3.9% over the past twelve months (set forth in October 26, 1988 issue of the News and Observer - Public Staff Demaree Cross-Examination Exhibit Number 2).

Company witness Demaree presented rebuttal testimony related to the operators' salaries, testifying that the actual overall percentage increase in salaries for operating personnel for 1988 was 8.4%. Witness Demaree presented Demaree Rebuttal Exhibit 4 detailing the reasons and listing specific people who were given increases above the 6.5% used by the Public Staff. The increases over 6.5% ranged from 6.87% for Mark Baum, who was transferred to the Whispering Pines area as manager resulting in a wage increase reflecting his additional responsibilities, to 14.94% for Carl Daniel, who was promoted to Vice President of Carolina Water Service resulting in a raise commensurate with his increased responsibilities. These additional increases and the other employees' average increase of 6.5% resulted in an overall increase in the Company's operators' salaries of 8.4% effective July 1, 1988. This increase of

8.4% equates to an increase in operators' salary expense of $12,256. Witness Demaree testified that many of the increases resulted from granting employees merit increases or increases due to promotions or due to employees advancing to positions of greater responsibility. Further, witness Demaree testified that salaries were readjusted in 1988 to enable the Company to maintain and attract competent employees and to meet the salaries being paid for similar positions in other companies.

Based upon the evidence of record, the Commission is unable to find that the increases granted by the Company are unreasonable or imprudent. Consequently, the Commission finds that an average increase of 8.4% in operators' salaries is reasonable for use in this proceeding.

The second adjustment to operators' salaries relates to the Public Staff's removal of the salary ($26,000) of a new employee, Martin Lashua, hired in the Charlotte office. Mr. Lashua replaced Mark Baum who was transferred to the Whispering Pines office as area manager. Eddie Baldwin, who was the manager in the Whispering Pines area, was transferred to the Pine Knoll Shores coastal area to occupy a newly created position. The net effect of these internal transfers, according to Company witness Demaree, resulted in one additional employee's salary which should be allowed as an expense of this proceeding.

As noted earlier, witness Haywood utilized the end of the test year December 31, 1987, to evaluate expenses. She stated that she disallowed any new employee hired past the test year. It is the Public Staff's contention that any new hire was needed for new customer growth. According to the Public Staff's proposed order, it was witness Haywood's understanding, based on discussions with Company personnel, that the new hire was to replace A. C. Davis at Pine Knolls Shores (PKS). However, at the end of the test year, Mr. Davis was still a full-time employee at the PKS office. Since the Public Staff utilized the test year, December 31, 1987, as a cut-off period, Mr. Davis was left in as an operating expense. The new hire (Martin Lashua), who would ultimately replaced an existing employee, Eddie Baldwin, was not included in expenses. It was the Public Staff's understanding that Mr. Baldwin was to replace Mr. Davis during 1988.

During cross-examination, witness Demaree testified that the new position at the coast (Pine Knoll Shores area) was filled in August or September 1988 and that part of the time of the new hire will be spent serving customers added since the end of the test year. Consequently, the Commission is convinced that with the hiring occurring so much further beyond the close of the test year (December 31, 1987) that the new hire was more than likely hired due to growth in customers which have not been included in this proceeding. Therefore, the Commission finds it appropriate to exclude the salary of the new Charlotte supervisor from this proceeding.

The third adjustment to operator's salaries relates to the Public Staff's removal of the salary ($10,500) of a new employee, Harold McCarson, hired in 1988 for the Asheville area. Witness Demaree testified that a new employee, Harold McCarson, was added with one-half of his salary being allocated to the Company's Mt. Carmel and Bent Creek systems and one-half allocated to the Sherwood Forest system which is not included in this rate case. Witness Demaree proposed to include as a pro forma adjustment one-half of

Mr. McCarson's salary in addition to the pro forma salaries proposed by the Public Staff.

In the opinion of the Public Staff, there are two problems with this adjustment. First, the amount of the Public Staff's total operators' salaries includes the salary of Joseph Daniels for the Asheville operations. Witness Demaree failed to remove the salary of Mr. Daniels who is no longer employed by the Company. Additionally, the Public Staff argued in its proposed order that witness Demaree failed to allocate any additional salary of the area supervisor, Jerry H. Alford, to supervision of the Sherwood Forest system which was acquired in 1988 and which is not included in this rate case.

Company witness Demaree testified that it is necessary to have two full-time operators in the Asheville area due to the technical sophistication and difficulty of operating the Mt. Carmel and Bent Creek plants. According to witness Demaree, one-half of Jerry H. Alford's time is allocated to Asheville, Nick Daniels works full-time in the Asheville area, and Harold McCarson spends one-half of his time in the Asheville area. This equals two full-time operators for Asheville. Witness Demaree testified that in order to reflect his employee level, one-half of Harold McCarson's salary in the amount of $10,500 was included by the Company as a payroll expense.

An examination of Public Staff witness Lee Exhibit 2 page 7 of 7 and Public Staff witness Haywood Exhibit 1 Schedule 3-1 reveals that the pro forma operator's salaries as proposed by the Public Staff includes employees' salaries in the Asheville area as follows: Jerry H. Alford - 81%, Nick Daniels - 80%, Joseph Daniels - 100% and Howard Allen - 67%, totaling 3.28 employees operating in the Asheville area. The Company has accepted the Public Staff's pro forma operator's salaries as a starting point and increased it by one-half the salary of the new employee in Asheville, thus resulting in 3.78 employees in the Asheville area. Based upon the foregoing, the Commission believes that the Public Staff's proposed number of Asheville employees provides a sufficient number of employees in the Asheville area to properly serve the customers at the end of the test year without the addition of one-half of the time of Harold McCarson.

The fourth adjustment to operator's salaries relates to the Public Staff's allocation of 2.5 field operators to the operation of 14 sewer plants in the Pine Knoll Shores area which are not owned by the Company but are operated on a contract basis, whereas the Company allocated 1.5 employees to the operation of these 14 systems.

Witness Lee testified that the Public Staff's recommendation in this regard was based on his review of Company operations and of sewer plant operating requirements. Under cross-examination witness Lee testified that the Company had 40 field operators at the end of the test year period that were maintaining 66 water systems and 34 sewer systems for a total of 100 systems which resulted in an average of 2.5 systems per operator. Witness Lee further testified that his recommendation of allocating 2.5 operators for the 14 sewer plants would result in a ratio of 5.6 plants per operator compared to 2.5 for the rest of the Company's operations and, therefore, his recommendation was conservative.

The Company, through witness Demaree, testified that only 1.5 field operators are required to operate the 14 contract sewage treatment plants in the Pine Knoll Shores area. Witness Demaree stated that Jeff Pruitt operates the contract plants full-time, year round. During the months of May through September, a total of five months, a second employee, John Cunningham, helps to operate the contract plants. The remainder of the year, the second employee works in operating the plants owned by Carolina Water Service.

Witness Demaree testified that two employees must operate the contract plants during the summer because the plants are fully loaded then due to high seasonal usage. During October through April, according to witness Demaree, there is a low percentage of occupancy and the plants process very little wastewater. The plants normally require less than 30 minutes per day to operate for normal cleaning. In the winter many of these plants have almost no flow, and the treatment standards are far less.

The Commission agrees with the Company that it is appropriate to allocate only 1.5 employees to the 14 noncompany owned sewage treatment plants in the Pine Knoll Shores area. The Company bases its allocation on the work actually undertaken by the employees in the area and the actual time that they spend on operating Company owned plants and noncompany owned plants. In defending the Public Staff adjustment in this area, Public Staff witness Lee testified that he made the allocation based on his knowledge of the amount of time it takes to operate certain plants and on his general knowledge of the duties and responsibilities of the Company's employees in the Pine Knoll Shores area as set forth in the following question/answer at the hearings:

Q. Did you make any independent analysis, Mr. Lee, of how much time it actually takes actual employees to operate the 14 sewer plants in Carteret County or thereabouts?

A. I did not do an individual inspection or evaluation of each of those plants. I relied basically on my general knowledge I've picked up of sewer plant operations . . . .

Company witness Demaree explained that due to the seasonal nature of the load placed on the 14 plants, the size of the plants, and the actual experience the Company has in operating the plants, the assumptions relied upon by Public Staff witness Lee are inaccurate in this case.

The Commission believes that the actual employee time as testified to by witness Demaree to operate these plants appears to be reasonable. The Commission therefore agrees with the Company that the allocation should be 1.5 employees to the noncompany owned sewage treatment plants in the Pine Knoll Shores area.

The final adjustment ($14,754) to operator's salaries relates to the Public Staff's adjustment to remove part-time operators' salaries from its pro forma annualized salary adjustment since these particular salaries are included in the Company's pro forma test year maintenance expense. According to data received by the Public Staff from the Company, these part-time employees perform duties such as grass-cutting and grounds maintenance. Witness Haywood's adjustment is necessary such that the part-time operators' salaries are not included both in the maintenance expense and the pro forma operators'

salaries amount. Witness Haywood made an adjustment to her pro forma annualized salary to remove $38,401 for the part-time salaries included in maintenance expense.

In O'Brien Rebuttal Exhibit 4, the Company incorporated the Public Staff's pro forma payroll amount as a starting point for making adjustments to calculate the Company's pro forma payroll amount. One of the Company's adjustments to the Public Staff's payroll number was to remove the salary of A.C. Davis, the PKS area supervisor. Witness O'Brien acknowledged that the compensation in the amount of $23,647 paid to A.C. Davis, the test year PKS supervisor, was booked in Account 604.10, a maintenance account. Obviously, if his compensation was accounted for in maintenance expense, it should not be included in the per books salaries.

The Company's adjustment of $23,647 netted against the Public Staff's adjustment of $38,401 results in a difference of $14,754 which was not challenged directly by the Company. The Commission recognizes that the Company began with the Public Staff's pro forma salary proposal and made the adjustments as previously discussed herein to determine its proposed operators' salary expense. Having carefully followed the parties adjustments, the Commission can find no contradictory evidence of the Public Staff's adjustment to remove $14,754 for part-time salaries which will be included by both the Public Staff and the Company in maintenance expense. Therefore, the Commission finds it appropriate to remove $14,754 from the operators' salaries since this amount is included by the Company and the Public Staff in maintenance expense.

Based on the foregoing, the Commission concludes that the appropriate level of operator's salaries and wages to be included in the cost of service is $688,657 based upon the conclusions previously discussed herein.

The next Public Staff adjustment contributing to the $79,970 difference in operation and maintenance expenses decreased the maintenance and repair expense account by $3,100. This adjustment was necessary to remove the expense portion of deferred charges related to noncompliance regulatory fines. As discussed under the Evidence and Conclusions for Finding of Fact No. 15, the Commission concludes that it is appropriate to allow one-half of these expenses in the amount of $1,550 to be included in this proceeding. Such treatment allows for an equal sharing of these costs between the shareholders and the ratepayers.

The final Public Staff adjustment contributing to the difference in operation and maintenance expense decreased the operating expense charged to plant account by $8,153. The balance of this expense account is generally a credit balance, thus a decrease in the account would result in an increase in operating expenses. This account, as explained by witness Haywood, represents the portion of salary and wage expense (along with related payroll taxes and employee benefits) which the Company determines should be capitalized. The Company and the Public Staff are in agreement as to the methodology for calculating the level of wages, payroll taxes, and benefits to be capitalized. The difference results from differences in the proposed levels of pro forma operators' salaries. As previously discussed, the Commission has made its own determination of the proper level of operators' salaries and wages and thus concludes that the proper balance of operating expenses charged to plant to be included in this proceeding is $164,918.

Based upon the foregoing, the Commission concludes that the appropriate amount of operation and maintenance expense to be included in the cost of service is $1,828,590.

The next area of difference in the operating revenue deductions between the Company and the Public Staff concerns the proper level of general expense. The $78,982 total difference between the Company and the Public Staff consists of differences in the proper levels of (1) office salaries and wages ($15,563 decrease); (2) regulatory Commission expense ($34,723 decrease); and (3) pension and other employee benefits ($28,696 decrease).

The first disagreement in the general expense category relates to office salaries. Again the Public Staff used the end of the test period to measure expenses incurred based on the same premise as used in their operators' salaries adjustment. Witness Haywood stated that 19.44% of the office salaries had been allocated to other systems not included in this rate case. This percentage had been provided by Public Staff witness Lee who determined the 19.44% based upon a ratio of nonrate case customer accounts to total customer accounts. The Company, for purposes of this case only, agreed with the 19.44% allocation of office salaries to other operations. The Company had originally proposed an allocation of 17.9% of office personnel costs to the nonrate case systems based on the ratio of nonrate case customers to total customers being served by the office personnel. The Company maintains that it is more appropriate to use total customers than customer accounts to allocate office personnel expense. Nevertheless, the Company has agreed to accede to the Public Staff adjustment in this area. Therefore, the Commission concludes that the 19.44% allocation to systems not included in this rate case is proper for use in this proceeding.

In rebuttal testimony, witness Demaree presented an updated office salary increase of 10.4% for 1988. Witness Haywood testified that the Public Staff's contention is that a 6.5% wage increase is quite generous and reasonable for use in this proceeding. In the opinion of the Public Staff, the Company's actual average increase of 10.4% in office salaries for 1988 is significantly greater than the Company's originally estimated wage increase and seems to be unreasonable. It is, according to witness Haywood, the Public Staff's intention to present a reasonable level of office salary expense as of December 31, 1987, the end of the test year.

Witness Demaree presented Demaree Rebuttal Exhibit 4 detailing the reasons and listing specific office personnel who were given increases above the 6.5% used by the Public Staff. The increases over 6.5% ranged from 6.97% for Lorett Williams, who was given an increase to raise her salary to a competitive level in the Charlotte area, to 11.11% for Christine Hult, who works in the Whispering Pines office which has grown in staff and the number of customers served, resulting in an increase commensurate with her increased responsibilities and the excellent job she is doing. These additional increases and the other employees' average increase of 6.5% resulted in an overall increase in the Company's office salaries of 10.4% effective July 1, 1988. This increase of 10.4% results in a $5,090 increase in the level of office salary expense. Witness Demaree testified that a level of salary must be analyzed rather than a percentage increase. In the opinion of witness Demaree the 10.4% office salary increases are justified based on what the job

market is doing in the surrounding area and in view of specific Company employees' performance, promotions, and new positions.

Based upon the evidence of record, the Commission is unable to find that the increases granted by the Company are unreasonable or imprudent. Consequently, the Commission finds that an average increase of 10.4% in office salaries is reasonable for use in this proceeding.

The remaining adjustment to office salaries relates to the Public Staff's exclusion of the salary, in the amount of $10,473, for the Company's new account manager in Charlotte, who was hired after the end of the test year. Again, the Public Staff is relying on the assumption that the employees in place as of December 31, 1987, should have been sufficient for the operation of the systems on line as of December 31, 1987. During cross-examination, Public Staff witness Lee testified that he had made no analysis of actual employee work performed or the amount of overtime taken. Witness Lee made no attempt to determine whether the Company was attempting to fill positions before year end. The Public Staff contended that this new manager was necessary due to growth in customers not included in this rate case proceeding.

In rebuttal testimony, witness Demaree testified that the new account manager in Charlotte, L. Crossin, was needed to adequately serve end of test year customers in the Charlotte area. The Company serves 7,500 customers in 49 systems in the Charlotte area. Witness Demaree testified that the Company was trying to find someone in December 1987 to fill this position and then in January 1988, L. Crossin was hired.

Based upon the evidence in this regard, the Commission is not persuaded by the Public Staff argument that the hiring of the new accounts manager was due to growth in customers beyond the test year. In view of the Company testimony of the need for this employee to adequately serve end of test year customers and the actual hiring having taken place in January 1988, the Commission concludes that it is reasonable and appropriate to include the salary of the accounts manager in the level of office salaries to be included in the cost of service. Based upon the foregoing, the Commission concludes that the appropriate level of office salaries to be included in this proceeding is $154,554.

The next adjustment to general expenses on which the parties disagreed relates to the removal of $34,723 from the regulatory commission expenses. The regulatory commission expense difference in the amount of $34,723 consists of four Public Staff adjustments as follows:

Line No.	Item	Amount
1.	Excluded Docket No. W-354, Sub 26 rate case expense	$(11,612)
2.	Excluded Docket No. W-354, Sub 39 rate case expenses	(14,095)
3.	Excluded 1985 miscellaneous regulatory expenses	(3,031)
4.	Excluded portion of legal fees relating to current case	(5,985)
5.	Total Public Staff adjustments	$(34,723)

The first item of difference relates to the balance of expense of a prior rate case (Docket No. W-354, Sub 26) which the Company is amortizing over five years in accordance with the Commission's Order in Docket No. W-354, Sub 39. The unamortized balance of these costs is $23,229 of which the Company seeks to recover $11,612 in operating expenses in this case, with amortization to be complete in December 1990.

It is the opinion of the Public Staff that these costs would be fully amortized in December 1988. According to witness Haywood, one year's amortization goes into the rate case year, the year in which expenses were incurred; thus in Docket No. W-354, Sub 39, since the test year was the 12-months ended December 31, 1984, the Public Staff believes that these Docket No. W-354, Sub 26 costs would have been amortized in 1984, 1985, 1986, 1987, and 1988.

The Company is of the opinion that it does not begin recovering these costs through rates until the order approving rates goes into effect. The Final Order in Docket No. W-354, Sub 39 was not issued until January 10, 1986, and thus, according, to the Company the full cost will not be recovered until the end of 1990.

The Commission agrees with the Company that these costs would not be fully recovered until December 1990; thus, these costs should be included in the cost of service. However, the Commission believes that since only two years of amortization remains, it would be reasonable to redistribute the recovery of these costs over three years, rather than two years, in accordance with the parties' agreement that it is appropriate to amortize current rate case costs over three years. Accordingly, the Commission finds that the appropriate rate case amortization expense associated with Docket No. W-354, Sub 26 to be included in rate case expenses in this proceeding is $7,743.

The next item of difference in the amount of $14,095 relates to the Company's position on its unrecovered cost of the 1985 rate case, Docket No. W-354, Sub 39. The Company budgeted $30,000 as rate case expense in that case, and the Commission authorized amortization of that amount over a three-year period. The Company's actual rate case expense for the case has now been determined to be $72,286, resulting in costs not being recovered currently through rates of $42,286. The Company is seeking recovery of the $42,286 in this case over three years, or $14,095 as an expense in this case.

The Public Staff takes the position that these costs are not valid test year expenses, and should not be allowed to be recovered retroactively. The Commission agrees with the Public Staff in this regard. These additional costs incurred by the Company relating to Docket No. W-354, Sub 39 are not valid test year costs for the 12-months ended December 31, 1987, and should not now be included in the cost of service. In Docket No. W-354, Sub 39, the Commission found a reasonable and representative level of rate case expense and included it in rates in that proceeding.

The third adjustment to regulatory expense proposed by the Public Staff relates to the Company's inclusion of unrecovered costs of 1985 miscellaneous regulatory matters. The Company is proposing to recover these expenses in the amount of $15,156 over a five-year amortization period resulting in the inclusion of $3,031 in expenses in this proceeding. According to the Company, these costs were incurred during 1985 in an attempt to obtain Commission approval for the transfer of systems through applications filed in that year and incurred for other regulatory matters.

The Public Staff takes the position that these costs are not on-going and are not a part of this proceeding. It is the Public Staff's opinion that these costs should have been expensed in the years incurred and thus should not be included in this proceeding. The Commission concurs with the Public Staff. These are not valid test year expenses and, therefore, they should not be included in the current cost of service.

The final Public Staff adjustment to regulatory commission expense relates to the disagreement between the parties dealing with the proper level of legal fees incurred in the current proceeding. As to the other rate case expense items associated with this case: filing fees, travel expenses, customer notices, copying costs, Water Service Corporation personnel, and other miscellaneous items, the parties agreed on these level of expenses.

Legal fees expense, as originally filed by the Company, was estimated at $47,000. Witness O'Brien indicated that he did not feel that this amount was extremely high. However, witness Haywood stated that the legal fees for Carolina Water Service were the highest in the state for a water company. She also stated that she was familiar with Piedmont Natural Gas Company, which incurred approximately $50,000 for legal fees for its latest rate case proceeding, and had approximately 193,000 customers compared to Carolina Water Service's 20,000 customers. Witness Haywood stated that the Public Staff was proposing $20,000 in legal fees which in her opinion is a reasonable level of legal fees and is also fair to the ratepayers.

The Company presented an updated filing of rate case expense in the rebuttal testimony of witness O'Brien. The final legal expense figure presented by the Company was $37,954. This amount is based on actual costs incurred between May 1988 and October 1988, as well as a reasonable estimate based upon analysis of time incurred in the last case, of costs to be incurred between November 1988, and the time that the briefs and proposed orders were to be filed in this case.

Apparently, the basis for the Public Staff position that only $20,000 in legal fees should be recovered is a comparison to the fees the Public Staff finds appropriate in other cases for other companies. In cross-examination of

witness O'Brien, the Public Staff suggested that the legal fees charged in a recent Piedmont Natural Gas case were $50,000. During the course of her testimony, Public Staff witness Haywood also seemed to imply that the cost of the recent Piedmont case was only $50,000. On recross-examination, however, witness Haywood revealed that the $50,000 was only the amount the Public Staff had recommended as being appropriate in that case. Indeed, the Public Staff had recommended that the budgeted amount actually requested by the Company of $80,000 be reduced to $50,000, and the Company agreed to this.

The Public Staff also suggests that the costs budgeted in a recently filed Mid South Water Systems, Inc., case (represented to be $5,000 at one time, $7,000 at another) support an adjustment to the legal fees requested by the Company in this case. The Commission finds that the Public Staff has failed to present sufficient information on the legal fees requested in those cases and has failed to lay the appropriate foundation for comparison between those cases and this case. The Commission notes that, unlike most water cases, there have been extensive hearings conducted in this case and that the parties have raised a number of important and complicated issues. The transcripts of this case are substantial. The briefs and proposed orders likewise are substantial. The Public Staff has presented insufficient evidence to persuade the Commission that the $17,954 difference ($37,954 - $20,000) in legal fees the Company requests in this case should be disapproved. As witness Haywood testified, there was little calculation involved in the Public Staff recommendation. The Commission concludes that it is appropriate to allow the company to recover legal fees of $37,954 related to this proceeding and to amortize these costs over 3 years, resulting in an amortization expense amount of $12,651.

Based on the foregoing, the Commission concludes that the proper level of regulatory commission expense is $44,348.

The final adjustment contributing to the $78,982 difference in general expenses relates to pension and other employee benefits. The difference between the parties in the amount of $28,696 involves two adjustments. The first adjustment would reduce health insurance costs by $7,771 and the second adjustment would reduce pension expense by $20,925. Witness Haywood stated that she adjusted the pension and the other employee benefits account to reflect her changes in payroll expense. She further stated in her prefiled testimony that she had not reflected any change to health insurance since it was not related to payroll expense. However, health insurance became an issue during the hearing. Witness Haywood stated that the difficulty in determining the appropriate amount of health insurance costs to include in this case is due to fluctuations in health insurance claims. She stated that the Company is self-insured with a $25,000 ceiling per employee and this makes the calculation even more difficult since costs vary with the number of claims. She also stated that a revised proposal for health insurance costs had been provided by the Company during the hearing. The Company is proposing an increase of $16,254 before Public Staff adjustments for allocations, over its original per books health insurance costs of $44,300. The Company averaged health insurance expense for 1986, 1987, and 1988, applying an inflation factor to both 1986 and 1987 costs. 1988 was used as the base year in determining the inflation factors to be used in determining an average health insurance cost per employee for 1988. Inflation factors were accepted for this case only due to materiality. To the average, the Company added the current annual premium cost based on premiums to cover the "catastrophe and processing costs" paid to the

health insurance company, after adjusting that premium to the level of employees at year end 1987.

The Public Staff's proposed adjustment of $7,771 for health insurance costs is calculated as follows based upon the Public Staff's previously discussed payroll expense:

Item	Amount	
Allocation to Carolina Water Service - NC per books	$46,452	
Health insurance increase - calculated by Company (accepted by Public Staff)	36.69%	
Increase in health expense ($46,452 x .3669)	17,043	
Total adjusted health insurance expense for CWS - NC ($46,452 + $17,043)	63,495	
Allocation of percent of gross operator and office payroll that relates to CWS-NC as proposed by the Public Staff	.8313	[1]
Total health insurance costs proposed by Public Staff ($63,495 X .8313)	52,783	
Health insurance cost expense proposed by Company	60,554	
Adjustment to health insurance cost per Public Staff	$ 7,771	

[1] Percent allocated to CWS-NC as proposed by the Public Staff:

	Operators Salaries	Office Salaries	Total
Adjusted CWS-NC	$692,803	$138,991	$ 831,794
Annualized prior to adjustments	$828,040	$172,531	$1,000,571
Percentage of total to CWS-NC ($831,794/$1,000,571)			83.13%

The Public Staff's methodology is consistent with the allocations of common plant proposed by the Public Staff and previously accepted by the Company. Therefore, the real difference exists due to what is determined to be the proper level of payroll expense. Also, with regard to the second adjustment relating to employee benefits, the Public Staff pension expense adjustment of $20,925 is a fall-out calculation to be determined based upon the appropriate level of payroll expense. Based on the prior findings relating to payroll expense, the Commission concludes that the proper level of pension and other employee benefits to be included in this proceeding is $121,307.

Based on the foregoing, the Commission has determined the appropriate amount of general expenses to be included in the cost of service is $794,964.

The next area of difference of $28,679 concerns depreciation expense. The Company agreed with the depreciation expense as calculated by the Public Staff except to the extent that the adjustments to plant in service were disagreed upon. The difference arose primarily because of the Public Staff's removal of CWIP and other plant items discussed in the Evidence and Conclusions for Finding of Fact No. 15. Witness Haywood stated that she utilized the Company's methodology in determining the appropriate level of 1987 depreciation

expense. She further stated that the Company offsets the amount of depreciation expense by credit amortization expenses related to the excess book value, contributions in aid of construction, and advances in aid of construction using the same rate.

The Commission, as discussed previously herein, has made its own determination as to what the proper balance of plant in service and plant acquisition adjustments are to be included in this proceeding. Based upon these findings, the Commission concludes that the proper level of depreciation expense is $270,553. This amount reflects the Commission's overall weighted depreciation rates which would result in a rate of 2.31% being applied to prior rate case plant in service adjustments in the water operations. Amortization of plant acquisition adjustments has been recalculated based upon a 1.88% rate for water and a 1.82% rate for sewer.

The next item of operating revenue deductions on which the Public Staff and Company disagree is taxes other than income taxes. This expense category includes gross receipts taxes, property taxes, and payroll taxes. It should be noted that the Public Staff adjustments to these categories were included in calculating its proposed rates rather than under present rates. The record shows that the Company agreed with the Public Staff's payroll tax adjustment except to the extent that the Commission accepted a different payroll number from the Public Staff. With regard to the calculation of gross receipts taxes, the Company applied tax rates of 6% for sewer gross service revenues and 4% for water gross service revenues. The Public Staff similarly applied these tax rates to gross revenues, but deducted uncollectibles prior to making the calculation. The deduction of uncollectibles from gross revenues prior to application of the gross receipts tax rate is consistent with past Commission treatment and is therefore found to be an appropriate methodology. The Commission further concludes, on the basis of the above evidence, along with the conclusions regarding revenues and payroll expense discussed elsewhere, that the proper level of taxes other than income taxes is $274,766.

The final difference in the operating revenue deductions existing between the parties relates to the calculation of state and federal income tax expense. These amounts are direct calculations determined by the levels of operating revenues and expenses proposed by each party. The Commission has made its own determination of the appropriate levels of rate base, revenues, and expenses and therefore finds that state income taxes of $7,531 and federal income taxes of $34,018 are appropriate levels for inclusion in the cost of service in this proceeding.

Based on the foregoing, the Commission concludes that the appropriate level of operating revenue deductions for use in setting rates in this proceeding is $3,209,517.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18 AND 19

The evidence in support of these findings of fact is found in the testimony of Company witness O'Brien and Public Staff witnesses Haywood and O'Donnell. The parties differed as to the cost of capital which the Commission should approve in this case. Company witness O'Brien testified that an 11.78% return on rate base should be approved and that a return on equity of 14.08% is appropriate. The Company used a pro forma capital structure of 53.54% debt and

46.46% equity in determining its recommended rates of return. Company witness O'Brien testified that the Company recommends a simple formula for determining the overall rate of return. The formula uses a current yield on five-year U. S. government notes plus a risk factor of 3%. The equity component of the overall rate of return is calculated by subtracting the Company's weighted actual cost of debt derived using the embedded cost of debt of 9.78% weighted by a capital structure ratio on debt of 53.54%. The formula produces a 14.08% equity return.

Witness O'Brien testified that long-term U. S. government bonds yield about 9.25% currently. When held to maturity, these are the closest things to a risk free investment. Utility first mortgage bonds are higher risk than government bonds. Currently, Baa debt is about 10.5%. The Company believes that a risk premium of 3% to 6% on equity is appropriate. Witness O'Brien testified that equity securities of large publicly traded securities paying dividends and having the advantage of liquidity are available to investors today. Naturally, he testified, any of these securities would be favored by the market over the equity in a small company with nontraded securities, such as Carolina Water Service. With these factors in mind, and given various studies that have shown risk spreads between debt and equity capital varying from between 3% and 6%, witness O'Brien testified that he believes a cost of equity of 14.08% is appropriate. However, due to self-imposed time restrictions for filing, the Company employed several estimates in developing its proposed rates which resulted in a requested overall rate of return of 11.04% in its original filing rather than its calculated 11.78% recommendation. In the Company's proposed order, which reflects the Company's updated position presented in rebuttal testimony and its acceptance of several of the Public Staff's adjustments, the Company's final position results in an 11.6% overall rate of return recommendation. Based upon the Company's capital structure proposal of 53.54% debt and 46.46% equity and the proposed 11.6% overall rate of return, the resulting Company equity return recommendation would be 13.7%.

Public Staff witness O'Donnell testified on the cost of capital for the Public Staff. Witness O'Donnell derived an overall rate of return on rate base by combining the risk free rate on five-year U.S. Treasury notes with a three percentage point factor to adjust for risk. Witness O'Donnell estimated the risk free rate to be 8.6%, which, when combined with the three percentage point risk factor, produces an 11.6% overall rate of return to be allowed on the pro forma approved rate base. The Public Staff recommended a capital structure consisting of 50% debt and 50% equity. When the 11.6% rate of return is applied to the capital structure of the Public Staff assuming a 9.78% cost of debt, the return on equity calculated is 13.42%.

The Commission has analyzed the recommendations of both the Company and the Public Staff. The Commission agrees with the parties that the embedded cost of debt is 9.78%; agrees with the Public Staff that a capital structure consisting of 50% debt and 50% equity is reasonable; and agrees that an 11.6% return on pro forma rate base resulting in a return on equity of 13.42% is warranted in view of the evidence in this case. Such a capital structure and rates of return lie within in the zone of reasonableness for a Company such as Carolina Water Service at this time.

Based upon the rate base, operating revenues, expenses, and rates of return as previously determined and set forth in this Order, the Commission

concludes that the Company should be allowed an increase in its annual gross service revenues of $663,070. This increase will allow the Company the opportunity to earn the 11.6% overall rate of return which the Commission finds to be reasonable.

The following schedules summarize the gross revenues and rate of return that the Company should have a reasonable opportunity to achieve based upon the increases approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and hereinafter found fair by the Commission.

SCHEDULE I
CAROLINA WATER SERVICE, INC.
OF NORTH CAROLINA
Docket No. W-354, Sub 69
STATEMENT OF RATE BASE AND RATE OF RETURN
COMBINED OPERATIONS
For the Test Year Ended December 31, 1987

Item	Amount
Plant in service	$28,870,605
Add - Debit balance in deferred taxes	160,820
Less - Accumulated depreciation	2,044,843
Plant acquisition adjustment	1,123,298
Customer deposits	65,086
Advances in aid of construction	316,950
Contributions in aid of construction	15,614,993
Excess book value	1,854,024
Deferred taxes	497,669
Add - Working capital allowance	277,121
Deferred charges	258,328
Original cost rate base	$ 8,050,011
Rates of Return:	
Present	5.72%
Approved	11.60%

SCHEDULE II
CAROLINA WATER SERVICE, INC.
OF NORTH CAROLINA
Docket No. W-354, Sub 69
STATEMENT OF OPERATING INCOME
COMBINED OPERATIONS
For the Test Year Ended December 31, 1987

Item	Present Rates (a)	Increase Approved (b)	After Approved Increase (c)
Operating Revenues:			
Service revenues	$3,775,988	$663,070	$4,439,058
Reserve for effect of TRA-86	(143,110)	143,110	-
Miscellaneous revenues	94,115	4,774	98,889
Uncollectibles	(56,891)	(9,817)	(66,708)
Total operating revenue	3,670,102	801,137	4,471,239
Operating Expenses:			
Operation and maintenance	1,828,590	-	1,828,590
General	794,964	-	794,964
Depreciation and amortization	270,553	-	270,553
Total operating expenses	2,894,107	-	2,894,107
Taxes other than income taxes	274,766	30,179	304,945
State income taxes	7,531	53,967	61,498
Amortization of ITC	(905)	-	(905)
Federal income taxes	34,018	243,776	277,794
Total operating expenses and taxes	3,209,517	327,922	3,537,439
Net operating income for return	$ 460,585	$473,215	$ 933,800

SCHEDULE III
CAROLINA WATER SERVICE, INC.
OF NORTH CAROLINA
Docket No. W-354, Sub 69
STATEMENT OF CAPITALIZATION AND RELATED COSTS
COMBINED OPERATIONS
For the Test Year Ended December 31, 1987

Item	Capitalization Ratio (a)	Original Cost Rate Base (b)	Embedded Cost (c)	Net Operating Income (d)
		Present Rates		
Long-term debt	50.00%	$4,025,005	9.78%	$393,645
Common equity	50.00%	4,025,006	1.66%	66,940
Total	100.00%	$8,050,011		$460,585
		Approved Rates		
Long-term debt	50.00%	$4,025,005	9.78%	$393,645
Common equity	50.00%	4,025,006	13.42%	540,155
Total	100.00%	$8,050,011		$933,800

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence supporting this finding of fact is found in the testimony and exhibits of Public Staff witness Haywood and Company witness O'Brien and Commission Orders and Company filings in Docket No. W-354, Sub 69, and M-100, Sub 113.

Public Staff witness Haywood recommended that the Company refund the amounts collected in the deferred account related to TRA-86. Witness Haywood stated that the Commission initiated Docket No. M-100, Sub 113, to determine the effects of TRA-86 on the cost of service and to quantify the tax savings derived from TRA-86. Witness Haywood stated that, if the benefits of the tax savings are not flowed through to ratepayers, those benefits would otherwise flow to the Company's stockholders.

The Attorney General in its proposed order agreed with the Public Staff that the tax savings arising out of TRA-86 must be refunded. Additionally, the Attorney General submits that unless and until it is judicially determined that the procedural and substantive requirements that the Commission mandated in Docket No. M-100, Sub 113 are unlawful, the Applicant must be held to the terms and conditions stated therein.

The Company's original position was that the monies in the deferred account should not be refunded to ratepayers. Company witness O'Brien stated that one of the reasons he was opposed to refunding the monies in the deferred account was that to reduce future rates for the overcollections of taxes constitutes retroactive ratemaking. Public Staff witness Haywood stated that the Commission Orders in Docket No. M-100, Sub 113, requiring refunds did not constitute retroactive ratemaking since the utilities' rates, based on a higher tax rate than under TRA-86, were made provisional January 1, 1987.

Another reason for not refunding the amount in the deferred account cited by Company witness O'Brien was that the Company had underrecovered its cost of service. Witness O'Brien asserted that the Public Staff's own exhibits showed that the Company had not earned its authorized rate of return. On rebuttal cross-examination, however, he agreed that the ratepayers should benefit from the tax savings to the extent that the Company did and, therefore, that the tax benefit should be based on the 1987 actual earnings rather than on tax savings based on rates set in Docket No. W-354, Sub 39. Nevertheless, witness O'Brien stated on cross-examination that he was not sure how to calculate the tax savings based on actual earnings data. He did state that he thought the numbers in the Company's Annual Report would be a good starting point for the calculation.

Public Staff witness Haywood testified that the last test year, at which the current rates were set, was the appropriate model to use in determining the tax savings to be flowed to ratepayers. She stated that if the Company was not earning an appropriate rate of return it would not be due to TRA-86, since the Company would be in the same position as it was before TRA-86. She testified that her exhibits did not reflect the actual 1987 earnings since they reflected pro forma adjustments to revenues and expenses such as the 1988 pro forma 6.5% salary increase.

On January 17, 1989, the Court of Appeals of North Carolina filed an Opinion in State ex rel. Utilities Commission v. Nantahala Power and Light, _____ N.C. App. _____ (1989), reversing certain Orders entered by the Commission in Docket No. M-100, Sub 113, regarding TRA-86. The Commission is in the process of studying this Opinion to determine its implications with respect to Carolina Water Service and, in particular, the water and sewer industry in this State. Therefore, the Commission concludes that it is appropriate to defer a ruling at this time on whether Carolina Water Service should be required to refund to its ratepayers the deferred revenues related to TRA-86 that have been collected in the deferred account. The Commission will rule on this matter by separate order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence for this finding is found in the testimony of Company witness O'Brien, Public Staff witness Lee, and public witnesses. Several customers testified at the hearings held in this proceeding and raised concerns that the Company's statewide uniform rates resulted in customers paying rates to unjustly subsidize service for customers in other areas. During redirect examination, witness Lee stated that the Public Staff might have been able to make additional plant adjustments if the Company's records had clearly identified investment, expense, and contributions on an individual system basis rather than all lumped together on a statewide basis. Witness Lee testified that the Company keeps the transactions for all systems in one ledger in its Northbrook, Illinois, home office. He further stated that he believes that the Company can, without too much difficulty, begin keeping accounting records on an individual system basis. Witness Lee testified that the Company's records are set up by assigned system account numbers, and the Company should be able to run year-end computerized ledgers for each system based on account numbers for expenses and various plant activities. Witness Lee further recommended at the hearing that the Company should provide individual data related to each system. He suggested that the advanced computerized system utilized by the

Company should be able to produce such informational data with limited effort and little difficulty. It is the Public Staff's opinion that the issue of statewide uniform rates warrants study to determine if such rates are unreasonably discriminatory.

Company witness O'Brien testified that uniform statewide rates have been in effect in North Carolina, as in most of the other states in which the Company operates, for many years. The uniform statewide rate structure has arisen after input and recommendation from the Company, the Public Staff, and the Commission itself. The uniform rate structure is based upon the principle that the resources, both financial and operational, available to a large diverse system can be used to provide service in the most efficient and least costly manner. Witness O'Brien acknowledged that, in any given period, revenues received from one area within the system may be used to subsidize revenues paid in another system where cost of service is unusually high. However, witness O'Brien testified, during other periods the subsidization flows in the other direction, and, on balance, there is a far greater stability in rates. For example, if the customers in Brandywine Bay or Cabarrus Woods were forced to bear all of the cost of the system improvements that the Company is currently undertaking in those areas, their rates would rise excessively in this case. Under the uniform rate structure, this wide fluctuation in the degree of rate increases is averaged out. According to the Company, it has relied upon past positions taken by the Public Staff and the Commission to structure its accounting procedures and operations to take advantage of the uniform system concept. The uniform rate structure permits the Company to avoid the time and expense of maintaining books on a system-by-system basis and of justifying rate increases for each individual system. It is the Company's position that it is unnecessary to keep separate system costs before determining whether to maintain the uniform rate structure.

The Commission has taken into account all the statements made by customers of the Company and other evidence on this topic and determines that it is appropriate to continue establishing the Company's rates under the uniform rate structure. The Commission last examined this issue in its Order in Docket No. W-354, Sub 39, on January 10, 1986. In that case the Commission stated as follows:

> "Intervenor Village of Sugar Mountain challenged Applicant's practice of determining rates on a statewide basis, believing that under such a system larger, older, better-established systems incorrectly subsidized other systems. Staff witness Lee stated that it had been the Commission's policy to encourage the use of uniform rates for utilities. Witness Lee further stated that while there might indeed be some subsidization between systems, those who received the subsidy would change from time to time, and that creating a statewide system created a system with the financial resources to solve problems which a smaller system might be unable to address. Witness O'Brien similarly noted that an individual system could be supported faster and more economically with the financial backing of a unified entity. Based upon the foregoing and the record as a whole, the Hearing Examiner concludes that the treatment of Applicant as a single operating system for ratemaking purposes encourages economic efficiency and is reasonable for use herein."

No party has presented the Commission with sufficient justification for altering the policy that has been established for Carolina Water Service over many years. Even if the Commission were disposed to adopt a new rate structure for the Company, there is no evidence in this record that would warrant an alternative rate structure at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence supporting this finding of fact is contained in the Commission's files and records, the Commission's Order in the Company's last general rate case, Docket No. W-354, Sub 39, and in the testimony of Public Staff witness Lee and Company witness O'Brien.

One of the issues in the Company's last rate case was whether tap on and plant modification fees should be applied uniformly. This issue was discussed in depth by the Hearing Examiner in his Recommended Order in the last case. The following are excepts from that Order:

> "Staff witness Lee recommended that the tap-on and plant modifications fees proposed by the Company be modified to include the same restrictive clause that was included in the Order for Docket No. W-354, Sub 26; namely, that the tap fees are
>
> > '[a]pplicable only to taps made to new mains that are installed after the effective date of this Order. Previously existing and approved tap fees, however, shall be applicable to all service areas or sections of service areas served by existing plant and mains.'
>
> "The Commission similarly restricted the plant modification fee:
>
> "This fee shall be applicable only in those cases where plant or main modifications or expansion of mains is required in order to serve new development for which the Division of Health Services or other regulatory agency approval of plans and specifications relating to it has not been obtained as of the date of the Final Order in this docket and shall be charged to and payable by only the developer or builder who requests the modification or expansion of facilities for which fee is charged.
>
> "The Applicant objects to the addition of the proposed language. The Hearing Examiner notes that, as was asserted by Company witness O'Brien, such a restriction would result in varying fees from neighbor to neighbor--a system difficult to administer and likely to create unnecessary animosity. Further, this language would limit the Applicant's ability to charge the proposed fees when it is necessary to expand source of supply facilities to serve previously existing mains. Further, the concept of uniform rates presumes no differentiation in rate base. The imposition of a variety of circumstances by which tap fees are based circumvents that concept where there is no sufficient reason to do so. The difference in rate is therefore not justified and is unreasonably discriminatory. In the Order in Carolina Blythe Utilities Company, Docket No. W-503, Sub 2 (July 1, 1982), the Hearing Examiner found just such a

difference in tap on fees to be unreasonably discriminatory and a violation of N.C. Gen. Stat. 62-140 (1984). Based upon the foregoing and the record as a whole, the Hearing Examiner finds the proposed language to be counterproductive and denies its inclusion."

Evidence presented in the current proceeding indicates that the Company has charged the uniform tap on fee and plant modification fee to only a minority of the customers added since the last rate case. It appears that the uniform tap on fee and plant modification fee were charged primarily to customers connecting to systems or portions of systems where no contract prohibiting application of the uniform fees existed between the Company and developer. It also appears that in some cases new customers connecting on the same street were charged different fees. It also appears that the Company had existing contracts at the time its last rate case was being decided prohibiting application of uniform fees. Evidence presented in this proceeding and in filings by the Company since its last rate case indicate that the Company has entered into contracts prohibiting application of uniform tap on fees in the majority of systems added since the last rate case. The existence of these contracts contradicts the Company's argument and the decision rendered by the Hearing Examiner as in the last rate case previously noted.

Public Staff witness Lee has recommended that the tariff language be amended to state that the tap fee established in the tariff will be applicable unless provided for otherwise by contract approved by the Commission. Witness Lee testified that review of 1986 tap records revealed that in some cases the Company deviated from the approved uniform tap fees. These cases occurred where the Company had entered into contracts with developers specifying different tap fees. Witness Lee observed that the Company, by honoring contracts calling for different tap fees, may violate the uniform rates approved for the Company. Witness Lee expressed the opinion that language is needed in the Company's tariffs to allow for deviation from the uniform tap fees if the Company is going to be allowed to negotiate different agreements with the developers.

Witness O'Brien addressed witness Lee's suggestion in his rebuttal testimony and agreed that the change advocated by witness Lee to add the language "unless otherwise approved by contract" is appropriate. Witness O'Brien testified that the differing fee arrangements are generally submitted to the Commission in connection with new acquisitions or the formation of new service territories. Other contracts are negotiated that provide for "front-end" payments for sewage treatment plant expansion, additional wells or added water storage in lieu of tap fees. Witness O'Brien testified that the Company's efforts are designed to maintain a reasonable investment in line with the Company's historical cost per customer, to improve service to existing customers through installation of supplemental or stand-by facilities, and to recognize that a larger customer base in most areas will result in greater operational efficiencies. Witness O'Brien proposes tariff language that does not require prior Commission approval of contracts with different tap and plant impact fees. Witness O'Brien testified that the Company did not wish to usurp the provisions of its tariffs, but only to have the ability to negotiate the timing and manner in which the fees are paid. He testified that in negotiating with developers, timing is of the essence. Prior approval of the contract differences would be extremely costly, time-consuming and burdensome to the Commission. He testified that the propriety of the fees is most

efficiently addressed at the time of a general rate case. He stated that the Company would be willing to bear the risk of such process because the Company believes the contracts accomplish the intent of the tariffs and are designed to keep the Company's investment at a reasonable level.

The Commission has analyzed the arguments by the parties in favor of making this addition to the language contained in the tariff and hereby approves the language proposed by the Public Staff. However the Commission concludes that any contract should contain a clause, clearly shown, which provides that said contract is subject to Commission approval. A copy of each contract should be filed at the time the application for the franchise is filed.

The Commission further concludes that the Applicant should file a copy of each of its present contracts and a report specifying the amount of tap on fees and/or plant impact fees that can be charged in each system or portion of a system. This will be added to the tariff. Under the present tariff, it would be very difficult, if not impossible, for the Commission to determine those fees in any particular service area.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

The evidence for this finding of fact comes from the prefiled testimony of Company witness O'Brien.

According to Schedule No. 8.1 of the testimony of Patrick J. O'Brien filed on August 11, 1988, the Applicant has been charging rates in Rolling Hills Subdivision lower than those approved for the Company to charge. These lower unapproved rates produce a bill (based on 6,000 gallons) of $5.58 while the approved rates produce a bill of $19.00. The Applicant has neither asked nor received permission to charge rates different from its approved "uniform rates". In fact, the Applicant has firmly opposed in this and other rate hearings different rates for different service areas. Yet, in this proceeding, it has been discovered that the Applicant has not only been charging rates that vary from its approved "uniform rates", but has done so without Commission approval.

This matter was not an issue during the hearing. In fact, there was no testimony at all on the matter. However, the Commission feels that this matter should be addressed. The Commission cites G.S.§62-139(a) which states:

> "No public utility shall directly or indirectly, by any device whatsoever, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this Article, nor shall any person receive or accept any service from a public utility for a compensation greater or less than that prescribed in such schedules."

The Commission also cites G.S.§62-140(a) which states:

> "No public utility shall, as to rates or service, make or grant any unreasonable preference or advantage to any person or subject any

person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service."

The Commission further cites its Rule R7-24 which states:

"No utility shall charge or demand or collect or receive any greater or less or different compensation for sale of water, or for any service connected therewith, than those rates and charges approved by the Commission and in effect at that time."

The Company has made no showing why the Rolling Hills rates should be different from its rates elsewhere. It should be required to do so.

One problem that arises in addressing this issue is the matter of the Notice to the Public. In the Notice to the Public concerning this rate increase, the customers in Rolling Hills Subdivision were notified that their proposed rates would be the same rates that they were presently being charged; i.e., the lower unapproved rates.

Based on the above discussion, the Commission is of the opinion that the Company shall continue charging the lower unapproved rates for a period of six months. However, in determining the revenues produced by rates approved in this present proceeding, the Commission has calculated the Rolling Hills subdivision customers at the approved uniform rates. The Commission is further of the opinion that the Applicant be required to file data that would justify charging the lower rate in Rolling Hills Subdivision and the reason for initiating this lower unapproved rate without Commission approval. This Order will require Notice to the Rolling Hills customers of the decision herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

The evidence for this finding of fact is found in the testimonies of Company witness O'Brien and Public Staff witness Lee. Public Staff witness Lee maintains that there is no longer a need to have a tap fee and the plant modification fee since the Company can charge both fees to all taps under its approved tariff. Witness Lee recommends that these two fees be combined into one.

In rebuttal, Company witness O'Brien testified that it is advisable to retain the difference between the tap fee and the plant modification and expansion fee, but that the name of the plant modification and expansion fee should be changed to "plant impact fee". Witness O'Brien testified that the Company's contracts with developers sometimes prevent the Company from collecting tap fees and in other cases prevent the Company from collecting plant modification and expansion fees. Witness O'Brien maintains that if the two fees are combined into one, this may prevent the Company from complying or honoring its contracts with these developers. Witness O'Brien also testified that prior to the Tax Reform Act of 1986 plant modification and expansion fees were not taxable but tap fees were. He argued that in the event the tax laws revert to the pre-1986 Tax Reform Act provisions, it will be wise to maintain the distinction between tap fees and plant impact fees.

The Commission has examined the differences between the parties on the issue of combining the tap fee and plant modification and expansion fees. The Commission determines that the reasons advanced by the Company for maintaining these as separate charges are sufficient to retain the tariff as it presently exists. The Commission likewise agrees that the description plant impact fee is more accurate than the description plant modification and expansion fee and may reduce customer confusion and misunderstanding. The Commission therefore approves a change in the name of plant modification and expansion fee to plant impact fee.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25

The evidence for this finding of fact is found in the testimony of Company witness O'Brien, Public Staff witness Lee, and Hound Ears witness Carter. The parties differ over certain elements of rate design that should be adopted in this case. The Company proposes to charge a base facility charge for commercial and other customers ranging from $8.00 for a 5/8" by 3/4" meter to $200 for a 4" meter. Public Staff witness Lee in Lee Exhibit No. 5 proposes to change the rate design by charging commercial and other customers a base facility charge of $7.50 for all size meters. Witness Lee advocates charging a single commercial base facility charge and increasing the commercial tap fee based on estimated water or sewer usage. Witness Lee testified that the greater fixed costs imposed by commercial customers should be recovered through the tap fee because it is more appropriate for the Company to recover these costs as a contribution up front. Likewise, Hound Ears witness Carter argued that the base charge should be the same for all customers.

Company witness O'Brien testified in rebuttal that the rate design for commercial base facility charges should remain the same. This rate design concept utilized by the Company has evolved over the years and has been accepted by the Commission with only minor modifications. The current concept embodied in the rate design has been refined over the years to recognize differences in multi-family versus single-family requirements and to eliminate inclusion of a minimum number of gallons. The commercial base facility charge was last addressed in the Company's 1984 rate case, Docket No. W-354, Sub 26. In that case, the Company proposed a higher base facility charge for nonresidential customers based upon their average usage. The Public Staff objected to the Company's proposal on the theory that the commercial rate should be designed to recover the proportional demand that larger meters place on the system at peak times.

Witness O'Brien testified that over the years there has been little customer testimony opposing the rate design and there is no analysis to support a change now. He pointed out that a change now, based on the Public Staff's recommendation, will result in a rate decrease for commercial customers. He also testified that some commercial customers use the Company's services only for a back up to their own water supply or for fire protection purposes and that the change recommended by witness Lee will result in a decrease in rates to these customers while still requiring the Company to maintain the facilities to serve these customers when their supply goes out or when fire protection is needed. In response to witness Lee's suggestion that the commercial customers pay for the additional fixed costs through larger tap fees, witness O'Brien testified that the language in the Company's existing tariff for plant

modification and expansion fees already addresses this issue and that this language has been in place since 1978.

The Commission has carefully analyzed the differences between the parties on the commercial base facility charge issue. Based upon this analysis the Commission determines that it is appropriate to adopt the rate design proposed by the Company and reject the change proposed by the Public Staff. The Commission notes that witness Lee testified in Docket No. W-354, Sub 26, as follows:

> "The Company is proposing to relate the commercial base facility charges to the average consumption per meter size of the commercial meters and not on the demand the meter can place on the water system during peak periods. It is my opinion that the base facility charges for the commercial customers should be determined on the same criteria as for the residential customers; therefore, I recommend that such charges be related to the proportional demand that the larger meters can place on the system during peak demand periods. The base facility charges I have recommended above are based upon comparison of the safe maximum operation capacities of displacement type water meters recommended by the American Water Works Association standards."

In the Commission's opinion, while witness Lee's recommendations may have some merit, he has given insufficient reason for changing his recommendation in this case and insufficient explanation as to why the reasoning he advanced in the last case is now inappropriate. The Commission recognizes that commercial customers with substantially larger meters than residential customers can place a great demand on the Company's facilities during peak periods. The Company must maintain substantial investment in fixed costs to meet the demand placed upon its facilities by these customers at peak periods. For example, the Company must have sufficient lines and mains and production plant and sewage treatment capacity to meet the needs of these customers. Additionally, the Company must incur fixed operation and maintenance expenses in order to ensure that the plant is operational and sufficient to meet the demand placed by these customers at peak periods. These are costs the Company must bear irrespective of the average usage of commercial customers.

Witness Lee argues that the extra costs imposed by high volume customers be collected through tap fees when these customers are added to the system. However, the Commission notes that many of these commercial customers are already on the system, and the cost to serve them has not been recovered. Adoption of the Public Staff commercial charge will cause residential customers to pay part of these additional costs through their rates.

The Commission agrees with the Company that the commercial rate presently in place is based upon sound rate design principles and has served well in the past. The Commission deems it inappropriate to change this rate now based upon the reasoning advanced by the Public Staff in this case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

The evidence supporting this finding comes from the testimony of Hound Ears witness Randy Carter and Public Staff witness Lee. Witness Carter stated that Carolina Water Service has acted unfairly in seeking to apply meter and metered charges on the Hound Ears Club commercial customers which used a high volume of water and not to residences where meters would be less beneficial to Carolina Water Service. He further stated that residential users at Hound Ears would benefit from individual water meters in that the vast majority of such residential users do not spend much time at Hound Ears and do not consume much water. He stated that if the utility is permitted to pick and choose which customer it wished to select for meter installation, there would be a great distortion of rate structure and unfair enhancement of revenues to Carolina Water Service. He requested that Carolina Water Service should be compelled to install meters throughout the Hound Ears system and be consistent or not use meters at all and just charge a flat rate to everybody.

Witness Lee testified that the majority of Carolina Water Service customers are metered. He further stated that, in a resort area like Hound Ears Subdivision, a customer on a flat rate would pay more per year than he would if he were on a metered rate.

Company witness O'Brien testified that the Company seeks to charge the Hound Ears customers and other customers in certain of its mountainous subdivisions a flat rate because the systems were unmetered at acquisition and the cost of installation is so high that it would not be practical. Witness O'Brien presented an exhibit which indicated that the total cost for metering the Hound Ears residential customers would be approximately $95,000.

The Commission agrees with Mr. Carter's observations. The Commission concludes that all unmetered customers, not just in Hound Ears, should be metered to prevent unjust discrimination among water customers. The Commission cites its Rule R7-22(a) which states that "All water sold within the State of North Carolina . . . shall be by metered measurements." and R7-22(b) which states that "where it is impractical or uneconomical to install meters. . . service may be supplied unmetered. . ." The Commission feels that it is neither uneconomical nor impractical to meter the Company's flat rate customers. The Commission notes that only a few of the Company's systems are not metered. The Commission further concludes that the Company should file a report within four months specifying a schedule for installing meters. Said report should indicate a time table of installing meters to all unmetered customers not later than December 31, 1991.

Witness Carter also recommended that the Commission exclude Hound Ears Subdivision from this rate case because there has been no basis shown for including it while excluding other systems acquired during the test year. Witness Carter presented an exhibit which indicated that the Commission granted the Applicant the franchise for Hound Ears Subdivision on February 11, 1987, and that according to Company witness O'Brien the Company had excluded from this rate case all water and sewer systems acquired during the test year.

The Commission notes from its files that the Applicant filed its application for Hound Ears Subdivision in November of 1986. Witness Carter

presented an exhibit which indicated that the Applicant had billed the customers in Hound Ears Subdivision at least the entire year of 1987. It appears from that exhibit, that although Carolina Water Service did not receive final Commission approval of the transfer until February of 1987, it had in fact provided service in Hound Ears for the entire test year.

The Commission rejects the request of Witness Carter to exclude the Hound Ears Subdivision from the rate increase in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 27 AND 28

The evidence supporting these findings comes from the testimony of the numerous customers who appeared at the various public hearings and in the testimony of Company witness Demaree and Public Staff witness Lee.

While the Commission did not receive significant complaints from customers in the majority of the Company's service areas, it did receive significant complaints concerning poor water service in nine areas discussed as follows:

Cabarrus Woods Subdivision

Customers in Cabarrus Woods complained that their water has a foul taste, contains sediment, and causes staining of fixtures. Company witness Demaree acknowledged that this system has hard water. He also admitted under cross-examination that the new well that was drilled in late 1988 contains hard water and excessive manganese.

The Commission notes that Cabarrus Woods has had a history of water quality problems. While the water quality problems in Cabarrus Woods appeared in the last case to have been corrected, the overwhelming evidence is that these problems have reappeared.

The Commission is concerned that the Company is now proposing to add a new well which does not appear to have better quality of water than the existing wells. The Commission is also concerned that the ongoing expansion of the Cabarrus Woods system results in expanding the water quality problems to additional customers. The Commission is of the opinion that the Company should make improvements to correct the water quality problem by either adding filter systems or obtaining another source of water with better quality. The Commission concludes that the Company should file a report with the Commission within four months of the date of this Order specifying what actions the Company proposes for improving the quality of water.

Courtney Subdivision

Customers from Courtney Subdivision testified regarding staining problems and complained that the Company's solution was to distribute bottles of stain remover. Witness Demaree did not address Courtney problems in the testimony he presented at the close of the second Charlotte hearing. The Commission concludes that the Company should investigate the quality problems in Courtney Subdivision and file a report within four months of the date of this Order specifying the actions the Company proposes for improving the quality of water in Courtney Subdivision.

Danby Subdivision

Customers from Danby Subdivision complained of stains caused by excessive manganese and odor caused by hydrogen sulfide in the water. Witness Demaree addressed the hydrogen sulfide problem but not the manganese problem. He stated that the Company was trying to treat the hydrogen sulfide problem with chlorine. He further stated that if the chlorine treatment does not work, the Company would go to aeration treatment, which would be fairly expensive. He further stated that the Company did not want to go to aeration until it was sure that chlorine treatment will not work. The Commission concludes that the Company should investigate the problem and file a report within four months of the date of this Order indicating whether a manganese problem exists and whether chlorine treatment is solving the hydrogen sulfide problem.

Forest Ridge/Forest Crossing Subdivisions

Customers from Forest Ridge/Forest Crossing testified that their water is discolored and often has sewer odor smells. Witness Demaree acknowledged that the Company had received complaints of discolored water but failed to state what caused the problem and whether it has been solved. He also failed to address the sewage odor problem. It is the opinion of this Commission that the Company should file a report with the Commission within four months of the date of this Order addressing these problems.

Emerald Point Subdivision

Customers from Emerald Point testified as to deposits, sediments, and scum caused by excessive hardness of the water. Witness Demaree agreed that these problems existed. He also stated that the Company's contract with the developer called for the developer to install filters if needed and that the developer was refusing to do so. Witness Demaree further testified that the Company would give the developer until January 1, 1989, to commit to installing filters. If the developer does not commit to installing filters, then the Company will proceed with obtaining plan approval for the filters and proceed with installation. The Commission concludes that filters should be installed and that the Company should file a report with the Commission within four months on the progress of installing filters in Emerald Point Subdivision.

Mt. Carmel, Lee's Ridge, and Bent Creek Subdivisions

Numerous customers from Mt. Carmel, Lee's Ridge, and Bent Creek Subdivisions testified that they are experiencing serious water quality problems. These customers testified that their water is often discolored, stains their fixtures and clothes, and contains sediment. The Commission notes that these systems have had ongoing water problems. Even though the Company has installed water filters in an effort to reduce the excessive iron, the evidence in this case shows that these iron removal filters have not been able to solve the problems. Even after treatment, the iron content is too high and results in the numerous problems testified to by the customers in these subdivisions.

Witness Demaree made the following statement concerning the Mt. Carmel/Lee's Ridge systems: "It is a very difficult system to operate, very high iron system. We have filters on the wells. The system is a hilly

system. We have Lee's Ridge. We have a lower area. We have a high area up near the tank that has lower pressure than the people at the bottom that have perhaps 60 or 70 pounds more pressure at the lower part of the system. It is difficult to flush. It is difficult to maintain. There is a lot of difficulty. It is one of the most difficult systems that we have in the state to operate. That is our excuses. It is hard to operate. The system acts up and when it acts up, it seems it deteriorates slowly to a point that service is unacceptable." He made the following statements about Mt. Carmel: "We have more effort invested in this system than we do in our other systems. It's a very tough system to operate."

The customers in these subdivisions have suffered with iron problems for over ten years. The Commission concludes that the Company is incapable of controlling the iron by filtration and sequestration. The only viable solution is through an alternate source of water.

Evidence was presented that the Asheville Buncombe Water Authority is willing to negotiate to either purchase or sell water to these systems. The Company contends that it can correct the problems by refurbishing the existing water filters. The Commission doubts that refurbishing the filters will provide continuous, trouble-free quality water based on the past history of these systems using filter treatment. The Commission concludes that the most reasonable solution to solving the water quality problems in the Mt. Carmel, Lee's Ridge, and Bent Creek systems is for water to be supplied by the Asheville Buncombe Water Authority.

The Commission further concludes that the Company should proceed to negotiate with the Asheville Buncombe Water Authority to purchase water on a bulk basis. The Commission would further advise the Company that if Asheville Buncombe Water Authority is unwilling to sell them water, the Company would be well-advised to seek another source of water. This may include negotiating with Asheville Buncombe Water Authority for the sell of these systems. The Commission is further of the opinion that the Company should file a report within four months of the date of this Order addressing these matters.

The Commission also concludes that the existing rates should remain in effect in these three subdivisions until these systems are either connected to the Asheville Buncombe Water Systems or the Company has upgraded the system to provide an acceptable quality of water service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

Based on the Commission's findings hereinabove, concerning the Applicant's rate base, depreciation, and operating expenses, the Commission concludes that the Applicant should be allowed an increase in its water service revenues of $457,542 and its sewer service revenues of $205,528 in order to achieve an overall rate of return of 11.6%, which is fair and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Water Service be, and hereby is, authorized to adjust its rates and charges to produce an annual increase in its water service revenues of $457,542 and sewer service revenues of $205,528.

2. That the Schedule of Rates attached hereto as Appendix A be, and hereby is, approved for water and sewer utility service rendered by Carolina Water Service and said rates and charges shall become effective for service rendered on or after the effective date of this Order.

3. That Carolina Water Service shall undertake and complete the improvements to service and water quality mandated in the Evidence and Conclusions of Findings of Fact Nos. 27 and 28 of this Order. Until such time as service is improved as required by this Order, and until the Commission issues a further order on this matter, the existing rates for water and sewer service shall remain in effect in the following service areas:

Bent Creek, Lee's Ridge, and Mt. Carmel Subdivisions.

Carolina Water Service shall file a report with the Commission on or before May 31, 1989 outlining the improvements it has made pursuant to the Evidence and Conclusions for Findings of Fact Nos. 27 and 28 of this Order. Upon receiving this report, the Commission shall review these improvements and issue its further order.

4. That it is appropriate to defer ruling on whether Carolina Water Service should be required to refund to its customers the deferred revenues related to TRA-86 that have been collected and reflected in the deferred account and Carolina Water Service shall continue to keep these revenues in the deferred account until further order of the Commission.

5. That the Applicant shall file a copy of each of its present contracts and a report specifying the amount of tap on fees and/or plant impact fees that can be charged in each of its systems within 60 days after the date of this Order.

6. That the Notice to customers, attached hereto as Appendix B, shall be served on all the customers (except those addressed in Ordering Paragraph Nos. 7 and 8) affected by this rate increase by inserting a copy of Appendix B in the Company's next regularly scheduled billing statement following the effective date of this Order. Appendix A of this Order shall be attached to the Notice to the customers.

7. That with respect to Rolling Hills Subdivision, the Applicant shall continue to charge the rates that it is currently charging; provided, however, that the rates approved in this Order shall become effective in Rolling Hills Subdivision for service rendered on and after August 1, 1989, unless the Company demonstrates to the satisfaction of the Commission that good cause exists to charge rates in Rolling Hills Subdivision that are different from the rates for its other residential customers approved in this Order. The Company may make such showing of good cause in writing to the Commission on or before April 1, 1989, and may request a hearing on this matter. The Company shall serve on its customers in Rolling Hills Subdivision the Notice to Rolling Hills Customers, attached to this Order as Appendix C, at the time of their next scheduled billing cycle. Appendix A shall be attached to this Notice.

8. That with respect to Mt. Carmel, Lee's Ridge, and Bent Creek Subdivisions, the Applicant shall serve on its customers in these service areas

the Notice attached as Appendix D to this Order, instead of the Notice attached as Appendix B. Appendix A shall be attached to this Notice.

9. That the interim rates approved for the Company in this docket are just and reasonable and should be affirmed. The undertaking for refund filed by the Company is hereby discharged and canceled.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of February 1989.

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

APPENDIX A

SCHEDULE OF RATES
of
CAROLINA WATER SERVICE, INC., OF NORTH CAROLINA
For All Its Service Areas in North Carolina
Except Belvedere Plantation, Robin Lakes, Southern Plaza, Rollowingwood, Foxfire, South Haven, Lakewood, Rita Pines, Hickory Hills, Bellwood, Eastgate, Tanglewood Estates, Tanglewood South, Queens Harbor, and Wolf Laurel Subdivisions

WATER RATE SCHEDULE

METERED WATER RATES
Residential:

A. Base facility charge: $8.00 per dwelling unit. This $8.00 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

B. Base facility charge: $7.30 per month per dwelling unit when service is provided through a master meter and a single bill is rendered for the master meter, as in condominium complexes.

C. Commodity charge: $2.30 per 1,000 gallons for all metered water usage. ($1.25 for untreated irrigation water in Brandywine Bay).

D. Flat rate for unmetered single-family residence: $15.50
Flat rate for unmetered commercial customers: $15.50 per single family equivalent.

The Company will, for the convenience of the owner, bill a tenant. However, all arrearages must be satisfied before service will be provided to a new tenant.

Commercial and other:

A. Base facility charge:

5/8" x 3/4" meter	$ 8.00
1" meter	20.00
1½" meter	40.00
2" meter	64.00
3" meter	120.00
4" meter	200.00

B. Commodity charge: $2.30 per 1,000 gallons, or 134 cubic feet.

Availability Rates: Monthly charge per customer: $2.00
Applicable only to property owners in Carolina Forest and Woodrun Subdivisions in Montgomery County, until such time connection is applied for to the water system.

*Connection Charge (tap on fee): 5/8" meter - $100 ($300 in Hounds Ears Subdivision, however no water impact fee in this Subdivision)
Meters larger than 5/8" - Actual cost of meter and installation.

*Plant Impact Fee - $400 for 5/8" meter
Multifamily or commercial customers - to be negotiated on basis of equivalence to a number of single-family customers, but not less than $400, payable by developer or builder.

Tap and Plant Impact Fee: The Tap on Fee and Plant Impact Fee are subject to the Gross Up Multiplier provisions of the North Carolina Utilities Commission, Docket No. M-100, Sub 113.

New Water Customer Charge: $22.00

Reconnection Charge:
If water service cut off by utility for good cause: $22.00
If water service discontinued at customer's request: $22.00
(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected.)

* Unless provided differently by contract approved by Commission.

SEWER RATE SCHEDULE

Residential:
Flat rate per month per dwelling unit: $20.50
Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

Commercial and Other: (Metered-Commercial and other nonresidential)
100% of water service subject to a minimum rate of $20.50 per month. Customers who do not take water service will pay $20.50 per single-family equivalent.

New Water and Sewer Customer Charges: New Sewer Customer Charge: $16.50
(If customer also receives water service, this charge will be waived.)

*Connection Charge (tap on fee):
Residential - $100.00 per single family dwelling unit.
($300.00 in Hound Ears Subdivision and $700.00 in Corolla Light Subdivision, however no impact fees in these subdivisions)
Commercial - Actual cost of connection

*Plant Impact Fee: - $1,000 for single family customers. $1,456 in Brandywine Bay
Multifamily or commercial customers: To be negotiated on basis of equivalence to a number of single family customers, but not less than $1,000 payable by developer or builder.

*Tap and Plant Impact Fee: The Tap On Fee and Plant Impact Fee are subject to Gross Up Multiplier Provisions of the North Carolina Utilities Commission, Docket No. M-100, Sub 113.

Reconnection Charge:
If sewer service is cut off by utility for good cause, the actual cost of disconnection and reconnection will be charged. The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish this estimate to customer with cut-off notice.
This charge will be waived if customer also receives water service from Carolina Water Service.

* Unless specified differently by contract approved by Commission.

OTHER MATTERS

BILLS DUE: On billing date.

BILLS PAST DUE: 21 days after billing date.

FINANCE CHARGE FOR LATE PAYMENT: 1% per month for balance due 25 days after billing date.

CHARGE FOR PROCESSING OF NSF CHECK: $7.00

BILLING FREQUENCY:
Bills shall be rendered bi-monthly in all service areas except Carolina Forest, Woodrun, Misty Mountain, Crystal Mountain, Ski Mountain, Pine Knoll Shores, Sugar Mountain, High Meadows, Bear Paw, Hound Ears, and Corolla Light, where bills shall be rendered quarterly. Availability charge in Carolina Forest and Woodrun will be billed semi-annually.

APPENDIX B

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc., of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Increase Rates for Water and Sewer Utility Service in Its Service Areas in North Carolina	NOTICE TO THE PUBLIC

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an Order granting increased rates for Carolina Water Service in the majority of its water and sewer systems in North Carolina. The rates are fully described in Appendix A attached hereto.

The Commission issued its decision following hearings in Raleigh, Charlotte, Asheville, New Bern, and Pine Knoll Shores at which a number of customers appeared and offered testimony. The Commission Order found that the service provided by Carolina Water Service to its customers is adequate; however, the Order noted that problems exist in several of the Company's systems. The Commission ordered the Company to take appropriate steps to correct these problems. These systems include Cabarrus Woods, Courtney, Danby, Forest Ridge/Forest Crossing, Emerald Point, Mt. Carmel, Lee's Ridge, and Bent Creek Subdivisions.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of February 1989.

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

APPENDIX C

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc., of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Increase Rates for Water and Sewer Utility Service in Its Service Areas in North Carolina	NOTICE TO THE ROLLING HILLS CUSTOMERS

Notice is hereby given that the North Carolina Utilities Commission has approved the rates shown on the Schedule of Rates, attached hereto as Appendix A for most of its service areas in North Carolina.

These new rates would increase the average monthly bill for water utility service for the customers in Rolling Hills Subdivision from approximately $5.60 to approximately $21.80 based on 6,000 gallons of water usage.

These rates shall become effective in Rolling Hills Subdivision for service rendered on and after August 1, 1989, unless Carolina Water Service establishes to the satisfaction of the Commission that the rates in Rolling Hills Subdivision should be different from the rates charged to its residential customers elsewhere in North Carolina.

The Commission has recently become aware that Carolina Water Service has been charging rates lower than those approved to be charged to its customers in Rolling Hills Subdivision. The Commission is requiring Carolina Water Service to increase its rates in Rolling Hills Subdivision in order to bring the Company into compliance with the Commission Rule R7-24 which provides:

> "No utility shall charge or demand or collect or receive any greater or less or different compensation for sale of water, or any service collected therewith, than those rates and charges approved by the Commission and in effect at that time."

Any customer in Rolling Hills Subdivision who wishes to be heard on the rate increase proposed to become effective on August 1, 1989, may write to the North Carolina Utilities Commission at the following address, Chief Clerk of the Utilities Commission, Dobbs Building, Post Office Box 29510, Raleigh, North Carolina 27626-0510.

Those customers may also contact the Public Staff which is authorized by statute to represent the consumers in proceedings before the Commission. Written statements to the Public Staff should include any information which the writer wishes to be considered by the Public Staff in its investigation of the matter, and such statements should be addressed to Mr. Robert Gruber, Executive Director, Public Staff, Post Office Box 29520, Raleigh, North Carolina 27626-0520.

The Attorney General is also authorized by statute to represent the consumers in proceedings before the Commission. Statements to the Attorney General should be addressed to the Honorable Lacy H. Thornburg, Attorney General, c/o Utilities Commission, Post Office Box 629, Raleigh, North Carolina 27602.

This the 7th day of February 1989.

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

APPENDIX D

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc., of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Increase Rates for Water and Sewer Utility Service in Its Service Areas in North Carolina	NOTICE TO THE CUSTOMERS IN MT. CARMEL, LEE'S RIDGE, AND BENT CREEK SUBDIVISIONS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an Order granting increased rates for Carolina Water Service in the majority of its water and sewer systems in North Carolina. The rates are fully described in Appendix A attached hereto.

The Commission issued its decision following hearings in Raleigh, Charlotte, Asheville, New Bern, and Pine Knoll Shores at which a number of customers appeared and offered testimony. The Commission Order found that the service provided by Carolina Water Service to its customers is generally adequate; however, the Order noted that problems exist in several of the Company's systems. The Commission ordered the Company to take appropriate steps to correct these problems.

These problem systems include Mt. Carmel, Lee's Ridge, and Bent Creek Subdivisions. The Commission ordered that the Company's existing rates shall remain in effect in these three subdivisions until the improvements ordered by the Commission have been made.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of February 1989.

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

DOCKET NO. W-354, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application by Carolina Water Service, Inc., of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Increase Rates for Water and Sewer Utility Service in Its Service Areas in North Carolina	))))	ORDER ON RECONSIDERATION

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, March 28, 1989, at 9:30 a.m.

BEFORE: Commissioner William W. Redman, Jr., Presiding; and Commissioners Ruth E. Cook and Julius A. Wright

APPEARANCES:

For the Applicant:

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

For the Public Staff:

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

For the Attorney General:

Lorinzo Joyner, 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 February 7, 1989, the Commission Hearing Panel entered an Order in this docket granting Carolina Water Service, Inc., of North Carolina (Carolina Water Service or Company) a general rate increase and requiring the Company to undertake certain specified service improvements.

On March 9, 1989, Carolina Water Service filed a motion for reconsideration whereby the Commission was requested to reconsider certain decisions set forth in the Order of February 7, 1989. The Company also submitted a memorandum of law in support of its motion for reconsideration.

On March 10, 1989, and March 13, 1989, the Attorney General and the Public Staff filed their respective motions for reconsideration. Carolina Water Service filed a response to those motions on March 21, 1989.

By Orders entered in this docket on March 16, 1989, and March 21, 1989, the Commission scheduled an oral argument to consider the pending motions for reconsideration. At the oral argument on March 28, 1989, the Public Staff presented a written statement of its argument.

Upon call of the matter for oral argument at the appointed time and place, the parties were present and represented by counsel who offered oral argument in support of their respective motions for reconsideration.

WHEREUPON, the Commission now enters this Order on Reconsideration.

EXCESS PLANT INVESTMENT

The Company objects to the Commission's disallowance of a substantial portion of its investment in the Cabarrus Woods elevated storage tank and the Brandywine Bay sewage treatment plant expansion, as well as the disallowance of the Company's entire investment in the Danby sewage treatment plant expansion.

The Company argued that the Commission Order is not in accordance with G.S. 62-133(b)(1) which requires the Commission in setting rates to consider utility property that will be used and useful within a reasonable time after the test year. The Company, however, has not taken into consideration G.S. 62-133(c) which requires the Commission, in determining the proper rates, to not only take into account utility plant that will be used and useful within

a reasonable period after the test year, but also the probable revenues and expenses associated with that plant.

There was no evidence presented during the hearing which would enable the Commission to determine the probable revenues and expenses of the customers associated with these additional plant investments. Therefore, in regard to the Cabarrus Woods and Brandywine Bay expansions, the Commission properly included only that portion of new plant that was needed to serve the end of test year level of customers.

The Commission agrees with the Public Staff that Carolina Water Service has misinterpreted the case of State ex rel. Utilities Commission v. General Telephone Company of the Southeast, 281 N.C. 318, 189 S.E. 2d 705 (1972) as requiring that plant and expenses must be included in rate base, provided that such plant and expenses are known as of the end of the hearing. For example, Carolina Water reads General Telephone as requiring the inclusion of all of the cost of the elevated tank in Cabarrus Woods solely because the cost of that investment was known as of the end of the hearing, the tank was on line and will be used to serve customer needs in the near future. Carolina Water Service's interpretation is flawed as it gives no consideration to the matching concept used by this Commission.

It has long been the Commission's policy to match investment with the revenues and expenses associated with such investment. For example, if plant was added after the test year, it is only fair and appropriate to include such plant in rate base if the revenues that such plant will produce are also included. If the Commission only includes the plant but does not factor in new revenues produced by such investment, then the utility is overcompensated at the expense of its customers; that is, a proper matching of expenses and revenues has not occurred.

The inequity of including new plant in rate base without making a corresponding adjustment for revenues is especially egregious where the additional plant, such as in Cabarrus Woods, will meet not only short-term growth, but will also serve long-term growth and plant expansion into another area. Nothing in the General Telephone case requires that the Commission turn its head on the matching concept nor to include plant that is targeted primarily for plant expansion.

It is important to note that one of the main purposes of the elevated storage tank in Cabarrus Woods and the expansion of the Brandywine Bay and Danby sewage treatment plants was to allow Carolina Water Service to serve additional new customers. It is the Public Staff's position that it is improper to saddle present customers with the costs of expansion when the reason for expansion is to serve future customers. While the addition of the elevated storage tank does provide benefits to the present Cabarrus Woods customers such as greater pressure, the possibility of fire protection, and additional storage, the tank will also allow Carolina Water Service to serve new customers. The expansion of the sewage treatment plant in the Danby Subdivision provides no advantages to the existing customers in that subdivision and it was not needed to serve the end of test year level of customers. As such, it is proper to only include a portion of the investment in Cabarrus Woods reflecting the benefits accruing to test year customers and

it is improper to charge the existing ratepayers with any of the costs of the Danby system expansion.

The Company's Brandywine Bay sewage treatment plant expansion, as discussed in the Commission Order of February 7, 1989, was performed in good faith under the Company's purchase agreement resulting in an expansion which would benefit current ratepayers and future property owners in Brandywine Bay. At the end of the test year, there were 111 customers in Brandywine Bay Subdivision. The total capacity of the Brandywine Bay sewage treatment plant including the additions is 150,000 gallons and can serve approximately 375 customers. The Commission reaffirms its prior decision that only a portion of the investment in the Brandywine Bay sewage treatment plant should be included in rate base recognizing that the system can serve many additional customers beyond the test year level of customers.

Commission Rules R7-16 and R10-12 provide that the utility company may require developers and builders to provide funds in advance for expansion of water and sewer utility systems to serve new development. These rules allow for the developer to be reimbursed as tap-on fees are collected from new customers. By establishing these rules, the Commission has recognized that water and sewer utility companies should not be required to expand their service areas and systems at their cost and risk or at the cost and risk of their existing customers. Any expansions of systems by this Company at its cost without acquiring advance funding from developers have been decisions made by Company management on behalf of its stockholders. The Commission concludes that any risks assumed by the Company in such expansions should be borne by the stockholders and not the existing customers.

The Public Staff objects to the Commission allowing $78,898 of the Company's investment in the elevated storage tank in Cabarrus Woods and $97,437 of the Company's investment in the new sewage treatment plant in Brandywine Bay without removing the remaining investment in those plants that this new plant replaced. However, the Public Staff failed to quantify the amount it now seeks for the Commission to disallow (the unamortized amount of investment in the old plant) from rate base in this matter. Nor did the Public Staff sponsor any such adjustment at the hearing.

The Commission has allowed the old plant to remain in rate base because the Company indicated that the storage tank in Cabarrus Woods Subdivision is being used for chlorination and the old sewage treatment plant in Brandywine Bay Subdivision is being refurbished and will be put back into service when needed. The refurbishing of the old plant in Brandywine Bay does not require that the plant be classified as plant held for future use. Also, once refurbished, the old plant should provide back-up in case of any temporary failure of the new plant.

Based upon the foregoing, the Commission reaffirms its decisions made in the February 7, 1989 Order on these matters.

DANBY SEWER PLANT - ADMISSION OF LATE-FILED EXHIBIT

Carolina Water Service argues that the Commission's disallowance of the Company's investment in the Danby sewage plant expansion was made upon improper procedure and violated the Company's right to due process. This contention is

without merit as the Company was clearly afforded numerous opportunities to argue this issue.

During the Public Staff's cross-examination of the Company on rebuttal, the Company was requested to provide the Commission with information on the cost of the Danby sewage treatment plant expansion, the capacity of such expansion, and the number of customers such expansion would serve. The Public Staff made it explicitly clear at the time why it wanted this information; that is, to get the Commission to disallow the costs of this sewer plant expansion. The Company knew why the Public Staff wanted the information and vehemently objected. The Commission overruled the Company's objection and required the Company to file a late-filed exhibit presenting the requested information. The exhibit was provided by the Company to the Public Staff. It was then filed with the Commission on December 29, 1988, by the Public Staff as a late-filed exhibit. In its reply brief and motion for reconsideration, the Company objected to the conclusions drawn by the Public Staff from this exhibit. However, Carolina Water Service did not specifically object to the Public Staff's request on December 29, 1988, to have the late-filed exhibit admitted in evidence and did not ask for the hearing to be reopened for the purpose of cross-examining and/or discussing the late-filed exhibit. Having failed to request that the hearing be reopened, the Company cannot be said to have been deprived of its constitutional right to have been heard. In fact, the Company has been heard on this issue on at least the following occasions: (1) At the hearing, Carolina Water Service had the chance to justify its expenditures on the Danby sewage expansion (Carolina Water Service failed to avail itself of this opportunity); (2) Carolina Water Service was the one (not the Public Staff) to prepare the late-filed exhibit and could have included any editorial comments/arguments it wished; and (3) Carolina Water Service filed a reply brief subsequent to the Public Staff's filing of its proposed order taking issue with the Public Staff's recommendation to exclude the cost of the Danby sewage plant expansion.

For the reasons set forth above, the Commission finds good cause to deny Carolina's motion for reconsideration regarding this issue.

PAYROLL EXPENSES

Carolina Water Service, in its motion for reconsideration, requested that the Commission reconsider its treatment of the Company's payroll expenses relating to three specific Commission adjustments as follows:

Line No.	Item	Amount
1.	Excluded Martin Lashua's salary - Charlotte Supervisor	$(26,000)
2.	Excluded Harold McCarson's salary - Asheville operator	(10,500)
3.	Removed part-time operators' wages	(14,754)
4.	Commission adjustments to payroll expenses	$(51,254)

The first adjustment to operators' salaries relates to the Commission's removal of the salary ($26,000) of a new employee, Martin Lashua, hired in the Charlotte office. Martin Lashua replaced Mark Baum, in the Charlotte office, who was transferred to the Whispering Pines office as area manager. Eddie

Baldwin, who was the manager in the Whispering Pines area, was transferred to the Pine Knoll Shores coastal area to occupy a newly created position. The net effect of these internal transfers, according to Company witness Demaree, resulted in one additional employee's salary (Martin Lashua: $26,000) which should be allowed as an expense of this proceeding.

According to the Company's motion for reconsideration and its memorandum of law filed concurrently, the Company objects to the Commission's treatment of Martin Lashua's salary on the basis that in its opinion "G.S. 62-133 clearly permits post-test period increases in salary expense whether or not the increases were incurred to meet needs existing at the end of the test period or to meet growth occurring prior to the close of the hearing."

Based upon a review of the evidence presented on this matter, as discussed on page 36 in the Commission Order issued February 7, 1989, the Commission reaffirms its decision, therein, that with the hiring of Martin Lashua occurring in either August or September 1988, eight or nine months after the close of the test year (December 31, 1987), the new hire was more than likely hired due to growth in customers which have not been included in this proceeding. Therefore, the Commission found it appropriate to exclude this salary expense from the cost of service to avoid a mismatching of investment, revenues, and expenses since there was no evidence to make these matching adjustments. The Commission agrees with the Company that G.S. 62-133 permits inclusion of post-test period increases in expenses. However, the Commission likewise finds that this same general statute also permits consideration of the related changes in revenues and investment which were not available in the record.

The next adjustment to operators' salaries relates to the Commission's removal of the salary ($10,500) of a new employee, Harold McCarson, hired in 1988 for the Asheville area. Witness Demaree testified that a new employee, Harold McCarson, was added with one-half of his salary being allocated to the Company's Mt. Carmel and Bent Creek systems and one-half allocated to the Sherwood Forest system which is not included in this rate case. Witness Demaree proposed to include as a pro forma adjustment one-half of Harold McCarson's salary ($10,500) in addition to the pro forma salaries proposed by the Public Staff.

The Company objects to the Commission's salary adjustment in this regard and stated in its memorandum of law, filed along with its motion for reconsideration, that: "The panel disapproved the prorated portion of the McCarson's salary apparently on the mistaken assumption that 3.28 or 3.78 employees serving in the entire western part of the State (including a subdivision near Murphy) were available to serve within the immediate vicinity of Asheville where 2½ employees are needed."

According to the evidence as discussed on pages 36 and 37 of the Commission's February 7, 1989 Order, Company witness Demaree testified that it is necessary to have two full-time operators in the Asheville area (Tr. Vol. 8, p. 18), not two and one-half as stated by the Company in its motion. The Commission has again reviewed the evidence in this matter and reaffirms its prior decision. The Commission examined Public Staff witness Lee Exhibit 2, page 7 of 7, and Public Staff witness Haywood Exhibit 1, Schedule 3-1, and found that the Public Staff's proposed pro forma operators' salaries included

3.28 employees operating in the Asheville area. As reflected on witness Lee's aforementioned exhibit and in his testimony (Tr. Vol. 6, p. 120), the systems in the Asheville area which were a part of the rate case were Bent Creek and Mt. Carmel (includes Lee's Ridge) in Buncombe County and Bear Paw in Cherokee County. It is the Commission's understanding, now, that it is the Company's position that the operator of the Bear Paw system is not to be considered in the Company's recommendation that two employees are needed to operate the Bent Creek and Mt. Carmel systems which are in the immediate vicinity of Asheville. Based upon witness Demaree's testimony that Howard Allen operates the Bear Paw system, the Commission would remove 67% of Mr. Allen's time which was previously included in the 3.28 employees resulting in 2.61 employees for Bent Creek and Mt. Carmel. Additionally, upon further review of Lee Exhibit 2, page 7 of 7, the Commission recognizes that 8% of Mr. Halford's time for supervision is allocated to the Bear Paw system, which would result in 2.53 employees remaining to serve the Bent Creek and Mt. Carmel systems. Therefore, the Commission concludes that it has still included more than enough employees to cover the Company's requirement that 2 employees are needed in the immediate Asheville area and no further adjustment is needed.

The final adjustment ($14,754) to operators' salaries relates to the Commission's adjustment to remove part-time operators' salaries from its pro forma annualized salary adjustment since these particular salaries are included in the Company's pro forma test year maintenance expense. In its motion for reconsideration, the Company objects to this adjustment on the basis that ". . .the removal of $14,754 as part-time operators' salaries is inappropriate because it was based on information presented in the Public Staff's proposed order that was not contained in the evidence presented at the hearing."

Based upon the evidence before it in this regard, the Commission believes it has made a fair and reasonable decision and reaffirms it. The record shows through Haywood Exhibit 1, Schedule 3-1, that the Public Staff made an adjustment to remove part-time operators from its proposed level of operators' salaries and wages expense to be included in the cost of service. Furthermore, a review of the testimony and exhibits of Company witnesses O'Brien and Demaree, pertaining to their disagreements with the Public Staff's salary adjustments, reveals no indication that the Company had any problem with this adjustment. Thus, at the hearing, it was an issue, uncontested by the Company, and, the Company therefore failed to show that the adjustment should be other than as proposed by the Public Staff. The Company in its motion for reconsideration did not specifically attack the merits of the Public Staff's adjustment, but rather has stated that the evidence relied upon is not in the record; the Commission believes it is. The Public Staff's statement in its proposed order, that its adjustment to the part-time operators salaries is necessary to avoid including these expenses in both maintenance expense and the operators' salaries expense, does not change what the Public Staff did in its prefiled testimony; it merely clarifies what was done. Furthermore, the adjustment was before the Company at the hearing, and they chose not to dispute it. The Public Staff is not required to argue an uncontested issue.

The evidence gathered by looking at Haywood Exhibit 1, Schedule 3-1, and O'Brien Rebuttal Exhibit 4, which both address operators' salaries expense, is that the Company begins with the Public Staff's total operators' salaries at line 22 of Haywood's exhibit showing that both the Company and the Public Staff add in the salary of the Pine Knoll Shores (PKS) area supervisor in coming to

their total operators' salaries which would include all operators both full-time and part-time. The Company then makes an adjustment of $23,647 to remove the wages of the PKS area supervisor that is included in maintenance expense on the books of the Company and the Public Staff removes the per books part-time operators' wages of $38,401, resulting in the net additional adjustment by the Public Staff of $14,754, which was not addressed by the Company. The initial inclusion of the part-time operators' salaries in the calculation of total operators' salaries, and then the removal of such, may appear awkward, but it is necessary to develop the Company's total operators' salaries for purposes of calculating adjustments to operating expenses charged to plant, payroll taxes, health insurance costs, and pension and other employee benefits. The Company's chart of accounts shows that part-time operators' wages would be included in a maintenance expense account. In the testimony of witness Demaree, he testifies that the salary expense of the PKS area supervisor is included in the maintenance expense account. Thus, the Commission concludes that this salary expense was removed from the Company's operators' salaries and wages expense to avoid including this expense twice in the cost of service. The evidence indicates that the Public Staff is fully aware of the Company's treatment to include the salary of the PKS area supervisor in the per books maintenance expense, and the Public Staff agrees with the Company on the appropriate level of maintenance expense except for one adjustment which deals with the issue of non-compliance fines. Thus the Public Staff's $38,401 part-time operators' salaries should obviously include the $23,647 for the PKS area supervisor and the Commission assumes it does, lacking any evidence to the contrary. The Commission, based upon the foregoing, concludes that the Public Staff's adjustment of $14,754 ($38,401 - $23,647) is appropriate to avoid the inclusion of these wages in both salary expenses and maintenance expenses.

1984 RATE CASE EXPENSE

The Commission allowed Carolina Water Service to include the costs of certain rate case expenses through the amortization of these costs with the inclusion of one year's amortization expense in operating revenue deductions and the inclusion of the unamortized balance in rate base as deferred charges. The rate case expenses which the Public Staff in its motion for reconsideration requests that the Commission disallow arose from costs incurred by the Company in presenting its 1983-84 rate case, Docket No. W-354, Sub 26. The unamortized balance of these costs on December 31, 1987 was $23,229, which the Company sought to include in rate base along with the inclusion of $11,612 in operating revenue deductions. The Company was amortizing these expenses pursuant to the Commission's Order in Docket No. W-354, Sub 39, over a five-year period, with amortization proposed to be complete in December 1990.

In its Order in Docket No. W-354, Sub 26, the Commission allowed the Company to include its estimated rate case expense of $35,000 over an eight-year period. In the Company's next rate case, Docket No. W-354, Sub 39, the Company requested permission to include in rates the effect of amortizing an additional $45,426 in rate case expenses which was the difference between the actual cost of $80,426 of the Docket No. W-354, Sub 26 rate case and the budgeted $35,000 established previously in that case. Public Staff witness Jacome agreed with the Company's proposal in Docket No. W-354, Sub 39, to allow the Company to include the amortization of its actual costs of Docket No. W-354, Sub 26 rate case expenses in the cost of service rather than the

Company's original estimate which was much lower. Witness Jacome recommended that the amortization period of the $35,000 budgeted amount be shortened from eight to five years and, likewise, advocated that the additional Docket No. W-354, Sub 26 rate case expense of $45,426 be amortized over a five-year period. The Commission accepted the recommendation of Public Staff witness Jacome. Now, in Docket No. W-354, Sub 69, the Company is of the opinion that it has not yet completed the amortization of all of these costs through rates. Therefore, the Company requested that this amortization continue in its current case.

The Public Staff testified that these costs would be fully amortized in December 1988 as, according to witness Haywood, one year's amortization goes into the rate case year, the year in which expenses were incurred. More specifically, since the test year was the 12 months ended December 31, 1984, in Docket No. W-354, Sub 39, the amortization would have begun in 1984 and ended in December 1988.

The Company was of the opinion that it does not begin collecting these costs through rates until the order approving rates goes into effect, and according to the Company, the full cost will not be amortized until the end of 1990. The Order in Docket No. W-354, Sub 39, was issued in January 1986, thus it is the Company's opinion that the amortization began in January 1986 and would end in December 1990.

The Commission agreed with the Company in this regard. However, the Commission concluded that the unamortized balance of $23,229 relating to the Docket No. W-354, Sub 26 proceeding should be amortized over three years. Therefore, the Commission concluded that the appropriate amount of amortization expense to be included in this proceeding was $7,743 with an unamortized balance of $15,486 to be included in rate base as deferred charges.

A somewhat similar scenario arose wherein the Company sought to include certain updated rate case expenses of its 1985 rate case, Docket No. W-354, Sub 39. However, regarding this particular proposal by the Company, the Commission agreed with the Public Staff's treatment; it would be improper to go back in time and allow these particular regulatory expenses which were incurred in 1985 and 1986. In the last rate case, the Commission had included in the cost of service what was believed, according to the evidence at that time, to be a fair and representative level of rate case expense which also reflected the update of previous rate case expenses.

The Public Staff argues in its motion for reconsideration that it is unable to make a distinction between the Commission's treatment of prior rate case expenses incurred in one particular rate case versus another rate case. The Public Staff further argued that to allow any type of recovery of prior rate case expenses would constitute unlawful retroactive ratemaking.

The Commission recognizes that there is in fact a clear distinction between these two proposals for rate case expenses. In Docket No. W-354, Sub 39, the Company sought to amortize the difference between the actual and budgeted costs of its last rate case, Docket No. W-354, Sub 26. The Public Staff agreed with this treatment, and the Commission accepted this treatment in finding a reasonable and representative level of rate case expense to be included in rates. Furthermore, the Public Staff did not appeal the Order in

Docket No. W-354, Sub 39. Because the Company has not yet collected all of these cost through rates, the Commission has allowed the amortization of these costs in the instant proceeding in establishing a reasonable and representative level of rate case expense to be included in rates.

Accordingly, the Commission upon reconsideration concludes that the rate case expense heretofore included in the cost of service, without objection by the Public Staff in Docket No. W-354, Sub 39, is reasonable and representative and finds no justification for changing its decision in this regard.

SETTLEMENT OF DEM PROCEEDING; LEGAL COSTS

In its Order of February 7, 1989, the Commission concluded that one-half of the settlement payments and costs, including attorney fees, incurred by the Company in settling two disputed cases with the Division of Environmental Management ("DEM") should be included as deferred charges for purposes of this rate case. The amount of this item allowed by the Commission was $6,199. These cases arose when DEM penalized the Company $22,000 for violations of the NPDES permit for the Beatties Ford sewer plant and $34,222 for violations of the NPDES Hemby Acres sewer plant permit. The Company instituted a contested case to challenge the basis for the fines. On June 22, 1987, DEM and the Company entered into an agreement of settlement under which the Company and DEM agreed to settle the dispute upon the Company's payment of $9,972 to DEM. This payment included a $3,000 payment for each contested case and reimbursement to DEM of approximately $4,000 for enforcement costs. Section 5 of the agreement specifically provided:

> "5. Settlement. This Agreement represents a settlement of disputed claims and is not to be deemed or construed as an admission of liability or of the truth of any fact by the DEM or Carolina Water Service."

The Company's legal fees for the DEM proceeding amounted to $5,525.

The Public Staff and the Attorney General, both at the hearing and in their proposed orders, opposed the inclusion of these DEM-associated items in the Company's test year operating experience. All parties cited and relied upon Utilities Commission v. The Public Staff, 317 N.C. 26 (1986) (the "Glendale case"). Further details on this matter may be found in the Commission's Order of February 7, 1989, on pages 29-31.

In approving one-half of the settlement payments and costs, including the legal fees, the Commission in its February Order agreed with the Company that ". . . under the facts of this case, the payments in settlement of the dispute with DEM and the costs associated with the contested cases are legitimate costs of undertaking utility business and should be recovered through rates. These payments are not fines." In deciding to include only one-half of these costs, the Commission recognized that the proceeding before DEM arose because of the Company's failure to fully comply with DEM requirements in the time and manner required by DEM. The Company had acknowledged that there were "technical violations" of its DEM permits. Nonetheless, as the Commission noted, DEM was willing to settle the dispute without requiring the Company to admit any liability or wrongdoing. The Commission then concluded:

". . . This issue has caused some difficulty for the Commission. Although the Company must bear part of the responsibility for the fines having been originally assessed, the Company acted prudently and in good faith in settling the cases with DEM. The Commission is of the opinion that it is equitable and appropriate that these costs should be shared equally by the ratepayers and by the stockholders of the Company." (Order of February 7, 1989, p. 31.)

In their motions for reconsideration, the Public Staff and the Attorney General requested the Commission to reconsider its decision on this issue. The Public Staff alleged:

"Ratepayers should not be expected to pay rates which include any expenses incurred due to a company's failure to comply with regulatory guidelines. Regulatory guidelines, such as DEM compliance standards, are intended to protect the customers of a utility as well as the environment."

The Public Staff termed as a "difference without a distinction" the conclusion that the monies were not paid as "penalties" or "fines" but were paid by way of compromise or settlement. The Public Staff further alleged: "The fact is that Carolina Water would not have had to pay any money to DEM if it had not violated DEM compliance standards."

The Attorney General took a position similar to that of the Public Staff. The Attorney General alleged:

"2. Allowing recovery of a portion of this administrative penalty is contrary to the long established policy of the Commission. The Attorney General has found no cases where this Commission has required ratepayers to pay any portion of fines or penalties assessed by regulatory agencies for violations of mandatory rules and regulations. Its position has been to view such expenditures as the responsibility of shareholders." (Motion of March 10, 1989.)

The Attorney General further contended: "There has never been a dispute about the existence of the violations; the only contest was the level of fines and penalties assessed by the Division of Environmental Management."

In its response to the Public Staff and the Attorney General, Carolina Water Service contended that these parties "mischaracterize the nature of the payments by claiming that they were made to satisfy the fines." The Company further pointed out that, unlike the Glendale case, there is no admission or finding of guilt or unlawful activity in the case now under consideration. The Company concluded: "The Commission should have permitted recovery of the entire cost of the compromise settlement."

Upon consideration of the Order of February 7, 1989, and the motions and responses of the parties relating to the reconsideration thereof, the Commission is of the opinion, and so finds and concludes, that its earlier decision on the DEM costs issue should be modified as hereinafter set out. First, the Commission addresses the settlement and enforcement costs paid by the Company in settlement of the DEM penalty cases. One of the difficulties initially faced by the Commission was whether to denominate these costs as

"fines", as contended by the Public Staff and the Attorney General, or as "compromise or settlement payments," as contended by the Company. The Commission, in its Order of February 7, 1989, agreed with the Company that the payments in settlement of the dispute with DEM were "legitimate costs of undertaking utility business and should be recovered through rates. These payments are not fines." (emphasis added.)

Upon further reflection, the Commission now has reason to reconsider its decision. Whether the payments to DEM are denominated as "fines" or merely as "settlement costs", the Commission agrees with the Public Staff and the Attorney General that to allow recovery of these payments would be contrary to normal regulatory treatment and Commission policy and would set a bad precedent. It is undisputed that the penalties assessed by DEM arose out of the violations of the Company's permits in the Beatties Ford and Hemby Acres service areas. The Company acknowledged that there were "technical violations" of its permits on the dates in question. The standards violated were adopted pursuant to G.S. 143-211 et seq., which was enacted to protect human health and to prevent injury to plant and animal life. It would be improper to require the class of people DEM sought to protect in instituting the administrative proceeding to pay for the DEM costs arising out of the violations, whether the payments are in the form of "fines" or "settlement costs", and whether or not there was an explicit finding of Company liability. Ratepayers could not have been receiving the level of service to which they are entitled under the Public Utilities Act if there was a violation of guidelines designed for their protection. The Commission is of the opinion that it is sound regulatory policy to exclude the Company's payment of $9,972 to DEM.

The Commission is further of the opinion, however, and so finds and concludes, that the entire amount of legal fees ($5,525) associated with the DEM proceeding should be allowed. In so deciding, the Commission must first address the decision of our Supreme Court in the Glendale case, which has been cited to us by all of the parties, including the Company, in support of their respective positions. In the Glendale case, the Commission allowed the water utility to include in its expenses the legal fees it incurred in contesting the amount of a penalty assessed by the Division of Health Services for violations by Glendale of the DHS rules and regulations. (As explicitly noted by the Supreme Court, Glendale did not contest the imposition of the penalty itself.) The Commission concluded that the legal fees were "a reasonable and necessary expenditure" of Glendale which was associated with its water service to its customers. The Supreme Court reversed the Commission and held: "Based upon the evidence presented, this conclusion is incorrect and constitutes an error of law under N.C.G.S. 62-94(b)(4)." In so deciding, the Supreme Court pointed out that the legal fees were incurred as a result of Glendale's failure to provide adequate water service and that "since these legal fees could have been avoided had Glendale initially carried out its responsibility of providing adequate water service to its subdivisions, this expense cannot properly be considered reasonable or necessary."

The Commission frankly recognizes that the arguments of the Public Staff and the Attorney General applying the Glendale decision to the issue sub judice bear close and serious consideration. The Commission is also of the opinion, however, that there is substantial merit in the arguments of the Company on the allowability of the legal fees at issue in this case. In the Glendale case, the Supreme Court stated that "whether certain legal costs are considered to be

operating expenses is determined by utilities commissions on a case-by-case basis and according to several guidelines." (Emphasis added.) These guidelines include whether the legal fees are a reasonable and necessary expense for the utility in providing its service (North Carolina), the specific benefit that the underlying legal proceeding will provide the ratepayers, whether the legal expenses are incurred in good faith, the actual outcome of the litigation, and whether the expenses could have been avoided through prudent management.

Unlike the Glendale utility, Carolina Water Service vigorously challenged the basis underlying the imposition of the DEM fines and instituted a contested case to challenge the fines, although it did acknowledge that there were "technical violations." The Beatties Ford and Hemby Acres systems had a long history of permit violations in the hands of former owners. After acquiring the systems, the Company, with DEM knowledge and cooperation, undertook improvements to the plants to bring them into compliance with permit requirements. In fact, the Company received notice of the Hemby Acres fines assessment just one month after DEM had issued a Special Order by Consent allowing continuation of the improvement program. O'Brien Rebuttal Exhibits 8 and 9. On June 22, 1987, the Company and DEM entered into the agreement of settlement under which the Company agreed to pay $9,972 to DEM ($3,000 for each contested case and approximately $4,000 for enforcement costs).

As more fully discussed in the Commission's Order of February 7, 1989, the Company's evidence disclosed that the Company settled the case in order to avoid the cost of a hearing and the procedures that would be necessary to fight the case through to conclusion. Prior to settlement the Company had spent $5,525 in legal fees. (The Company was also of the opinion that its challenge to DEM prudently avoided the substantial expense that would have been necessary to bring the plants into immediate compliance with any violations.)

The Commission concludes that the Company acted prudently and in good faith in incurring the legal fees in the DEM proceeding. The Company's challenge to the imposition of the fines clearly avoided payment of the substantial fines that DEM had originally assessed. No party has indicated that the legal fees were excessive. The evidence supports the Company's good faith in incurring the legal fees in the contested action. Apparently, DEM recognized merit in the Company's position by agreeing to settle the dispute for payments substantially lower than the fines initially assessed and under terms that imposed no liability or fault upon the Company.

Under the facts of this case, the Commission allows the full amount of the legal fees to be included. We do not construe the Glendale case, with its distinguishable facts, as preventing the inclusion of legal fees incurred by the Company in its good faith belief, subsequently justified, that it had a meritorious defense to the imposition of fines by DEM.

SYSTEM SPECIFIC DATA

The Public Staff in its motion for reconsideration requests that the Commission reconsider its decision to not require Carolina Water Service to maintain its books and records so that the Company can readily separate its investment, costs, and expenses for each of its individual systems.

The Commission, in its Order in this docket dated February 7, 1989, found that the Company should continue to charge rates based upon the principle of a uniform, statewide rate structure. The Commission further concluded that no party had presented the Commission with sufficient justification for altering the policy that has been established for Carolina Water Service over many years. Even if the Commission were disposed to adopt a new rate structure for the Company, the Commission concluded that there was no evidence in the record that would warrant an alternative rate structure at this time.

The Public Staff argues in its motion for reconsideration that until the Company is required to keep its records so as to identify its costs on a system-by-system basis, the Commission will have no means to determine if uniform rates are just or unjust. The Public Staff points out that the Company operates certain systems in the mountains of North Carolina where costs are high and also serves a number of systems in other areas of North Carolina where the cost of service is lower. Further, the Public Staff states that until the Company is able to present to the Commission system specific costs, the Commission will never be able to make an informed decision on the issue of whether it is fair and equitable to charge uniform rates to such divergent service areas.

As the Commission pointed out in its Order in this docket, the uniform rate structure is based upon the principle that the resources, both financial and operational, available to a large diverse system can be used to provide service in the most efficient and least costly manner. The Company acknowledged, that in any given period, revenues received from one area within the system may be used to subsidize revenues received in another system where cost of service is unusually high. However, as pointed out by witness O'Brien, during other periods the subsidization flows in the other direction, and, on balance, there is a far greater stability in rates.

Based upon the foregoing and the entire record in this regard, the Commission is not persuaded that any justification exists at this time to depart from its findings and conclusions heretofore reached in this regard.

CONVERSION OF UNMETERED SERVICE

On reconsideration, the Company objects to the requirement that Carolina Water Service install meters in all systems and eliminate all flat rate billings not later than December 31, 1991. The Company argues that the Commission has not established a rule eliminating all flat rate billing applicable to all water and sewer utilities in the State and that the Commission is singling out Carolina Water Service for disparate treatment.

The Company argued at the hearing on reconsideration that it is likely that another utility (Mid South) recently before the Commission for a rate revision will only be required to perform a feasibility study on installing meters. In that case, the Public Staff, in recommending a feasibility study of installing meters instead of recommending that the Company actually be required to install meters, indicated that one of the reasons for doing so was ". . .the flat rates being charged to the customer do not appear to result in unreasonable discrimination among customers. All flat rate systems serve year round customers not seasonal customers. Therefore, the situation does not exist where a seasonal customer would not have the benefit of only being

charged the metered base charge for months when his unit may be unoccupied due to seasonal usage." (Testimony of Jan A. Larsen, Utility Engineer, filed on February 22, 1989, in Docket No. W-720, Sub 94.) It should be noted, however, that the Public Staff has not recommended that Mid South be given blanket approval not to install meters on its flat rate systems. Instead, the Public Staff recognized that the character of most of Mid South's unmetered systems are different from those of Carolina Water Service and that it may not be practical or economically feasible to meter all of Mid South's flat rate systems. Some of those systems were taken over by Mid South at the request of DHS and the Public Staff, and with the blessing of the Commission in an effort to continue water service to the customers of those systems upon the failure of the prior owners. Some of those systems were installed in the late 1950's and early 1960's and have no plans or system maps locating mains and service laterals. Some of those systems were constructed with galvanized steel mains and service laterals which may be corroded and in a deteriorated condition. Furthermore, some of Mid South's unmetered subdivisions will be annexed in the relatively near future or are being paralleled by county water systems. In any event, the Public Staff has recommended that the Commission require Mid South to study each of its systems and propose which systems should be metered.

Commission Rule R7-22 requires that all water sold shall be by metered measurements unless it is impractical or uneconomical to do so. The Commission has previously found that it is not uneconomical for Carolina Water Service, a company with revenues of nearly $4,500,000 and a rate base in excess of $8,000,000, to meter all of its systems.

The Company has already metered the nonresidential customers in Hound Ears Subdivision. Thus, it is certainly not impractical to also meter the residential customers in that service area. The Commission hereby reaffirms its previous decision that Carolina Water Service should be required to meter all customers in Hound Ears Subdivision on the basis of the testimony offered by witnesses Carter and Lee. Carolina Water shall complete this metering not later than December 31, 1990.

The Commission further concludes, however, that it is reasonable and appropriate to grant Carolina Water Service's motion for reconsideration as to its other unmetered systems. The Commission has no knowledge of the age and engineering problems that may exist with regard to these systems, most of which, if not all, are in the mountains. For this reason, a feasibility study is in order. This study shall be filed by September 1, 1989, and shall indicate the name and location of each system, the age and material of the water laterals, whether or not there are cut-off valves and/or meter boxes on the customers' lines, the number of present and potential customers, the possibility of each system being annexed by a county or municipality in the foreseeable future, whether or not the system is a seasonal system, and the estimated cost of metering each system.

PRIOR APPROVAL OF NONUNIFORM TAP AND PLANT IMPACT FEES

The Company objects to the requirement that it obtain prior approval of all contracts between the Company and the developers which provide for developer advances that deviate from the Company's uniform tap and plant impact fees.

The Company argues that this requirement places it at a competitive disadvantage with other companies who are not subject to the same requirement.

The Public Staff argues that all companies should be treated the same concerning nonuniform tap and plant impact fees; that is, utilities should be required to get prior Commission approval before deviating from uniform tap and plant impact fees. The record in this case, however, showed that Carolina Water has consistently deviated from its uniform tariffed fees. While it is true that all utilities should generally be held to the same standard, other water and sewer companies have not consistently deviated from their uniform tap-on fees. Other companies, moreover, have been requiring the developers to pay the full cost for the installation or expansion of new systems as allowed in Commission Rule R7-16 and R10-12. This has relieved these companies of the financial burden of installation or expansion. Also, such policy has allowed these other companies to have lower depreciation expense, resulting in lower rates for their customers.

The point is that most if not all competing companies have generally maintained uniform policies of expansion when dealing with developers which have resulted in uniform treatment of their customers regarding recovery of investment and lower rates per customer. Carolina Water Service, however, enters into contracts to pay varying amounts for new customer connections and it seeks to include these varying amounts of investment per customer in its rate base to be recovered through uniform rates from all its customers statewide.

The Commission concluded in its Order of February 7, 1989, that ". . . any contract should contain a clause, clearly shown, which provides that said contract is subject to Commission approval. A copy of each contract should be filed at the time the application for the franchise is filed." G.S. 62-138(a), (d), and (e) provide that:

"(a) Under such rules as the Commission may prescribe, every public utility:

(1) Shall file with the Commission all schedules of rates, service regulations and forms of service contracts, used or to be used within the jurisdiction of the Commission; and
(2) Shall keep copies of such schedules, service regulations, and contracts open to public inspection.

* * *

"(d) The schedules required by this section shall be published, filed, and posted in such form and manner and shall contain such information as the Commission may prescribe; and the Commission is authorized to reject any schedule filed with it which is not in compliance with this section. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

"(e) No public utility, unless otherwise provided by this Chapter, shall engage in service to the public unless its rates for such service have been filed and published in accordance with the provisions of this section."

Carolina Water Service and all regulated water and/or sewer utilities are required to file as an exhibit (see No. 7 of required exhibits on page 6 of franchise application form) a copy of contracts or agreements between the applicant and other party (land developers, customers, etc.) regarding the proposed utility service, including contracts regarding tap fee, construction costs, easements and right-of-ways.

The Commission notes that the statute and required exhibit cited above have been requirements for many years. They are required of all utilities. The additional language required of Carolina Water Service is not inconsistent with this requirement.

The Commission is requiring the inclusion of language that all contracts are subject to Commission approval because the evidence shows that Carolina Water Service may be the only regulated utility which is "uniformly" varying from its "uniform" connection fees.

In summary, it is appropriate for the Commission to review Carolina Water Service's contracts. It is the largest water/sewer utility in the State. It is a rate base company whereas most of its competitors are operating ratio companies. It pays for new connections whereas its competitors generally require complete contribution of new systems by developers. Given that Carolina Water Service is willing to pay for new systems (versus requiring full developer contribution), it should have a competitive advantage over its competitors.

Based upon the foregoing and the entire record, the Commission reaffirms its decisions made in the February 7, 1989 Order on this matter. However, on April 4, 1989, Carolina Water Service filed a motion for an extension of time of 90 additional days in which to file a copy of each of its present contracts and a report on the amount of tap fees and/or plant impact fees that can be charged in each of its systems, as more particularly required in Ordering Paragraph 5 of the Commission's February 7, 1989, Order. The Commission is of the opinion that good cause exists to grant this motion.

WITHHOLDING RATE INCREASE PENDING IMPROVEMENTS

The Public Staff has requested the Commission to withhold the rate increase in Cabarrus Woods, Courtney, Danby, Forest Ridge/Forest Crossing and Emerald Point Subdivisions until Carolina Water Service has corrected the problems in these service areas.

The Commission, in its February 7, 1989 Order, required Carolina Water Service to make the improvements to service and water quality indicated on pages 61-63 of that Order. Carolina Water Service was also required to file a report within four months specifying the progress it has made in completing the needed improvements. The Commission will review these reports and, depending on the progress or success that Carolina Water Service is having in solving the problems in these service areas, may issue another order in these matters at that time. While these subdivisions do have problems, they are in no way as severe or as long-lasting as the problems that the customers have been experiencing in the Mt. Carmel, Lee's Ridge, and Bent Creek Subdivisions, in which the Commission withheld the rate increase.

The Commission, therefore, reaffirms its decision made in the February 7, 1989 Order, as it relates to withholding the rate increase pending the completion of service improvements.

SCHEDULES ILLUSTRATING THE COMPANY'S GROSS REVENUE REQUIREMENTS

The following schedules summarize the gross revenues and rate of return that the Company should have a reasonable opportunity to achieve based upon the increases heretofore approved in this Docket by Order issued on February 7, 1989, and as modified in this Order to reflect the Commission's change in its treatment of the DEM non-compliance fines issue. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore found fair by the Commission as well as the changes by the Commission upon reconsideration. The Commission concludes that the effect upon gross revenues of the Commission's decisions upon reconsideration are de minimis and do not result in a change in the Company's rate structure heretofore approved on February 7, 1989.

SCHEDULE I
CAROLINA WATER SERVICE, INC.
OF NORTH CAROLINA
Docket No. W-354, Sub 69
STATEMENT OF RATE BASE AND RATE OF RETURN
COMBINED OPERATIONS
For the Test Year Ended December 31, 1987

Item	Amount
Plant in service	$28,870,605
Add - Debit balance in deferred taxes	160,820
Less - Accumulated depreciation	2,044,843
Plant acquisition adjustment	1,123,298
Customer deposits	65,086
Advances in aid of construction	316,950
Contributions in aid of construction	15,614,993
Excess book value	1,854,024
Deferred taxes	497,669
Add - Working capital allowance	277,066
Deferred charges	256,549
Original cost rate base	$ 8,048,177
Rates of Return:	
Present	5.73%
Approved	11.60%

SCHEDULE II
CAROLINA WATER SERVICE, INC.
OF NORTH CAROLINA
Docket No. W-354, Sub 69
STATEMENT OF OPERATING INCOME
COMBINED OPERATIONS
For the Test Year Ended December 31, 1987

Item	Present Rates (a)	Increase Approved (b)	After Approved Increase (c)
Operating Revenues:			
Service revenues	$3,775,988	$662,295	$4,438,283
Reserve for effect of TRA-86	(143,110)	143,110	-
Miscellaneous revenues	94,115	4,768	98,883
Uncollectibles	(56,891)	(9,805)	(66,696)
Total operating revenue	3,670,102	800,368	4,470,470
Operating Expenses:			
Operation and maintenance	1,828,145	-	1,828,145
General	794,964	-	794,964
Depreciation and amortization	270,553	-	270,553
Total operating expenses	2,893,662	-	2,893,662
Taxes other than income taxes	274,766	30,145	304,911
State income taxes	7,568	53,915	61,483
Amortization of ITC	(905)	-	(905)
Federal income taxes	34,187	243,544	277,731
Total operating expenses and taxes	3,209,278	327,604	3,536,882
Net operating income for return	$ 460,824	$472,764	$ 933,588

SCHEDULE III
CAROLINA WATER SERVICE, INC.
OF NORTH CAROLINA
Docket No. W-354, Sub 69
STATEMENT OF CAPITALIZATION AND RELATED COSTS
COMBINED OPERATIONS
For the Test Year Ended December 31, 1987

Item	Capitalization Ratio (a)	Original Cost Rate Base (b)	Embedded Cost (c)	Net Operating Income (d)
		Present Rates		
Long-term debt	50.00%	$4,024,088	9.78%	$393,556
Common equity	50.00%	4,024,089	1.67%	67,268
Total	100.00%	$8,048,177		$460,824
		Approved Rates		
Long-term debt	50.00%	$4,024,088	9.78%	$393,556
Common equity	50.00%	4,024,089	13.42%	540,032
Total	100.00%	$8,048,177		$933,588

IT IS, THEREFORE, ORDERED as follows:

1. That, except as modified herein, the Commission Order heretofore entered in this docket on February 7, 1989, shall remain in full force and effect.

2. That, except as granted herein, the motions for reconsideration filed in this docket by Carolina Water Service, the Public Staff, and the Attorney General be, and are hereby, otherwise denied.

3. That Carolina Water Service shall meter all customers in Hound Ears Subdivision. Metering in Hound Ears Subdivision shall be completed by December 31, 1990.

4. That Carolina Water Service shall undertake a feasibility study of metering its remaining unmetered customers. This study shall be filed with the Commission by September 1, 1989, and shall indicate the name and location of each unmetered system, the age and material of the water laterals, whether or not there are cut-off valves and/or meter boxes on the customers' lines, the number of present and potential customers in each system, the possibility of each system being annexed by a county or municipality in the foreseeable future, whether or not the system is a seasonal system, and the estimated cost of metering each system.

5. That the effect upon gross revenues of the Commission's decisions upon reconsideration are de minimis and does not result in a change in the rate structure heretofore approved.

6. That the motion of Carolina Water Service, filed April 4, 1989, for an extension of time of 90 additional days within which to comply with Ordering Paragraph 5 of the Commission's February 7, 1989, Order, is hereby allowed.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of April 1989.

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

DOCKET NO. W-720, SUB 94
DOCKET NO. W-259, SUB 5
DOCKET NO. W-95, SUB 11
DOCKET NO. W-335, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Mid South Water Systems, Inc., Bethlehem Utilities, Inc., H.C. Huffman Water Systems. Inc., and Lincoln Water Works, Inc., for Authority to Increase Rates for Water and Sewer Utility Service in All of Their Service Areas in North Carolina	)	RECOMMENDED ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN: Council Chambers, City Hall, 76 North Center Street, Hickory, North Carolina on March 1, 1989.

Room 270, Charlotte-Mecklenburg Government Center, 600 East Fourth Street, Charlotte, North Carolina, on March 2, 1989.

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 14, 1989.

BEFORE: Hearing Examiner Wilson B. Partin, Jr., (Hickory and Charlotte only)

Commissioner Edward B. Hipp, Presiding, and Chairman Robert O. Wells and Commissioner Julius A. Wright (Raleigh only)

APPEARANCES:

For Mid South Water Systems, Inc., Bethlehem Utilities, Inc., H.C. Huffman Water Systems, Inc., and Lincoln Water Works, Inc.:

Jerry B. Fruitt, Attorney at Law, 1042 Washington Street, Raleigh, North Carolina 27605

For the Using and Consuming Public:

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

BY THE COMMISSION: On October 10, 1988, Mid South Water Systems, Inc. (Mid South), Bethlehem Utilities, Inc. (Bethlehem), H. C. Huffman Water Systems, Inc. (Huffman), and Lincoln Water Works, Inc. (Lincoln), filed the above-referenced application. (Hereinafter, the above-mentioned companies shall collectively be referred to as Applicants or Companies or individually as Applicant or Company.) In the application, the Applicants also requested interim rates. On October 20, 1988, the Applicants filed an amendment to the application.

On November 7, 1988, at the regularly scheduled Commission Conference, the Public Staff and the Applicants presented arguments concerning the Applicants' requested interim rates.

By Order dated November 10, 1988, the Commission declared the matter to be a general rate case, suspended the proposed rates, established interim rates, scheduled public hearings for March 1, 2, and 14, 1989, and required public notice. The March 1 and 2 hearings, held in Hickory and Charlotte, respectively, were set to receive testimony from public witnesses. The March 14 hearing, held in Raleigh, was set to receive testimony from the Applicants, the Public Staff, and public witnesses.

On November 14, 1988, the Commission, by Errata Order, corrected the Notice to the Public attached to the November 10, 1988, Order.

On December 7 and 13, 1988, the Companies filed the required Undertakings and Certificates of Service.

Several letters in opposition to the rate increase have been filed with the Commission.

On February 21, 1989, the Public Staff filed the Affidavit and Notice of Affidavit of George Sessoms, Director of the Public Staff's Economic Research Division. On February 23, 1989, the Applicants requested that Mr. Sessoms be available for cross-examination at the March 14, 1989, hearing.

On February 22, 1989, the Public Staff filed the testimony and exhibits of Jan Larsen, Utilities Engineer, and Todd Clapp, Staff Accountant.

The public hearings were held as scheduled. The following public witnesses appeared and testified:

At the Hickory Hearing -

Bethlehem Customers - Francis Shearer and Gene Means

Huffman Customers - Richard Thompson, Doyle L. Parker, Marjorie Mallonee, Bob Clodfellor, and William Worley

Mid South Customers - Pam Canipe, Emsley Armfield, Duane Lewis, Martin Noble, Gwendolyn McGill, and Todd Robinson

At the Charlotte Hearing -

Mid South Customers - (Ashe Plantation) Robert Hall, Daren Frazer, Michael Sherrill, Vickie Julian, Paul Hoffner, Robert Midiventeo, Sunny Bell, Gail Crew, Mariam Wright, Maryjean Peterman, Kim Hamilton, Bill Corbett, Keith Wagner, Robert Bunn, Phil McBryde, and Jeffrey Wright

At the hearing in Raleigh, the Applicants offered the direct and rebuttal testimony of Jerry H. Tweed, Executive Vice President of Mid South. The Public Staff offered the testimony of Jan Larsen, Todd Clapp, and George Sessoms.

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

FINDINGS OF FACT

Because this Order affects four separately certificated utilities, with four separate tariffs, and must satisfy basic legal and accounting requirements for each of these Applicants individually, the Commission has taken care to ensure that adequate findings of fact have been stated for each utility. The Commission is of the opinion that this cannot be done well in an entirely financially consolidated context. The Commission has endeavored to avoid unnecessary repetition.

1. The Applicants are public utilities as defined by G.S. 62-2(23), are subject to the jurisdiction of this Commission, and are properly before this Commission for a determination of the justness and fairness of their requested rates.

2. As of December 31, 1987, Mid South provided water service to approximately 3,731 customers in 92 subdivisions in 13 counties. Mid South provided sewer service to 382 customers in 12 subdivisions in five counties. Bethlehem provided water service to 295 customers in four subdivisions in Alexander County. Huffman provided water service to 476 customers in 11 subdivisions in three counties. Lincoln provided water service to 121 customers in one subdivision in Lincoln County. Collectively the Applicants served 4,623 water customers and 382 sewer customers.

3. As of December 31, 1988, the Applicants collectively served 5,190 water customers and 559 sewer customers.

4. The appropriate test year to be used in setting rates in these cases is the 12 months ended December 31, 1987.

5. The Applicants are providing generally adequate service. However, service to the following areas is inadequate and must be improved:

Mid South	
Ashe Plantation	Mecklenburg County
Green Road	Gaston County
Springhaven	Catawba County
Starbrook Park	Gaston County
Bethlehem	
Fairfield Acres	Alexander County
Huffman	
Crestmont	Catawba County
Herman Acres	Catawba County

6. Mid South's present, interim, and proposed rates, and the Public Staff's recommended rates are as follows:

	Present	Interim	Proposed	Public Staff's Recommended
WATER SERVICE (Metered Rates)				
Base Charge (based on meter size)				
Meter Size				
3/4" x 5/8"	$ 7.00	$ 8.00	$ 8.00	$ 7.00
3/4"	10.50	12.00	12.00	7.00
1"	17.50	20.00	20.00	7.00
1-1/2"	35.00	40.00	40.00	7.00
2"	56.00	64.00	64.00	7.00
3"	105.00	120.00	120.00	7.00
4"	175.00	200.00	200.00	7.00
6"	350.00	400.00	400.00	7.00
Usage charge/1,000 gals	$ 1.65	$ 2.00	$ 2.50	$ 1.72
WATER SERVICE (Flat Rate)				
Residential				
Woodlawn Subdivision/month	$ 8.00	$ 13.00	$ 15.00	$ 10.96
All other service areas/month	11.00	13.00	15.00	10.96
Nonresidential				
Woodlawn Business	$ 10.00	$ 15.00	$ 20.00	$ 14.70
Woodlawn Motel	35.00	53.00	70.00	51.00
Woodlawn Restaurant/ Lumberyard	42.00	63.00	84.00	62.00
Woodlawn Manufacturing	75.00	113.00	150.00	110.00

	Present	Interim	Proposed	Public Staff's Recommended
SEWER SERVICE				
Metered (Residential)				
Autumn Chase/1,000 gals	$ 1.50	$ 1.50	$ 2.00	-
Base charge	-	-	-	$ 7.00
Usage charge/1,000 gals	-	-	-	1.50
Metered (Nonresidential)				
(% of water bill)	100%	100%	100%	-
Base charge	-	-	-	$ 8.00
Usage charge	-	-	-	2.50
Flat Rate (per month)				
Mallard Head Condominiums	$ 15.00	$ 21.00	$ 25.00	$ 22.45
Country Valley Subdivision	16.00	21.00	25.00	22.45
All Other Service Areas	18.00	21.00	25.00	22.45

7. Bethlehem's present, interim, and proposed rates, and the Public Staff's recommended rates are as follows:

	Present	Interim	Proposed	Public Staff's Recommended
WATER SERVICE (Metered Rates)				
0-1,000 gals/month	$ 4.68	-	-	-
Over 1,000 gals/month/1,000 gals	1.50	-	-	-
Base Charge	-	$ 7.00	$ 8.00	$ 7.00
Usage Charge/1,000 gals	-	1.65	2.50	1.72
WATER SERVICE (Flat Rate)	-	$ 11.00	$ 15.00	$ 10.96

8. Huffman's present, interim, and proposed rates, and the Public Staff's recommended rates are as follows:

	Present	Interim	Proposed	Public Staff's Recommended
WATER SERVICE (Metered Rates)				
0-3,000 gals/month	$ 7.00	-	-	-
Over 3,000 gals/month/1,000 gals	1.30	-	-	-
Base Charge	-	$ 7.00	$ 8.00	$ 7.00
Usage Charge/1,000 gals	-	1.65	2.50	1.72
WATER SERVICE (Flat Rate)	$ 7.50	$ 11.00	$ 15.00	$ 10.96

9

9. Lincoln's present, interim, and proposed rates, and the Public Staff's recommended rates are as follows:

	Present	Interim	Proposed	Public Staff's Recommended
WATER SERVICE (Metered Rates)				
0-1,000 gals/month	$ 6.77	-	-	-
Over 1,000 gals/month/1,000 gals	1.75	-	-	-
Base Charge	-	$ 7.00	$ 8.00	$ 7.00
Usage Charge/1,000 gals	-	1.65	2.00	1.34
WATER SERVICE (Flat Rate)	-	$ 11.00	$ 15.00	$ 10.96

10. Mid South should account for its investment in its Wexford properties in a manner consistent with the accounting methodology set forth under Evidence and Conclusions for Finding of Fact No. 10.

11. Plant acquisitions of Lincoln, Bethlehem, and Huffman included in rate base by the Applicants should be adjusted by reductions to plant in service, accumulated depreciation, and depreciation expense as follows:

Company	Plant In Service	Accumulated Depreciation	Depreciation Expense
Lincoln	$ 1,000	$ 260	$ 40
Bethlehem	102,720	18,490	4,109
Huffman	93,885	9,388	3,755

12. The reasonable original cost rate base used and useful at the end of the test period for each Applicant is as follows:

Item	Amount
Mid South	
Water	$500,819
Sewer	28,297
Combined Operations	529,116
Lincoln	7,847
Bethlehem	20,970
Huffman	17,153

13. The Applicants' gross service revenues on a combined basis for the test year under present rates, after accounting and pro forma adjustments, are $883,583. Such gross service revenues are $1,261,407 after giving effect to the Applicants' proposed rates and are $1,135,936 under the rates approved herein.

14. It is appropriate to allocate the following expenses among all four affiliated companies on the basis of the allocation factors found reasonable in finding of fact No. 15: repair and maintenance, administrative and office, telephone, insurance, rate case, transportation, salaries and wages, and payroll taxes.

15. The allocation factors and growth factors recommended by the Public Staff are reasonable and should be used in separating operating expenses by Applicants.

16. The reasonable and appropriate level of test year operating revenue deductions for each Applicant after normalized and pro forma adjustments are as follows:

Item	Amount
Mid South	
Water	$705,137
Sewer	87,246
Combined Operations	792,383
Lincoln	21,199
Bethlehem	59,454
Huffman	93,440

17. The operating ratio method, which allows a margin on operating revenue deductions requiring a return, is the proper method to determine the revenue requirements for each of the water and sewer operations of the Applicants.

18. The allowed margin on operating revenue deductions requiring a return for each of the water and sewer operations of the Applicants is 12.0%. The 12.0% margin is fair, reasonable, and consistent based on the evidence offered in this proceeding.

19. The revenues approved herein produce the following operating ratios:

Item	Excluding Gross Receipts and Income Taxes (%)	Including Gross Receipts and Income Taxes (%)
Mid South		
Water Operation	89.29	90.29
Sewer Operation	89.29	90.28
Bethlehem	89.29	90.07
Huffman	89.29	90.07
Lincoln	89.28	90.07

These ratios are just and reasonable to the Applicants and ratepayers.

20. Based on the foregoing, the Applicants should be allowed an increase in annual gross service revenues of $252,353. This increase will allow the Applicants the opportunity to earn a 12.0% margin on its operating revenue deductions requiring a return which the Commission finds to be reasonable in this proceeding. The rates contained in Appendix A will allow this increase and are fair to the Applicants and the customers.

21. The interim rates approved by the Commission in its Order of November 10, 1988, are just and reasonable and should be affirmed. The undertaking for refund should be discharged and cancelled.

22. The connection charges (tap-on fees), reconnection charges, and returned check charge recommended by the Public Staff are fair and reasonable and should be approved.

23. The Applicants should conduct a study to determine the feasibility of installing meters on its unmetered water systems.

24. It is inappropriate to adopt one fixed base facility charge for all meter sizes at this time.

25. It is appropriate to establish uniform rates for water and/or sewer service for Mid South, Bethlehem, and Huffman. However, for Lincoln it is appropriate to set its usage charge lower than those of the other companies since it purchases water from the County for resale.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4 AND 6-9

The evidence supporting findings of fact Nos. 1-4 and 6-9 is contained in the verified application and the testimony and exhibits presented by the Applicants and the Public Staff. These findings are essentially informational, procedural, and jurisdictional in nature and were uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is contained in the testimony of the public witnesses at the two customer hearings in Hickory and Charlotte and in the testimony of Public Staff witness Larsen and Applicants' witness Tweed. Each subdivision with reported service problems is discussed below:

Ashe Plantation - Mecklenburg County - Mid South

Sixteen customers testified in Charlotte about water quality problems in this subdivision. These customers reported brown stains on water fixtures, stained clothes, a sulphur odor, occasional air in the water, and concerns about the possible effects of the water on their health.

The problems mentioned suggest high levels of manganese and, perhaps, hydrogen sulfide stemming from sulfur reducing bacteria. The latest available inorganic chemical analysis which was performed on a sample collected by Jim Adams, Environmental Engineer with the Division of Health Services (DHS), in August 1988, shows a manganese level of 0.33 mg/l and a hardness of 208. DHS's maximum contamination level for manganese is 0.05 mg/l. There is no DHS limit for hardness.

At the hearing in Raleigh, Applicants' witness Tweed testified that Mid South had installed a small berm filter in an attempt to remove the excess manganese from the water. Witness Tweed explained that this filter was too small and was actually washing manganese through the filter making the quality problem worse rather than better. He stated that Mid South had installed a larger filter sometime in early February and that the water quality was improved. Witness Tweed also added that Mid South had begun a flushing program to remove manganese accumulations from the mains.

Witness Tweed stated that the water quality in Ashe Plantation should be further improved when a new high yield well with a lower hardness level is put on line within the next 60 days. Witness Tweed stated that this new well would become the primary well with the first well to be used as a back up source of water.

Green Road - Gaston County - Mid South

No customers from the Green Road system testified at any of the public hearings. However, the Commission has received complaint letters reporting low water pressure and mud, sand, and rust in the water. Public Staff witness Larsen testified that no noticeable iron was detected in the water. Witness Larsen suggested that the well may be overpumping and thereby introducing mud and sand in the water. Witness Larsen reported that there are no blow off valves or cutoff values in the Green Road system. Witness Larsen recommended installation of blow off valves, institution of a flushing program, installation of a master meter at the well to determine its pumping rate, and an investigation to determine whether the existing 250 gallon storage tank is adequate.

Springhaven - Catawba County - Mid South

Ms. Pam Canipe of Springhaven Subdivision testified at the public hearing in Hickory about green stains on water fixtures and a rotten egg smell in the water. Applicants' witness Tweed testified at the hearing in Raleigh that green stains are probably caused by a low pH level and that Mid South will add pH adjustment equipment if necessary. Witness Tweed also stated that City of Hickory water is available to this subdivision.

Starbrook Park - Gaston County - Mid South

No customers from the Starbrook Park system testified at the public hearings. However, the Commission has received complaint letters concerning low pressure. Public Staff witness Larsen addressed this issue in his testimony, stating that during his investigation he recorded a pressure of 48 psi at one customer's home and that he noticed green stains in the water fixtures. Witness Larsen testified that the green stains indicated low pH, and recommended that Mid South investigate the complaint of low pressure and possible low pH problems.

Fairfield Acres - Alexander County - Bethlehem

Two customers testified at the public hearing in Hickory, reporting red water, iron in the water, and slugs of mud or iron in the water. Witness Tweed testified at the hearing in Raleigh that Bethlehem has installed chemical feed equipment and that acqua-meg, a polyphosphate chemical, is being injected into the water to sequester the iron. (Polyphosphate basically maintains iron and/or manganese in suspension, in their clear or liquid form, keeping them nonobjectional.)

Crestmont - Catawba County - Huffman

Mr. Bob Clodfelter testified at the Hickory hearing regarding problems with iron, low pressure, and being on the end of a line. Applicants' witness

Tweed testified at the evidentiary hearing in Raleigh that Huffman would investigate this problem and install a blow off valve if possible.

Herman Acres - Catawba County - Huffman

Two customers testified in Hickory about air in the water, low pressure, and green and rust colored staining of water fixtures. At the Raleigh hearing, witness Tweed addressed these service problems and stated that the low pressure and air in the lines was probably caused by a malfunctioning air relief valve. Witness Tweed also stated that the pH may have to be increased to alleviate the green stains.

The Commission concludes that the Applicants should investigate the problems discussed above and report findings and proposed solutions to the Commission and the Public Staff, that a complete inorganic analysis should be filed by Mid South for Ashe Plantation when the new well is placed on line, and that Bethlehem should continue the operation of sequestration equipment at Fairfield Acres and coordinate with DHS concerning future operation of this equipment and any additional improvements necessary.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding of fact is contained in the Applicants' verified application, in the rebuttal testimony and exhibits of Applicants' witness Tweed, and in the prefiled and revised testimony and exhibits of Public Staff witness Clapp. Further evidence is found in the Commission Order Granting Franchise and Approving Rates in Docket No. W-720, Sub 35, which was issued on April 3, 1985.

The Public Staff proposes to include the Wexford water system in rate base at zero cost. Mid South proposes to include the system at a cost of $82,381. In the cited Order granting franchise and approving rates, the Commission found that the system had been dedicated or contributed to the Applicant at zero cost for ratemaking purposes.

Public Staff witness Clapp testified that he removed the Wexford water system from rate base upon consideration of the cited Order granting Mid South's franchise for the system, which stated that the system would be dedicated to the Applicant at zero cost as it applies to ratemaking. Witness Clapp also testified that in a letter dated March 9, 1985, from Thomas Carroll Weber to Jerry H. Tweed, then Director of the Public Staff Water Division, Mr. Weber stated that "Mid South Water Systems will be receiving this system free of charge...There will be zero cost to the utility so far as applies to the ratemaking process."

Witness Tweed testified that the Wexford franchise was granted in 1985 without a hearing and that the Commission has determined in other franchise cases that the appropriate place to determine acquisition price treatment is in a rate case and not a franchise proceeding. Witness Tweed also testified that the inclusion of $82,381 in rate base would have no significant impact on the rates of the customers. He argued that, as long as the purchase price per customer is close to the per customer operating revenue deductions on which Mid South would otherwise earn a return, the impact on the customer's rates is small. Witness Tweed also testified that it was his understanding in 1985 that

the Mid South construction company had recouped the costs of the Wexford system and then donated it to the utility company; it is now his understanding that the utility company "actually paid $82,381 for that system."

After careful consideration of the limited and ambiguous evidence presented on this issue, the Commission concludes that this matter needs to be more fully examined before a reasonably informed decision can be reached as to the proper ratemaking treatment to be accorded the debt and equity investors' investment, if any, in Mid South's Wexford properties. The Commission further concludes that, until such time as this matter can be fully investigated and examined in the context of the Company's next general rate case proceeding, the Company should be permitted to place all related capital costs associated with said investment in a deferred account pending final disposition by the Commission. Such capital costs include depreciation charges as proposed by the Company in this proceeding and a reasonable carrying charge on the Company's unrecovered investment, including all amounts placed in the deferred account.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is contained in the verified application, in the rebuttal testimony and exhibits of Applicants' witness Tweed and in the prefiled and revised testimony and exhibits of Public Staff witness Clapp. Further evidence is found in the Commission's official files in specific dockets as follows:

Docket No.	Description
W-335, Sub 2	Transfer of Lincoln
W-335, Sub 3	Lincoln's last general rate case
W-259, Sub 3	Bethlehem's last general rate case
W-259, Sub 4	Transfer of Bethlehem
W-95, Sub 7	Huffman's last general rate case
W-95, Sub 10	Transfer of Huffman

The Public Staff and the Applicants disagree on the amounts to include in rate base for plant in service and the resulting accumulated depreciation and depreciation expense relating to the acquisitions of Lincoln, Bethlehem, and Huffman. The Applicants are proposing to include all or a portion of the purchase price for each system in plant in service and compute accumulated depreciation and depreciation expense based on that amount. The Public Staff is proposing to reduce plant in service, accumulated depreciation, and depreciation expense to reflect the purchase price of the Lincoln system approved by the Commission in Lincoln's last general rate case proceeding in Docket No. W-335, Sub 3, and the original cost net investment of the Bethlehem and Huffman acquisitions at their transfer dates.

The first adjustment concerns the acquisition of Lincoln. Applicants' witness Tweed testified that the purchase price for Lincoln was $7,000. According to witness Tweed, this purchase price equates to a cost of $58 per customer ($7,000/121). Thus, it is the opinion of witness Tweed that since the Applicants' overall per customer operating revenue deductions on which the Company is entitled to earn a return is approximately $200 per customer, then the inclusion of the $7,000 purchase price of Lincoln does not materially

impact rates, and it should be allowed to improve the financial stability of the Company.

Public Staff witness Clapp testified that he reduced the purchase price of Lincoln by $1,000 to reflect the $6,000 purchase price found reasonable by the Commission in Docket No. W-335, Sub 3, Lincoln's last general rate case which occurred after it had been acquired by Carroll and Mary Weber. The Public Staff also proposed corresponding decreases to accumulated depreciation and depreciation expense resulting from this adjustment to the purchase price. The Public Staff agreed with the Applicants that a 4% composite depreciation rate for all general plant is appropriate. Therefore, the Public Staff is proposing an adjustment to reduce depreciation expense by $40 and to reduce accumulated depreciation by $260 representing six and one half years of depreciation.

The Commission reaffirms its decision on the treatment of the purchase price in its June 3, 1982, Order in Docket No. W-335, Sub 3. The Commission notes that this rate case was subsequent to the purchase of Lincoln. The Order in Docket No. W-335, Sub 2, which approved the transfer of Lincoln to Carroll and Mary Weber, was effective on July 21, 1981, while the Final Order in Docket No. W-335, Sub 3, was effective on June 23, 1982. In Docket No. W-335, Sub 3, the Commission found that the Company's original cost rate base was $6,352 as proposed by the Public Staff in the testimony of Candace Ann Paton and set forth in Paton Exhibit I, Schedule 2. Said schedule showed that the purchase price of the system in March 1981 was $6,000 and, after adjustments for depreciation, tap-on fees, customer deposits, and working capital, the resulting original cost rate base was $6,352.

In regard to the Company's proposal to now change the purchase price of Lincoln from $6,000 to $7,000, the Commission finds no evidence supporting this difference which would change the factors previously relied upon or otherwise alter the Commission's ruling on plant in service found reasonable for Lincoln in Docket No. W-335, Sub 3. Therefore, the Commission concludes that reductions to plant in service, accumulated depreciation, and depreciation expense of $1,000, $260, and $40, respectively, are appropriate and reasonable.

The second and third adjustments concern the acquisitions of Bethlehem and Huffman. Applicants' witness Tweed testified that the purchase prices were $115,000 for Bethlehem and $100,000 for Huffman. Witness Clapp testified that he made a debit plant acquisition adjustment for each of these systems to reflect the net original cost at the time of the transfer because Carroll and Mary Weber had paid a price in excess of the seller's net original cost. The debit plant acquisition adjustment proposed by the Public Staff for Bethlehem results in a $102,720 decrease to plant in service, a $18,490 decrease to accumulated depreciation representing four and one half years of depreciation, and a $4,109 decrease to depreciation expense. The Public Staff's Huffman debit plant acquisition adjustment results in similar reductions of $93,885 to plant in service, $9,388 to accumulated depreciation representing two and one half years of depreciation, and $3,755 to depreciation expense.

In rebuttal testimony concerning Bethlehem, witness Tweed stated that, while allowance of the full purchase price might be excessive, allowing one-half that amount should be considered reasonable based on a calculated purchase price per customer of $195 (($115,000/2)/295). Witness Tweed compared the purchase price per customer of $195 to the total operating revenue

deductions per customer of approximately $200 on which the Company would otherwise earn a return as his basis for determining what is reasonable. Witness Tweed testified that this treatment would improve the financial stability of the Company and has an insignificant rate impact. Accordingly, the Applicants' proposed order reflects acceptance of one-half of the Public Staff's adjustments to Bethlehem. Therefore, the Applicants accept a debit plant acquisition adjustment of $51,360, accumulated depreciation adjustment of $9,242, and depreciation expense adjustment of $2,054 relating to Huffman and reject the remainder of the Public Staff's adjustment. Further, witness Tweed proposed that Huffman should be given ratebase treatment on its full purchase price for the same reasons he had recommended inclusion of the Lincoln and Bethlehem acquisition adjustments. According to witness Tweed, the purchase price of the Huffman system represents an investment of $210 per customer ($100,000/476) which is not unreasonable when compared to total operating revenue deductions per customer.

The Public Staff's position regarding the debit plant acquisition adjustments was presented by witness Clapp in his prefiled testimony. Witness Clapp testified that it was not reasonable or appropriate to penalize the ratepayers for the transfer of franchises by requiring them to pay more than once for the original cost of property used in providing utility service. The Applicants' methodology, including the purchase price in rate base and allowing the depreciation expense as a cost of service, has the effect of increasing the rate base by the excess purchase price and of allowing the Company to recover the depreciation expense on the excess purchase price in the cost of service. Witness Clapp also testified that his discussions with the Public Staff Water Division indicated that there were no system deficiencies that would have gone unaddressed if the acquisition had not taken place.

The Commission notes its findings of fact in the Final Order in Docket No. W-259, Sub 4 (transfer of Bethlehem). There the Commission concluded that the purchase price for Bethlehem was $115,000 and that the original cost net investment was $14,173 in 1982. The Commission also found that the Applicant was aware of a sizeable acquisition adjustment from the purchase. The Commission specified that its approval of the transfer did not constitute approval of any increase in rate base.

The Commission also notes its Final Order in Docket No. W-95, Sub 10 (transfer of Huffman), in which the Commission specified that the approval of a stock transfer did not constitute approval of any increase in the rate base of Huffman.

In Docket No. W-354, Sub 39 (Carolina Water Service), the Commission applied the following criteria in determining rate base treatment for debit plant acquisition adjustments:

1. The benefits to ratepayers should outweigh the cost of inclusion in rate base of the excess purchase price,
2. System deficiencies would have gone unaddressed if not for the acquisition by the acquiring Company; and
3. The acquisitions were a result of arm's length bargaining.

The Commission believes these to be appropriate criteria to apply in considering the proper treatment of acquisition adjustments in this proceeding.

With respect to the acquisitions of Bethlehem and Huffman, the Commission concludes that the benefits to the ratepayers do not outweigh the cost of inclusion in rate base of the excess purchase price. The Applicants' methodology comparing the purchase price per customer with the operating revenue deductions per customer is not appropriate in these cases. Additionally, it has not been shown that system deficiencies would have gone unaddressed if the acquisitions had not taken place.

Accordingly, the Commission concludes that the debit plant acquisition adjustments for Bethlehem and Huffman should be disallowed in rate base and that plant in service, accumulated depreciation, and depreciation expense should be reduced by an additional $51,360, $9,248, and $2,055, respectively, for Bethlehem to reflect a total disallowance for Bethlehem of $102,720, $18,490, and $4,109, respectively, rather than just one half the adjustment as accepted by the Company, and $93,885, $9,388, and $3,755, respectively, for Huffman.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Applicants' witness Tweed and Public Staff witnesses Clapp and Larsen presented testimony regarding each Company's reasonable original cost rate base. Each Company rate base (Mid South, Lincoln, Bethlehem, and Huffman) is discussed separately as follows.

MID SOUTH WATER SYSTEMS, INC.

The following table summarizes the amounts proposed by Mid South and the Public Staff in their respective proposed orders. The Company's rate base amounts have been calculated based upon the depreciation expense conclusions reflected in the Company's proposed order. The amounts presented reflect Mid South's combined water and sewer operations.

Item	Company	Public Staff	Difference
Plant in service	$ 681,987	$ 613,799	$(68,188)
Accumulated depreciation	(138,298)	(123,024)	15,274
Contributions in-aid-of construction	(39,440)	(39,440)	-
Cash working capital	-	74,421	74,421
Average tax accruals	-	(11,354)	(11,354)
Total Rate Base	$ 504,249	$ 514,402	$ 10,153

Plant in Service

Based on the testimony of the Applicants' witness and the Public Staff witnesses concerning plant in service and depreciation expense and the related discussions in the parties' proposed orders, the Public Staff recommended an amount that was $68,188 below the Company's recommended amount of $681,987. This difference is itemized as follows:

Item	Amount
Capitalized repair and maintenance items	$ 11,373
Capitalized pumps	21,819
Wexford water system	(82,381)
Carl Pate's truck (asset no. 213)	(7,539)
Jerry Tweed's car (asset no. 209)	(5,201)
Carroll Weber's truck (asset no. 205)	(6,259)
Total difference	$(68,188)

The Public Staff made an adjustment which removed $40,625 from maintenance and repair expenses and capitalized this amount with depreciation over 25 years. The Public Staff, at the Company's request, attempted to document this adjustment by providing the Company with invoices which had been pulled from the Company's records. According to witness Tweed, he reviewed these invoices and, by adding all the items which did not have expense written beside them, they totaled $42,157 rather than $40,625. However, upon his own review and interpretation, witness Tweed determined that the $40,625 consisted of three parts: $11,373 for small items which should have been expensed, $21,819 for pumps which for the most part had 3 years written on the invoices, and $7,433 for meters which the Company agrees with the Public Staff that these should be capitalized and depreciated over 25 years.

The $11,373 adjustment to plant in service arises due to the Public Staff's proposal to capitalize rather than expense repair and maintenance items such as paint, glue, relay and pressure switches, electrical tape, leak truck parts, and contract labor for repairs. Witness Tweed testified that in the $11,373 amount there was some, but not much, contract labor for repairs using outside labor. Further, witness Tweed stated that the Company restocks a leak truck once every month with such costs of restocking being as much as $700 to $1,000. These costs would be for repair clamps, couplings, tees, and all kinds of different items. According to witness Tweed, the Company sometimes buys parts in bulk to restock a leak truck which goes around to each subdivision and repairs leaks in water mains, customer lines, meters, i.e., leaks of all types. Witness Tweed believes these items should be expensed rather than being capitalized and depreciated over 25 years as the Public Staff has proposed.

On cross-examination, witness Clapp stated that he had not reviewed the invoices and did not know for sure what was capitalized, nor did he know if any of these items would have a life of greater than 25 years. However, witness Clapp when questioned about the probability of glue and paint lasting 25 years, responded that if these are a part of construction or installation, i.e., if used as capital items, he thought there was a reasonable argument to capitalize these items. According to witness Clapp, it was witness Larsen who made the proposal to capitalize these items, and he just flowed the adjustment into his schedules and stated in his direct testimony that he had capitalized various items of plant totaling $40,625 based on the recommendation of witness Larsen. Witness Larsen provided no direct testimony on this issue and was not cross-examined on this issue.

In summary, the Company, rather than the Public Staff, provided for the record a breakdown of the Public Staff's $40,625 adjustment into three pieces (various small items, pumps, and meters). As to the $11,373 adjustment to capitalize various small items, the Public Staff provided very little evidence

to support this adjustment. The composition of the $11,373 adjustment is somewhat vague, but based upon the Company's description of the probable low costs and the use of these various small items as testified to by witness Tweed and the lack of evidence to the contrary, the Commission finds it appropriate to expense these particular items for purposes of this proceeding.

The remaining part of the $40,625 adjustment which the Company and the Public Staff disagree is in the amount of $21,819 relating to pumps. The Public Staff is proposing that these pumps be depreciated using a 4% composite rate (25 years) for depreciation, whereas the Company would expense them. The 4% composite rate is the depreciation rate for all general plant as recommended by the Company and agreed to by the Public Staff.

The Public Staff argued that the pumps constitute general plant and should be depreciated using the 4% composite rate previously found appropriate. Witness Clapp testified that a composite rate is applied to aggregate categories of plant where some items have a service life of less than 25 years and other items have a service life of more than 25 years. Therefore, the composite rate is an averaged rate for all items included. According to the Public Staff, the capitalization of the pumps is consistent with the guidelines and recommendations of NARUC (National Association of Regulatory Utility Commissioners).

In rebuttal testimony, witness Tweed stated that a good argument could be made in Mid South's case for expensing pumps rather than capitalizing them. Witness Tweed stated that the Company replaces many pumps each year and has been expensing them for the most part. According to witness Tweed, based upon his review of the Company checkbooks for 1985 and 1986, more than likely if the Public Staff had audited those years, they would have likely capitalized $25,000 during each year which the Company had expensed. These past expenditures relating to pumps would, in the opinion of witness Tweed, never be recovered since they were not depreciated and given no rate treatment. For example, witness Tweed testified that if the Company expensed $25,000 worth of pumps in 1985, $25,000 in 1986, and $25,000 in 1987, and all had been capitalized over three years he would have $25,000 per year included in depreciation expense. Therefore, it is witness Tweed's opinion that the ratepayers would pay the same amount in rates whether he capitalizes or expenses pumps. Witness Tweed stated that this is especially true in the case of Mid South where there are a large number of pumps purchased at relatively low prices because of the Company's wholesale purchase of pumps. In support of a three year depreciation on these pumps, witness Tweed in rebuttal testimony pointed out that almost all of the stack of invoices which related to the $21,819 of pumps had three years written on them, and he assumed these were notes written by witness Larsen which indicated the life of the pump.

During cross-examination on rebuttal testimony, witness Tweed testified that the Company had capitalized pumps in the last rate case and that the amount showing up in the Company's current asset list is not nearly the amount that the Company replaces every year. Because some pumps have been included in general plant by the Company and depreciated using a 4% composite rate, the Public Staff argued that the Company was inconsistent in their application of the 4% composite rate since they would now recommend that the pumps in the amount of $21,819 removed by the Public Staff from repair and maintenance expense should be depreciated separately using a shorter life. Witness Tweed

testified under cross-examination that he agreed with the use of composite depreciation, but contended that the Public Staff had made so many adjustments to the Applicants' figures that he was forced to abandon that philosophy in order to keep rates at a representative level.

Based on the foregoing, the Commission finds that the pumps at issue in the amount of $21,819 should be capitalized rather than expensed. However, the Commission is not convinced that the appropriate depreciation life would be either 25 years or three years. The record does not reflect what types or sizes of pumps these are. If this were available, the appropriate depreciation rate could be more easily determined. The Commission concludes that it is both fair and reasonable to allow the Company to depreciate these pumps over five years. The Commission does not believe in this particular case that there is a problem of inconsistency in using a 4% composite rate (25 years) for all general plant except concluding these particular pumps would be depreciated with a 20% composite rate (five years). Had these pumps originally been included by the Company as capital items the Company would have more than likely increased the composite rate to reflect the additional weighting effect of including these pumps at possibly a three year or some other service life. In their next general rate case proceeding the Applicants should present a description of these pumps to justify whatever service lives they propose.

The next item of difference relates to the Wexford water system. As discussed in the Evidence and Conclusions for Finding of Fact No. 10, the Commission has determined that the Wexford investment in the amount of $82,381 should not be included in plant in service in this case, but rather all related capital costs associated with said investment should be placed in a deferred account pending final disposition by the Commission in the Company's next general rate case proceeding.

The final area of difference between the parties for plant in service is the removal of 50% of Carroll Weber's truck, 50% of Jerry Tweed's car, and 100% of Carl Pate's truck from the utility rate base. Public Staff witness Larsen recommended that 13.15 vehicles should be included in the utility operations based on the number of employees requiring vehicles during the test year, whereas the Company is recommending that 15.15 vehicles be included. The difference in terms of plant in service totals $18,999 consisting of the following portions of three vehicles.

Item	Amount
50% of Carroll Weber's truck	$ 6,259
50% of Jerry Tweed's car	5,201
100% of Carl Pate's truck	7,539
Total	$18,999

Based upon the Evidence and Conclusions for Finding of Fact No. 16, wherein the Commission has made its determination as to the proper level of employees and salaries, the Commission concludes that the appropriate level of vehicles to be allowed for the utility operations is 14.90 vehicles which is .25 vehicles less than recommended by the Company or 1.75 vehicles more than the Public Staff's recommendation.

The Company included one half of Carroll Weber's salary in the utility operations and included one half the cost of his vehicle. The Public Staff recommended that none of Carroll Weber's salary be treated as utility related and therefore, excluded the entire cost of his vehicle. The Commission has concluded elsewhere in this Order that only one fourth of Carroll Weber's salary is utility related and, therefore, the Commission concludes that only one fourth of Carroll Weber's truck investment should be included.

With respect to his car, witness Tweed stated that he and Rick Durham share a car and, based on the inclusion of 100% of his salary as utility related and 50% of Rick Durham's salary as utility related, he is recommending 100% inclusion of the cost of this shared vehicle in rate base. The Public Staff recommended that 100% of Jerry Tweed's salary should be allowed in the cost of service and none of Rick Durham's should be allowed as utility related, therefore witness Larsen recommended that only one half of the cost of Jerry Tweed's car be included in the utility operations. On cross-examination, the Company questioned witness Larsen about what he would recommend if the Company had gone out and bought two cars, one for Mr. Tweed and one for Mr. Durham. In response, witness Larsen stated that ". . .if they had two vehicles, that may be too many - one too many." Witness Larsen further testified that he did not think Mr. Tweed needed a vehicle nearly as much as an operator or someone like that who needs a vehicle everyday. The Commission, as discussed elsewhere herein, has agreed with the Company that 100% of Jerry Tweed's salary and 50% of Rick Durham's salary should be included as part of utility payroll and therefore the Commission concludes that it is appropriate to include the full cost of Jerry Tweed's car in plant in service as proposed by the Company.

The final adjustment to plant in service relates to the removal by the Public Staff of 100% of Carl Pate's salary and the corresponding adjustment to remove the cost of Carl Pate's truck from plant in service. As discussed in the Evidence and Conclusions for Finding of Fact No. 16, the Commission concluded it was appropriate to allow 100% of Carl Pate's salary in the cost of service and, therefore, concludes it is also reasonable and proper to include the cost of his truck in plant in service.

Accordingly, the Commission concludes that the proper level of plant in service for Mid South is $618,297 consisting of plant in service for the water operations of $590,672 and the $27,625 for the sewer operations.

Accumulated Depreciation

The $15,274 difference between the parties as to the proper level of accumulated depreciation consists of the following adjustments:

Item	Amount
Repair and maintenance items	$ 455
Pumps	873
Wexford water system	(3,295)
Carl Pate's truck	(1,508)
Jerry Tweed's car	(1,559)
Carroll Weber's truck	(1,878)
Other assets - office furniture/equipment	(8,362)
Total	$(15,274)

These adjustments follow from the Public Staff's adjustments to the plant in service previously discussed except for the adjustment to accumulated depreciation for other assets which are mostly office furniture and equipment.

The first item relates to depreciation on repair and maintenance items in the amount of $455 ($11,373 x 4%), which the Commission has agreed with the Company that for purposes of this proceeding these items should be expensed rather than capitalized, therefore the Commission would eliminate the Public Staff's depreciation adjustment.

The accumulated depreciation on the pumps was calculated by the Public Staff using a 4% composite rate and resulted in both accumulated depreciation and depreciation expense being $873 ($21,819 x 4%). The Commission has found that the pumps should be depreciated over 5 years (20%). The Commission finds that the appropriate accumulated depreciation and depreciation expense is $4,364 ($21,819 x 20%), respectively.

The next item relates to the accumulated depreciation for the Wexford water system. As discussed in the Evidence and Conclusions for Finding of Fact No. 10, the Commission found it appropriate to remove the $82,381 investment in Wexford from plant in service in this proceeding pending investigation in the Company's next general rate case. Thus, the Commission finds it appropriate to reduce accumulated depreciation and depreciation expense by $3,295 ($82,381 x 4%).

The next three items relate to depreciation on the vehicles which the Public Staff excluded. Based on the previous decisions discussed herein, relating to the proper level of vehicles to include in plant in service, the Commission agrees with the parties that it is appropriate to reflect depreciation on vehicles using a 20% composite rate and concludes that accumulated depreciation should include $1,508 for Carl Pate's truck, an additional $1,559 for the remaining half of Jerry Tweed's car, and $939 for one fourth of Carroll Weber's truck. The accumulated depreciation on the vehicles of Jerry Tweed and Carroll Weber reflect one and one half years of depreciation whereas only one year of accumulated depreciation is included for Carl Pate's truck.

The last adjustment relates to accumulated depreciation on other assets - office furniture and equipment in the amount of $8,362. The parties agree on the level of plant in service for these other assets, but they disagree as to what is the appropriate depreciation rate; 10% is recommended by the Public Staff and 20% is proposed by the Company. Public Staff witness Clapp testified that the use of a 10% composite rate for other assets was based on Public Staff recommendations for other utilities for these same types of assets, the NARUC Depreciation Guide for Small Water Utilities, and discussions with the Public Staff Water Division.

These other assets include items such as typewriters, general office furniture, tools, answering machines, computers, copy machines, etc., as shown on Clapp Exhibit 1, Schedule 2-3a, Page 2 of 3. Based upon the type of equipment and various expected service lives and the Commission's treatment for other utilities, the Commission concludes that a 10% composite rate is reasonable and appropriate to use for purposes of this proceeding. Accordingly, the Commission concludes that accumulated depreciation should be reduced by $8,362.

Contributions In-Aid-Of Construction (CIAC)

Public Staff witness Clapp testified that the Public Staff reduced rate base by $39,440, the amount of tap fees collected as of December 31, 1987. The Company did not oppose this adjustment in its proposed order. Therefore, the Commission concludes that this CIAC adjustment is appropriate.

Cash Working Capital and Average Tax Accruals

Witness Clapp testified that cash working capital, net of average tax accruals, provides the Company with the funds necessary to carry on day-to-day operations. The cash working capital was determined by the Public Staff based on one eighth of operation and maintenance expenses and the average tax accruals consists of one sixth of gross receipts taxes and payroll taxes and one half of property taxes. Based upon the level of operating revenue deductions found reasonable in the Evidence and Conclusions for Finding of Fact No. 16, the Commission concludes that the appropriate and reasonable levels of cash working capital and average tax accruals are $85,220 and $12,153, respectively.

Deferred Charges

Neither party reflected any of these additional charges in their rate base proposals, but the Commission concludes, based upon its treatment for other utilities, that it would be appropriate to include in rate base the unamortized balances of rate case expense and the other legal fees discussed in the Evidence and Conclusions for Finding of Fact No. 16. Therefore, the Commission concludes that rate base should be increased by $5,580 for unamortized rate case expense and $1,678 for unamortized other legal fees.

Based upon the preceding evidence, the Commission concludes that Mid South's appropriate original cost rate base for use in setting rates in this proceeding is $529,116 consisting of $500,819 for the water operations and $28,297 for the sewer operations.

LINCOLN WATER WORKS, INC.

The following table summarizes the amounts proposed by Lincoln and the Public Staff in their respective proposed orders. The Company's rate base amounts have been calculated based upon the depreciation expense conclusions reflected in the Company's proposed order.

Item	Company	Public Staff	Difference
Plant in service	$ 12,929	$ 11,929	$ (1,000)
Accumulated depreciation	(1,888)	(1,628)	260
Contributions in-aid-of construction	(5,062)	(5,062)	-
Cash working capital	-	2,015	2,015
Average tax accruals	-	(289)	(289)
Total Rate Base	$ 5,979	$ 6,965	$ 986

Plant in Service

The Commission has previously concluded in the Evidence and Conclusions for Finding of Fact No. 11, that it would be inappropriate to include the additional $1,000 as proposed by the Company. Therefore, the Commission finds that the reasonable level of plant in service for Lincoln is $11,929.

Accumulated Depreciation

The difference in accumulated depreciation of $260 follows from the Public Staff's adjustments to the plant in service amount accepted above and the depreciation rates found reasonable herein. The Commission concludes that the proper level of accumulated depreciation for use in this proceeding is $1,628.

Contributions In-Aid-Of Construction

Public Staff witness Clapp testified that the Public Staff reduced rate base by $5,062, the amount of tap fees collected as of December 31, 1987. The Company did not oppose this adjustment in its proposed order. Therefore, the Commission concludes that it is appropriate to reduce rate base by $5,062 for CIAC.

Cash Working Capital and Average Tax Accruals

Witness Clapp testified that cash working capital, net of average tax accruals, provides the Company with the funds necessary to carry on day-to-day operations. The cash working capital was determined by the Public Staff based on one eighth of operation and maintenance expenses and the average tax accruals consists of one sixth of gross receipts taxes and payroll taxes and one half of property taxes. Based upon the level of operating revenue deductions found reasonable in the Evidence and Conclusions for Finding of Fact No. 16, the Commission concludes that the appropriate and reasonable levels of cash working capital and average tax accruals are $2,301 and $303, respectively.

Deferred Charges

Neither party reflected any of these additional charges in their rate base proposals, but the Commission concludes, based upon its treatment for other utilities, that it would be appropriate to include in rate base the unamortized balances of rate case expense and the other legal fees discussed in the Evidence and Conclusions for Finding of Fact No. 16. Therefore, the Commission finds it appropriate to include in the Lincoln rate base an amount of $172 for unamortized rate case expenses and $438 for unamortized other legal fees.

Based upon the preceding evidence, the Commission concludes that Lincoln's appropriate original cost rate base for use in setting rates in this proceeding is $7,847.

BETHLEHEM UTILITIES, INC.

The following table summarizes the amounts proposed by Bethlehem and the Public Staff in their respective proposed orders. The Company's rate base amounts have been calculated based upon the depreciation expense conclusions reflected in the Company's proposed order.

Item	Company	Public Staff	Difference
Plant in service	$ 120,641	$ 120,641	$ -
Accumulated depreciation	(12,506)	(3,258)	9,248
Contributions in-aid-of construction	(350)	(350)	-
Plant acquisition adjustment	(51,360)	(102,720)	(51,360)
Cash working capital	-	5,786	5,786
Average tax accruals	-	(855)	(855)
Total Rate Base	$ 56,425	$ 19,244	$(37,181)

Accumulated Depreciation

The difference in accumulated depreciation of $9,248 follows from the Public Staff's adjustment to reduce rate base by a debit plant acquisition adjustment and the depreciation rates found reasonable in the Evidence and Conclusions for Finding of Fact No. 11. The Commission concludes that the proper level of accumulated depreciation for use in this proceeding is $3,258.

Contributions In-Aid-Of Construction

Public Staff witness Clapp testified that the Public Staff reduced rate base by $350, the amount of tap fees collected as of December 31, 1987. The Company did not oppose this adjustment in its proposed order. Therefore, the Commission concludes that it is appropriate to reduce rate base by $350 for CIAC.

Debit Plant Acquisition Adjustment

In the Evidence and Conclusions for Finding of Fact No. 11, the Commission determined that the appropriate amount to reduce Bethlehem's plant in service for the debit plant acquisition adjustment is $102,720.

Cash Working Capital and Average Tax Accruals

Witness Clapp testified that cash working capital, net of average tax accruals, provides the Company with the funds necessary to carry on day-to-day operations. The cash working capital was determined by the Public Staff based on one eighth of operation and maintenance expenses and the average tax accruals consists of one sixth of gross receipts taxes and payroll taxes and one half of property taxes. Based upon the level of operating revenue deductions found reasonable in the Evidence and Conclusions for Finding of Fact No. 16, the Commission concludes that the appropriate and reasonable levels of cash working capital and average tax accruals are $6,708 and $917, respectively.

Deferred Charges

Neither party reflected any of these additional charges in their rate base proposals, but the Commission concludes, based upon its treatment for other utilities, that it would be appropriate to include in rate base the unamortized balances of rate case expense and the other legal fees discussed in the Evidence and Conclusions for Finding of Fact No. 16. Therefore, the Commission finds it appropriate to include in the Bethlehem rate base an amount of $428 for unamortized rate case expenses and $438 for unamortized other legal fees.

Based upon the preceding evidence, the Commission concludes that Bethlehem's appropriate original cost rate base for use in setting rates in this proceeding is $20,970.

HUFFMAN WATER SYSTEMS, INC.

The following table summarizes the amounts proposed by Huffman and the Public Staff in their respective proposed orders. The Company's rate base amounts have been calculated based upon the depreciation expense conclusions reflected in the Company's proposed order.

Item	Company	Public Staff	Difference
Plant in service	$101,158	$101,158	$ -
Accumulated depreciation	(10,108)	(720)	9,388
Contributions in-aid-of construction	(500)	(500)	-
Plant acquisition adjustment	-	(93,885)	(93,885)
Cash working capital	-	9,317	9,317
Average tax accruals	-	(1,030)	(1,030)
Total Rate Base	$ 90,550	$ 14,340	$(76,210)

Accumulated Depreciation

The difference in accumulated depreciation of $9,388 follows from the Public Staff's adjustments to reduce rate base by a debit plant acquisition adjustment and the depreciation rates found reasonable in Evidence and Conclusions for Finding of Fact No. 11. The Commission concludes that the proper level of accumulated depreciation for use in this proceeding is $720.

Contributions In-Aid-Of Construction

Public Staff witness Clapp testified that the Public Staff reduced rate base by $500, the amount of tap fees collected as of December 31, 1987. The Company did not oppose this adjustment in its proposed order. Therefore, the Commission concludes that it is appropriate to reduce rate base by $500 for CIAC.

Debit Plant Acquisition Adjustment

In the Evidence and Conclusions for Finding of Fact No. 11, the Commission determined that the appropriate amount to reduce Huffman's plant in service for the debit plant acquisition adjustment is $93,885.

Cash Working Capital and Average Tax Accruals

Witness Clapp testified that cash working capital, net of average tax accruals, provides the Company with the funds necessary to carry on day-to-day operations. The cash working capital was determined by the Public Staff based on one eighth of operation and maintenance expenses and the average tax accruals consists of one sixth of gross receipts taxes and payroll taxes and one half of property taxes. Based upon the level of operating revenue deductions found reasonable in the Evidence and Conclusions for Finding of Fact No. 16, the Commission concludes that the appropriate and reasonable levels of cash working capital and average tax accruals are $10,858 and $1,136, respectively.

Deferred Charges

Neither party reflected any of these additional charges in their rate base proposals, but the Commission concludes, based upon its treatment for other utilities, that it would be appropriate to include in rate base the unamortized balances of rate case expense and the other legal fees discussed in the Evidence and Conclusions for Finding of Fact No. 16. Therefore, the Commission finds it appropriate to include in the Huffman rate base an amount of $718 for unamortized rate case expenses and $660 for unamortized other legal fees.

Based upon the preceding evidence, the Commission concludes that Huffman's appropriate original cost rate base for use in setting rates in this proceeding is $17,153.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact is found in the testimony and exhibits of the Applicants and the Public Staff. Both parties agree on the level of present revenues for Bethlehem, Huffman, and Lincoln. The difference in the level of present revenues for Mid South arises due to the Public Staff's use of annualized end-of-period actual customer usage rather than the Applicants' method of using per book revenues multiplied by a growth factor. The Commission concludes that it is appropriate to use the methodology employed by the Public Staff in this regard. Further, both parties agree on the level of other revenues as well as the uncollectibles rates. The following chart sets forth the Commission's conclusions with respect to the level of gross

service revenues under present, Applicants' proposed, and Commission approved rates.

Company/Service	Present Revenues	Applicants' Proposed Revenues	Commission Approved Revenues
Mid South/Water	$697,094	$ 947,232	$ 828,064
Mid South/Sewer	70,197	99,134	103,130
Mid South/Combined	767,291	1,046,366	931,194
Bethlehem/Water	39,599	75,367	70,234
Huffman/Water	55,069	111,592	110,320
Lincoln/Water	21,624	28,082	24,188
Total Combined	$883,583	$1,261,407	$1,135,936

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact is found in the Applicants' verified application and the testimony and exhibits of the Applicants and the Public Staff.

Witness Tweed testified that although Mid South Water Systems, Inc., keeps a separate set of books for each affiliated company, most of the expenses are paid by Mid South and then allocated to the other companies. Witness Clapp testified that he had used the allocation factors recommended by Public Staff witness Larsen and found reasonable in finding of fact No. 15. The Company presented no evidence disputing the allocation of expenses among all four affiliated companies.

Therefore, the Commission concludes that it is appropriate and reasonable to allocate the following common expenses among all four companies: repair and maintenance, administrative and office, telephone, insurance, rate case, transportation, salaries and wages, and payroll taxes.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence supporting this finding of fact is contained in Applicants' verified application and rebuttal testimony and the testimony and exhibits of Public Staff witness Larsen. The Applicants did not object to the allocation factors used by the Public Staff. In its original application, the Applicants separated certain expenses using allocation factors. However, in its rebuttal testimony, the Applicants consolidated all expenses for each of the four companies into one, thereby eliminating the need to utilize allocation factors. Likewise, the Companies derived one consolidated growth factor, rather than a separate growth factor for each company as proposed by the Public Staff, based upon the Public Staff's methodology.

The Commission concludes that it is appropriate to develop a level of revenues and operating revenue deductions for each company and, therefore, concludes that the allocation factors and growth factors proposed by the Public Staff are appropriate for use herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence for this finding of fact is found in the testimony and exhibits of Applicants' witness Tweed and Public Staff witnesses Clapp and Larsen. The following chart sets forth the total amounts proposed by the Applicants and the Public Staff in their proposed orders for all four companies on a combined basis.

Item	Company	Public Staff	Difference
Operating revenue deductions:			
Purchased water	$ 7,349	$ 7,349	$ -
Purchased sewer	11,308	11,308	-
Telephone expense	16,198	15,144	(1,054)
Power for pumping	152,280	152,280	-
Chemicals	3,252	3,252	-
Repairs and maintenance	117,157	74,667	(42,490)
Administrative and office	23,799	19,499	(4,300)
Professional fees	13,088	6,442	(6,646)
Insurance	36,305	25,650	(10,655)
Rate case expense	3,449	3,449	-
Transportation expense	30,456	21,606	(8,850)
Salaries and wages	467,676	347,211	(120,465)
Rents and leases	15,927	15,927	-
Testing fees	23,256	23,256	-
Miscellaneous expense	4,208	4,208	-
Licenses	1,062	1,062	-
Total operation and maintenance expenses	926,770	732,310	(194,460)
Depreciation expense	56,934	42,142	(14,792)
Payroll taxes	39,269	29,820	(9,449)
Property taxes	4,750	4,750	-
Gross receipts taxes	36,653	37,097	444
State income taxes	-	6,607	6,607
Federal income taxes	-	17,541	17,541
Total operating revenue deductions	$1,064,376	$870,267	$(194,109)

The parties agree on the level of purchased water, purchased sewer, power for pumping, chemicals expense, rate case expense, rents and leases, testing fees, miscellaneous expense, licenses, and property taxes. The Commission concludes that the level of expenses proposed by the parties for each of these items, with the exception of rents and leases to be discussed hereinafter, are reasonable and appropriate for use in this proceeding.

Each item on which the Applicants and the Public Staff differ is addressed separately as follows.

Telephone Expense

The Applicants proposed that the appropriate amount for telephone expense is $16,198. The Public Staff proposed $15,144, leaving a difference of $1,054, set forth as follows:

Item	Amount
Capitalization of answering machine	$ (136)
Capitalization of phone installation	(229)
Charlotte office expense	(390)
Reclassification from radio expense	265
Application of growth factor and allocation factor per Company for:	
a. Bethlehem	(186)
b. Huffman	(612)
c. Lincoln	234
Total	$(1,054)

During the hearing, witness Tweed accepted the Public Staff adjustments capitalizing the answering machine and phone installation and reclassifying radio expense which results in a net total reduction of $100. However, witness Tweed testified that the Applicants had placed a company telephone in the home of Zula Williams in July 1988, for the after hours answering service and that such expense was not included in the cost of service in this rate case. The Applicants take the position that the costs of this additional telephone would more than offset the $100 net adjustment of the Public Staff. The Commission concludes that the adjustments mentioned above advocated by the Public Staff are proper and should be adopted; however, the Commission further concludes that the net affect of the Public Staff adjustments of $(100) would be more than offset by the inclusion of the telephone expense for the after hours answering service. As discussed subsequently, the salary of Zula Williams was updated by the Company to include the payments to her for providing this after hours answering service and the Public Staff agreed with this item of payroll expense. Therefore, the Commission finds that this additional telephone expense should be allowed and concludes that it would be reasonable and appropriate to allow an additional $100 of telephone expense.

The next difference relating to telephone expense relates to the removal by the Public Staff of the telephone expense relating to the Charlotte office. Witness Tweed testified that the Company currently does not have a Charlotte office but stated that he expects to open one within the next four months.

Public Staff witness Clapp testified that during his investigation he determined that the Company no longer uses the Charlotte office and that Company personnel indicated to him that there were no intentions of opening another satellite office because it had not worked well for the Company. Witness Clapp also stated that the telephone expense related to the Charlotte office is not an ongoing, recurring expense and should be removed. Further, witness Clapp removed from expenses the rental expense related to the Charlotte office and the Company agreed with this. Based upon the evidence, the Commission concludes that because the Company did not have an office open in Charlotte at the close of the hearings and the lack of persuasive evidence of a

firm commitment to do so, it would be inappropriate to allow the $390 of expense proposed by the Company.

The final difference between the Applicants and the Public Staff concerns the Applicants application of growth factors and allocation factors to Bethlehem, Huffman, and Lincoln. The Applicants' application, Tweed Exhibit 3, page 1 of 2, shows that the application of the growth and allocation factors results in an increase to Bethlehem and Huffman of $186 and $612, respectively, and a decrease of $234 for Lincoln. The reason that there is no difference for Mid South is that the Public Staff, as testified to by witness Clapp, incorrectly picked up the Company's number, which included application of the growth and allocation factors, before making its adjustments. Witness Clapp testified that he did not believe that telephone expense should be increased just because of customer growth.

On cross-examination, it was established that the Company has a WATS line. Witness Clapp was questioned about the billing for this service being determined by the number of calls and that, if this is how it is done, would the telephone expense grow as the number of customers grows. Witness Clapp testified that he was not sure how this billing was done and that he would need to investigate this in detail before he could make a determination.

Based upon the evidence presented in this proceeding, the Commission is not persuaded that it is inappropriate to allow for an increase in telephone expense to bring it to an end-of-period level as a result of customer growth. The Commission believes the Applicants' WATS line charges would be affected by the number of incoming calls. Accordingly, the Commission concludes that the level of telephone expense approved herein should be calculated using the application of a growth factor.

Based on the foregoing, the Commission concludes that the appropriate level of telephone expense to be included as an operating revenue deduction is $15,913 for all companies combined.

Repair and Maintenance

The difference in repair and maintenance (R&M) is composed of the following items:

Item	Amount
Expensing of small items instead of capitalizing	$(11,987)
Expensing of pumps	(22,997)
Removal of accounts payable at 12/31/86 from R&M account no. 5260-1	(7,506)
Total	$(42,490)

The first area of difference for repair and maintenance is the expensing rather than capitalization of certain small items. The difference of $11,987 is calculated by taking an amount of $11,373, which is proposed to be capitalized by the Public Staff, and multiplying it by a growth factor of 1.054 to state expenses on an ongoing level as proposed by the Company. Company witness Tweed testified that these items consisted of such things as paint, glue, parts for the leak truck, and contract labor. Company witness Tweed

testified that it was appropriate to expense these small items rather than capitalizing them. He further testified that he sometimes purchases parts for the leak truck in bulk and has to restock it approximately once each month. Also, he testified that it may cost as much as $700 to $1,000 to restock the leak truck with parts which include repair clamps, couplings, tees, and other different items.

Based on the evidence presented and as previously discussed in Evidence and Conclusions for Finding of Fact No. 12, the Commission is not persuaded by the argument of the Public Staff that these small items should be capitalized and concludes that they should be included in repair and maintenance expense as proposed by the Companies.

The second difference between the parties concerns the expensing of pumps. The difference of $22,997 is calculated by taking an amount of $21,819, which is proposed to be capitalized by the Public Staff, and multiplying it by a growth factor of 1.054 to state expenses at any ongoing level as proposed by the Company. These pumps, as discussed in Evidence and Conclusions for Finding of Fact No. 12, were determined to be items which should be capitalized and depreciated over five years. The Commission finds that it is, therefore, appropriate to remove them from expenses.

The last item of difference between the parties concerns the removal of $7,506 pertaining to accounts payable accrued at December 31, 1986, for repair and maintenance account no. 5260-1. In combination with the other adjustments to this account, this adjustment results in a negative balance. Witness Tweed argued that the Company should not expect anyone to pay the Applicants $1,938 per year for the privilege of maintaining their equipment which in his opinion would be the implication of the Public Staff's adjustment in this regard. Witness Tweed stated that the Commission should accept the $7,506, which was the amount of the 1986 accounts payable accrued, as the ongoing level of expense for account no. 5260-1. Public Staff witness Clapp testified that the negative balance resulted from an error in the Applicants' accrual of their expenses. He suggested that either the Applicants are accruing an expense which was not placed in this account during the test year, or that they have misclassified the amount, and it is showing up in another account. Witness Clapp also stated that the Public Staff discovered several misclassified items during their audit.

The Commission concludes that it is appropriate to remove the 1986 expenses accrued from 1987 expenses even if it leaves a negative balance in that particular repair and maintenance account. The Commission is aware that there are many individual accounts within the repair and maintenance category. The Commission agrees that the Company should recover its full cost of providing service, but finds that it is reasonable, based on the testimony in this case, to conclude that Mid South has misclassified expenses or not accrued its expenses properly. The Company has not disagreed with the other adjustments to remove 1986 accounts payable, and presumably disagrees with this one only because it results in a negative balance.

Based on the foregoing, the Commission concludes that Mid South has been allowed to recover its total repair and maintenance costs when viewed in the aggregate and, therefore, it would be improper to add $7,506 back to account no. 5260-1.

Based on all of the preceding evidence, the Commission concludes that the appropriate and reasonable level of repair and maintenance expense is $86,642.

Administrative and Office

Witness Tweed, in his rebuttal testimony, stated that the only contested adjustment for administrative and office expense was the removal of $4,080 from Lincoln Water Works' administrative and office account. Witness Tweed also stated that after reviewing the adjustment with Lincoln's bookkeeper and an outside accountant, he was unable to reach the same conclusion as the Public Staff. Witness Tweed stated it was his understanding that there was a note in the Company's books that said something to the effect that the amount was a 1987 repair and maintenance expense. He proposed to add back $4,300 ($4,080 X 1.054) to administrative and office expense for Lincoln.

Witness Clapp, for the Public Staff, testified that he removed the $4,300 because the amount related to an out of period item. He stated that he discussed this adjustment with Company personnel after filing and they stated that it was for repair and maintenance. Witness Clapp testified that Company personnel indicated at the time of the audit that the amount related to closing out a loan account for Lincoln from Mid South Water Systems, Inc. The Public Staff agreed to review any additional evidence the Company could provide to support its position. No further evidence has been filed with the Commission.

The Commission concludes that the $4,300 relates to an out of period item and, therefore, it is appropriate to remove the amount from Lincoln's administrative and office expense.

Based on all the foregoing, the Commission finds that the proper level of administrative and office expense is $19,499.

Professional Fees

The Public Staff proposed an amount $6,646 below the Applicants' proposed $13,088. The difference in professional fees is composed of the following items:

Item	Amount
Addition of accounting fees for 1987	$(1,825)
Other professional fees	(4,821)
Total	$(6,646)

The first area of difference concerning professional fees is the Public Staff's adjustment in their revised testimony and exhibits to include the 1987 accounting fees for all four companies. Public Staff witness Clapp testified that the level of professional fees, after Public Staff adjustments, did not look reasonable and that he contacted the Company hoping that they could explain why. Witness Clapp explained that there are several reasons why the amount proposed by the Public Staff in their prefiled testimony and exhibits does not represent an annual level. For example, it could be an incorrect amount of accounts payable accrued or a misclassification of an expense.

Public Staff witness Clapp testified that the Company provided additional information that was requested, and it was discovered that the accounting fees

for 1987 had not been accrued. The Company provided documentation showing that charges by their accountant for bookkeeping and tax returns for 1987 were $7,143 for Mid South, $575 for Lincoln, $650 for Bethlehem, and $675 for Huffman or a total of $9,043. The Public Staff made an adjustment in their revised testimony and exhibits to adjust the professional fees account for each Company to include the cost incurred for 1987 accounting services. This required an adjustment to Mid South water, Mid South sewer, Lincoln, Bethlehem, and Huffman of $3,286, $286, $25, $175, and $(125), respectively, for a combined adjustment of $3,647 to professional fees. Witness Tweed testified on cross-examination that the fee for Mid South in the amount of $7,143 was not allocated between utility operations and construction operations but that the amount was for the whole Company. Therefore, in its adjustment, the Public Staff allocated 50% of the accounting fees for Mid South to construction operations.

The Company, on the other hand, made an adjustment to include the same amount as the Public Staff for Mid South and further adjusted Bethlehem, Huffman, and Lincoln by $650, $675, and $575, respectively, which were the documented charges for these Companies. This results in the difference between the parties for this item of $1,825.

The Commission concludes, based upon the evidence presented, that the documented amount for 1987 bookkeeping and tax return fees of $5,472 as sought by the Company, rather than the $3,647 proposed by the Public Staff, is reasonable and appropriate for use herein.

The remaining difference between the parties of $4,821 relates to the ongoing level of professional fees sought by the Companies. The Company, in its proposed order, contends that its total documented level of professional fees is $8,267 which is calculated by adding the amount proposed by the Public Staff in its original prefiled exhibits of $2,795 and the $5,472 of 1987 fees as set forth above. Witness Tweed testified during the hearing that the Company had incurred more than $4,000 in legal fees in the past three months which were not related to this particular rate case but to other utility matters. Therefore, he stated that it was reasonable to expect more than $4,000 in legal fees for the Company and it would also be appropriate to accept the amount of $13,088 as sought in the application as the ongoing level of professional fees expense.

The Commission has carefully weighted the evidence in this regard and concludes that it is appropriate to allow the additional legal fees sought by the Companies in order to arrive at a reasonable and representative level of professional fees to be included as an operating revenue deduction. However, in arriving at a representative level of expense, the Commission deems it appropriate to amortize the $4,821 over a period of three years, thereby including $1,607 as an expense and an unamortized balance of $3,214 as deferred charges.

Accordingly, the Commission finds that the appropriate level of professional fees expense to include in this proceeding for all companies combined is $9,874.

Insurance Expense

The Public Staff is recommending a level of insurance expense of $25,650 which is $10,655 less than that of the Applicants' proposed amount of $36,305. The difference between the parties comprises the following items:

Item	Company	Public Staff	Difference
General Liability	$14,580	$ 9,419	$(5,161)
Automobile	12,180	10,231	(1,949)
Equipment Floater	671	671	-
Workmen's Compensation	7,804	4,259	(3,545)
Building Contents	818	818	-
Boiler & Machinery	252	252	-
Totals	$36,305	$25,650	$(10,655)

In its revised testimony and exhibits, the Public Staff reflected the Applicants' proposed amount of insurance expense. The Public Staff stated that they were neither agreeing or disagreeing with the Applicants' amount, but rather that the information required to determine the reasonableness of the allocations between utility and nonutility operations was not available at that time. The Public Staff reserved the right to change their recommended level of insurance expense in its proposed order.

In its proposed order, the Public Staff accepted the Applicants' proposed amounts for equipment floater insurance, building contents insurance, and boiler and machinery insurance. Therefore, the Commission concludes that the amounts proposed by the Applicants for these types of insurance are reasonable and appropriate.

The first difference between the parties concerns general liability insurance. The Applicants propose $14,580, while the Public Staff contends that $9,419 is the appropriate level. The difference between the parties results from a growth factor adjustment and the percentage allocated to utility operations. The Public Staff has made an adjustment to the current general liability premium to remove the growth that the utility has experienced during 1988. Under cross examination, Applicants' witness Tweed testified that the proposed insurance premiums reflect a larger company than in 1987. In the Applicants' response to the Commission's request that they submit information regarding customer growth during 1988, the overall growth for all four companies combined was 15%. It appears that the Applicants are proposing to include additional insurance expense due to customer growth while not realizing in its revenues the additional monies to be received from these new customers. Therefore, the Public Staff reduced the Applicants' total premium for general liability insurance 15% or $4,374 ($29,160 x .15).

The remaining difference results from the allocation factor. The Applicants allocated 50% to utility operations, while the Public Staff allocated 38%. The Applicants did not provide any support for the basis of their allocation factor. The Public Staff based their allocation on the percentage of total utility revenues to total revenues (utility and construction).

The Commission concludes that the adjustment to remove 1988 growth and the allocation based on revenues employed by the Public Staff are appropriate in determining the level of general liability insurance for the Applicants. The Commission bases its finding on the premise that the Applicants presented no justification for its allocation factor and that a 50/50 split is not appropriate because the risks for the construction operations may be greater than for the utility. It is also appropriate to remove the 1988 growth in order to be consistent with the Commission's long-standing policy to match revenues and expenses. Since this growth was subsequent to the test year and the policy's premium was based on the size of the Applicants fourteen months after the close of the test year, it would be unfair and inappropriate to include such expense in the cost of service without including the revenues that the growth has produced.

The Commission concludes that the Applicants have significantly increased their insurance requirements over the test year level. Allowing only actual, known changes, but not increases due to growth has been the Commission's policy. Therefore, the Commission concludes that the appropriate and reasonable level of general liability insurance is $9,419.

The second item of difference concerning insurance expense is vehicle insurance. The only difference between the parties results from the allocation factor used for separating costs between utility and nonutility operations. The Applicants propose to allocate 50% to utility operations while the Public Staff proposes 42%. The Companies state that the entire Company owns thirty-one trucks and cars of which approximately 50% are used by the utility companies. The Public Staff based their 42% factor on the ratio of the number of vehicles recommended for inclusion in rate base of 13.15 to the total vehicles of 31 owned by the entire Companies. The Commission concluded in the Evidence and Conclusions for Finding of Fact No. 12, that the appropriate number of vehicles to include in rate base is 14.90. It follows that no more than 48% (14.90/31) of the vehicle insurance expense should be borne by the ratepayers.

The Commission concludes that 48% is the appropriate allocation factor for apportioning insurance expense between utility and nonutility operations and that the reasonable and appropriate level of vehicle insurance is $11,692.

The final area of difference between the parties concerning insurance expense is workers compensation. The Public Staff is proposing an amount $3,545 below the Applicants' amount of $7,804. The difference between the amounts results from the method of calculation. The Companies used the current premium for workers compensation under the new insurance policy and allocated 40% to utility operations. Again, the Applicants have not provided any support for this allocation or the reasonableness of the amount.

The Public Staff has taken its proposed level of salaries and applied the workers compensation rates for 1988/89 to this level of salaries. The Public Staff has used this methodology to insure that workers compensation does not include additional expenses due to growth and to prevent cross-subsidization of the construction business by the utility.

The Commission concludes that the methodology used by the Public Staff for calculating workers compensation is appropriate. Based on the evidence

presented, the Commission is unable to determine the reasonableness of the Applicants' allocation factor. Clearly a mismatch of revenues and expenses would occur if the Companies' current premium is used because of growth since the end of the test year. The level of salaries and the workers compensation rates are known, therefore, a more accurate amount will result from the Public Staff's methodology. Accordingly, based upon the level of salaries and wages hereinafter found reasonable by the Commission and using the workers compensation rates for 1988/89, the appropriate amount for workers compensation insurance is $4,910.

Based on the foregoing, the Commission concludes that the total level of insurance for all companies combined is $27,762.

Transportation

In his rebuttal testimony, witness Tweed stated that he did not disagree with the following Public Staff adjustments: reclassification from account no. 5420-1 of $320, removal of account no. 5260-1 of ($6,383), and removal of 1986 accounts payable accrued of ($676). The adjustments result in a combined decrease of $6,739 to transportation expense and witness Tweed stated that he would accept the combined growth factor (1.054) to reach the true amount of adjustments that the Companies accepted. The application of the growth factor results in a $364 increase proposed by the Companies. The Commission concludes that the adjustments to transportation expense of $6,739 are reasonable and appropriate.

The difference in transportation expense is composed of the following items:

Item	Amount
Reduction by 21%	$(5,447)
Application of growth factor and allocation factor per Company for:	
a. Bethlehem	(1,361)
b. Huffman	(1,862)
c. Lincoln	(157)
Per books difference for Huffman	(1,502)
Application of growth factor by Public Staff	1,115
Growth factor applied by Company to adjustments accepted	364
Total	$(8,850)

Public Staff witness Larsen testified that based upon his adjustments to vehicles, he calculated that only 79% of the transportation expense should be allowed. The Commission concludes that it is reasonable and appropriate to allocate transportation expense based upon the Commission's adjustment to the number of vehicles allowed in this proceeding. Therefore, based on the number of vehicles found reasonable in Evidence and Conclusions for Finding of Fact No. 12, the Commission concludes that it is proper to reduce total transportation expense by 10%.

The next item of difference concerns the Applicants' application of a growth factor and an allocation factor to Bethlehem, Huffman, and Lincoln. In the application, Tweed Exhibit 3, page 2 of 2, shows that the application of

the growth and allocation factors results in a combined increase of $3,380 for all three companies. The reason that there is no difference for Mid South is because the Public Staff incorrectly picked up the Company's number, which included application of the growth and allocation factors, before making its adjustments. The Public Staff has applied a growth factor and an allocation factor to each Companies' adjusted amounts. This is consistent with the Applicants' methodology, although the recommended levels differ.

The third item of difference concerns the per books amount of transportation expense for Huffman Water Systems, Inc. In the application, the Applicant used $1,734 as the per books amount. The Public Staff concluded from its audit of the Company's books and records that the per books amount of transportation expense for Huffman was $232. This resulted in a difference of $1,502. Based upon the evidence presented in this proceeding, the Commission is unable to determine what causes the difference in the per book expense set forth by the Applicants and the Public Staff for Huffman. Without any specific evidence in the record concerning this difference, the Commission concludes that the difference between the parties of $1,502 should be divided equally. Accordingly, the Commission concludes that the appropriate amount to use for the per book expense for Huffman is $983.

The final differences between the parties concerns that application of the growth factors. The Companies applied a combined composite growth factor (1.054) to the amount that the Companies agreed to accept, $6,739, resulting in an increase of $364. The Public Staff applied a separate growth factor to each Company after adjustments and allocation. This resulted in a $1,115 increase to total transportation expense (all companies combined). The Commission concludes that it is appropriate to apply a growth factor to the adjusted amounts for each Company.

Based upon all of the preceding evidence and the conclusions made by the Commission, the Commission concludes that the reasonable and appropriate level of transportation expense for all companies combined is $26,964.

In determining this amount, the Commission has taken Mid South's per book expense of $32,541 as set forth by the Company and made the adjustments agreed to by the Company of $320, $(6,383), and $(676) to arrive at an amount for Mid South of $25,802. To this amount is added the per books expense for Bethlehem and Lincoln of $878 and $750, respectively, as well as the per books expense for Huffman of $983 as set forth above. Based upon this calculation, the resulting amount is $28,413.

The Commission then reduces the $28,413 by 10% based upon the Commission's adjustment to the number of vehicles allowed which results in an amount of $25,572. The $25,572 is then multiplied by the allocation and growth factors proposed by the Public Staff and accepted by the Commission for use herein in arriving at the total amount of transportation expense for all companies combined of $26,964.

Salaries and Wages

Applicants' witness Tweed in his rebuttal testimony proposed an amount of $467,676 for salaries and wages. Attached to witness Tweed's rebuttal testimony was a listing of all employees of the companies reflecting their

current salaries and titles. Counsel for the Applicants sought to have the salary listing treated as proprietary information which was allowed by the Commission. The Public Staff proposed an amount of $347,211 for salaries and wages for all companies combined, resulting in a difference of $120,465.

Both parties agree to include the full salary of Jerry Tweed, the Applicants' Executive Vice President, and the Commission concludes that the amount proposed is appropriate.

The first area of difference between the parties concerns the inclusion of the salary of Carroll Weber, one of Applicants' stockholders. Applicants seek to include one half of Carroll Weber's salary or $30,000 whereas the Public Staff does not include any salary expense for Mr. Weber. Public Staff witness Larsen testified that witness Tweed was hired in July, 1988, and his responsibilities involve the control of all utility functions, overseeing of all administrative duties, and dealing with regulators and other state agencies. Witness Larsen further testified that witness Tweed was hired to take control of all the utility functions and believes that he should replace those individuals who previously performed this function. Therefore, the Public Staff proposes that Mr. Weber's salary as well as that of Rick Durham, Applicants' General Manager, be removed from utility operations.

Witness Larsen was questioned on cross-examination about whether the Applicants' management was or was not the type of people who get involved in the field and involved in helping make repairs. In response, witness Larsen testified that "From my observations, I would say that Jerry Tweed and Mary Weber are in the office or are not involved in that type of work you just described. And I would say Carroll Weber and Rick Durham would probably be involved to some degree to that type of work. How much, I do not know." Further, witness Larsen testified that during the Public Staff audit he had seen Mr. Weber from time to time and he was in the office, but he was not sure if Mr. Weber was around because of the utility operation or utility construction.

Witness Tweed testified that he proposes what he considers to be a reasonable level of salary expense for all employees needed to provide a reasonable level of test year service. With regard to Mr. Weber, witness Tweed testified that he has overall management responsibility and obtains any needed financing for the companies. He further testified that Mr. Weber visits and inspects the Applicants' existing systems and if any repairs or maintenance is needed, he directs that it be done. Witness Tweed further testified that Mr. Weber assists in an emergency situation and provides guidance to the Applicants' field foremen or other field operators who are working to resolve the emergency situation.

Based upon a careful review of the evidence presented in this regard, the Commission is convinced that Carroll Weber spends a significant portion of his time involved in the operation and management of utility operations and should be so compensated. However, the Commission is not persuaded that one half of his time is devoted to utility operations as proposed by the Companies especially since Mr. Tweed was hired to be responsible for a majority of management functions. Therefore, the Commission in determining a reasonable and representative amount of salary expense for utility operations, concludes

that Mr. Weber should be included at a salary of $15,000, or one half of that sought by the Companies.

The next area of difference concerns the salary expense for Mary Weber, Applicants' Vice-President and Secretary and also a stockholder of the Companies. Although both parties agree that three-fourths of Mrs. Weber's time be included in utility operations, the parties disagree concerning her salary level. The Applicants propose a salary level of $30,000 whereas the Public Staff proposes $13,000, both representing three-fourths of her time.

Witness Tweed testified that Mrs. Weber is the office personnel manager and comptroller. He further testified that she works with the various employees on any problems, maintains the budget, pays the bills, and basically manages the finances of Mid South.

The Commission agrees with the parties that Mrs. Weber should be included at three-fourths time for utility operations; however, the Commission is of the opinion that to include $30,000 as salary expense would be excessive. Accordingly, the Commission concludes that a reasonable and representative level of salary expense for Mrs. Weber is $22,500 ($30,000 x .75) considering her duties and responsibilities and the current salary level of other Companies employees.

The last area of difference between the parties with respect to administrative and executive salaries concerns that of Rick Durham, General Manager. The Applicants propose to include Mr. Durham as one-half time utility with a corresponding salary of $21,021 whereas the Public Staff proposes to not allow any of Mr. Durham's salary.

The Public Staff proposes to disallow the salary of Mr. Durham generally for the same reasons as that for disallowing Mr. Weber's salary, that is, Mr. Tweed was hired to become manager of the utility companies and thus replace Mr. Weber and Mr. Durham. However, witness Larsen testified that the Public Staff would not object if Mid South was billed directly for Mr. Durham's contribution on an hourly basis or a case-by-case basis. Further, witness Larsen testified that during his field visit to the Companies, he had observed Mr. Durham doing utility work.

Witness Tweed testified that Mr. Durham has developed a billing program for the billing department and has been primarily responsible for computerizing the Applicants' books and records, annual reports and testing schedules, and training utility employees in the use of the computer. He further testified that Mr. Durham is a professional engineer and provides engineering expertise to the field people. Further, Mr. Durham inspects systems that the Applicants are going to acquire as well as inspecting systems that are currently operating and reports back on the condition of the systems. Witness Tweed further testified that Mr. Durham also assists with the needs of developers and customers and prepares and submits applications with the State for approval of wells, filtering systems, pumps, etc. In response to the Public Staff's proposal that the Companies be billed directly for Mr. Durham's services, witness Tweed testified that if the Companies did bill out his time it would be more than his proposed utility salary of $21,021. Based upon the foregoing and the entire record, the Commission concludes that Rick Durham clearly has substantial responsibilities in the utility operations and, accordingly,

concludes that the amount of $21,021 proposed by the Applicants for his salary is just and reasonable and should be included in the Applicants' cost of service.

In reaching the above conclusions regarding the administrative and executive personnel and their respective salaries, the Commission does not find it unreasonable to allocate 2.5 people to the overall management function of a company which has as many systems and customers as does Mid South and its affiliated companies. The Commission further concludes that administrative and executive salaries in the amount of $120,521 is a reasonable and representative level to serve the test year level of customers.

Another area of difference between the Applicants and the Public Staff is with regards to the level of operations/maintenance personnel and their respective salary levels. The Public Staff proposes to remove the salary of Carl Pate, a system operator, and does not include the salary of Charles Boland, a system operator which was recently hired by the Applicants.

Witness Larsen testified that he removed the salary of Carl Pate because he was basically on a retainer with the Companies. He further testified that Mr. Pate was in poor health and was not, from what he understood, working for the Companies but was occasionally called for information on specific systems. Also, witness Larsen testified that he has included the salary of Jerry Mather who was hired after the test year to replace Mr. Pate as it was his understanding after talking with the Companies that Mr. Mather was hired to take over Mr. Pate's systems.

Witness Tweed testified that at the time he filed the rate case proceeding, Mr. Pate was disabled and was at home. Mr. Pate was being paid $152 per week to be on retainer so he could be contacted since the Applicants needed his expertise on many of the systems in Alexander County and he also provided some on-site advise during this time. Witness Tweed further testified that Mr. Pate is currently back at work full time and has been provided a truck and the Applicants propose to include his entire salary of $18,720 per year. In response to questions concerning Mr. Mather, witness Tweed testified that he was not hired to replace Mr. Pate but was employed to work in the Gaston County-Charlotte area as the Applicants did not have enough operators to cover the test year level of systems in that area. When questioned in regard to who took over Mr. Pate's systems during the time he was out, witness Tweed responded that they absorbed them with other operators, they just doubled up.

In regard to the inclusion of the salary of Charles Boland by the Companies, the Public Staff takes the position that Mr. Boland was not needed to serve test year customers and that growth in customer revenues after the test year should compensate the Companies for its addition in operators such as Mr. Boland. Witness Tweed testified that Mr. Boland had been hired sometime either at the end of 1988 or the beginning of 1989 and at the time of the hearings, Mr. Boland was still working his notice with another Company.

Based upon the foregoing, the Commission concludes that the salaries of both Mr. Pate and Mr. Mather should be included in the cost of service in order for the Companies to adequately serve the needs of the test year level of customers. Further, the Commission concludes that there has been insufficient evidence presented to show that the new employee, Charles Boland, was needed to

level of revenues and expenses elsewhere herein, the Commission concludes that the proper amount for state income taxes is $161 and $321 for federal income taxes under present rates.

The Commission, in calculating the amount of federal income taxes, has treated the Applicants' as being members of a controlled group pursuant to the provisions of the Internal Revenue Code. Accordingly, the Applicants are entitled to one $50,000 and one $25,000 taxable income bracket below the 34% tax rate bracket and the Commission has used this methodology in calculating federal income taxes. Also, the Commission has treated the Applicants as one corporation for purposes of calculating the additional 5% tax that must be paid by corporations with taxable income in excess of $100,000.

Based upon the foregoing, the Commission concludes that the reasonable and appropriate level of test year operating revenue deductions for all four Applicants combined after normalized and pro forma adjustments are $966,476.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 17, 18, AND 19

The evidence supporting these findings of fact is contained in the testimony and exhibits of Applicants' witness Tweed and Public Staff witnesses Sessoms and Clapp.

Public Staff witness Sessoms cited the fact that the operating expenses are larger than the associated rate bases for each of the water and sewer operations of the Applicants. He testified that, since the operating expenses are larger than the rate bases, variation in revenues and/or expenses presents a greater risk to the owner than variation in the return on investment in rate base. In such a situation, he felt it appropriate to shift the focus from investment to expenses and use the operating ratio method which allows a margin above operating expenses. He added that investment in rate base is given consideration in the operating ratio method because depreciation is included in the operating expenses requiring a margin. Witness Sessoms also testified that the operating ratio method provides for a more reasonable level of revenues than the return on rate base method when operating expenses are larger than rate base.

The Commission finds that the operating ratio method is the proper method to determine revenue requirements for each of the water and sewer operations of the Applicants.

Concerning the margin which should be allowed on operating expenses requiring a return, Tweed Rebuttal Exhibit 1 indicates that the revenues and expenses requested by the Companies produce a 12.05% margin.

Public Staff witness Sessoms recommended in his prefiled testimony that each of the water and sewer operations of these Companies be allowed an 11.9% margin. At the hearing, witness Sessoms revised his recommendation to 12%. He derived his recommended margin of 12.0% by combining the risk-free rate on 5-year U.S. Treasury bonds with a 3 percentage point factor to adjust for risk. Yields on 5 year U.S. Treasury bonds averaged 9.0% over the most recent 26 week period and when added to the 3.0% risk factor produced the 12.0% margin.

Witness Sessoms testified that several factors should be considered when judging the adequacy of a return. These factors are quality of service, the expected level of inflation, interest coverage, and adequacy of income level after interest expense. In considering these factors in conjunction with this proceeding, witness Sessoms testified he had not incorporated any consideration with respect to quality of service. He also stated that the expected level of inflation has been factored into the yield on 5 year U.S. Treasury bonds by investors.

Although the operating ratio method emphasizes expenses and not investment, witness Sessoms also considered interest coverage and adequacy of income level after interest expense. With respect to interest coverage, he testified that only the interest on debt supporting the rate base should be considered in the ratemaking process. He also recommended that rates for a water or sewer company should be based on an imputed capital structure consisting of 50% debt and 50% equity. He stated that assuming such a capital structure for ratemaking purposes would give the owner incentive to move toward such a capital structure, which, when achieved, would promote financial stability and allow ratepayers the benefit of the lower cost of debt.

Despite his recommended capital structure, witness Sessoms calculated the interest coverage produced by his recommendation considering the actual capital structure of these Companies which are financed with 90% to 100% debt. For each of the water and sewer operations, with the exception of the water operation of Mid South, the interest coverage on debt supporting the rate base was equal to or in excess of 3.5 times using the 11.9% margin contained in his prefiled testimony. He testified that this level of coverage was excellent. For the water operations of Mid South, interest coverage on debt supporting the rate base was 1.9 times which was adequate. He further testified that by using his revised recommendation of a 12% margin would cause interest coverage to be higher.

Witness Sessoms pointed out that his prefiled recommendation of 11.9% would produce a return on equity supporting the rate base of the water operations of Mid South equal to 77%. Thus, he testified that if the margin on expenses for this operation were increased to provide a higher interest coverage than 1.9 times, the 77% return on equity would simply become higher. He noted that, while this return on equity seemed high, one must remember that the operating ratio method focuses on expenses and not investment.

For the reasons stated, witness Sessoms recommended that each of the water and sewer operations of the Applicants be allowed a 12.0% margin on operating expenses requiring a return.

The determination of the appropriate fair rate of return for the Companies is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on the Companies, 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 by sound management to produce a fair return for its stockholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are fair to its customers and to its existing investors."

The return allowed must not burden rate payers 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).

Based upon the evidence, the Commission finds that 12.0%, as proposed by witness Sessoms, is the appropriate margin to allow on operating expenses requiring a return for each of the water and sewer operations of the Applicants.

The operating ratios resulting from the allowed 12.0% margin on operating expenses range from 90.07% to 90.29% including gross receipts and income taxes. Such ratios are reasonable and fair to both the owners and the ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

Based upon the rate base, revenues, operating revenue deductions, and margin on operating revenue deductions as previously determined and set forth in this Order, the Commission concludes that the Applicants should be allowed an increase in their annual gross service revenues on a combined basis of $252,353.

The following schedule summarizes the revenues and operating revenue deductions on a combined basis and incorporates the findings and conclusions heretofore and hereinafter found fair by the Commission. Attached to this Order as Appendix C are schedules setting forth the rate base, revenues, and operating revenue deductions for each specific company.

SCHEDULE I
MID SOUTH WATER SYSTEMS, INC.
BETHLEHEM UTILITIES, INC.
H.C. HUFFMAN WATER WORKS, INC.
LINCOLN WATER WORKS, INC.
STATEMENT OF OPERATING INCOME FOR COMBINED OPERATIONS
For the Test Year Ended December 31, 1987

Item	Present Rates	Increase Approved	After Approved Increase
Operating revenues:			
Water revenues	$813,386	$219,420	$1,032,806
Sewer revenues	70,197	32,933	103,130
Other revenues	13,789	-	13,789
Uncollectibles	(4,847)	(1,223)	(6,070)
Total operating revenues	892,525	251,130	1,143,655
Operating revenue deductions:			
Purchased water	7,349	-	7,349
Purchased sewer	11,308	-	11,308
Telephone expense	15,913	-	15,913
Power for pumping	152,280	-	152,280
Chemicals	3,252	-	3,252
Repairs and maintenance	86,642	-	86,642
Administrative and office	19,499	-	19,499
Professional fees	9,874	-	9,874
Insurance	27,762	-	27,762
Rate case expense	3,449	-	3,449
Transportation expense	26,964	-	26,964
Salaries and wages	431,348	-	431,348
Rents and leases	16,534	-	16,534
Testing fees	23,256	-	23,256
Miscellaneous expense	4,208	-	4,208
Licenses	1,062	-	1,062
Total operation and maintenance expenses	840,700	-	840,700
Depreciation expense	47,745	-	47,745
Payroll taxes	35,702	-	35,702
Property taxes	4,750	-	4,750
Gross receipts taxes	37,097	10,700	47,797
State income taxes	161	11,526	11,687
Federal income taxes	321	43,485	43,806
Total operating revenue deductions	966,476	65,711	1,032,187
Net operating income	$(73,951)	$185,419	$ 111,468

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

This finding of fact follows from the conclusions reached with respect to rates approved herein and in finding of fact No. 22 below and from the Applicants' Undertakings to refund.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence for this finding is found in the testimony of Public Staff witness Larsen, in the Applicants' application, and in the proposed orders of the Public Staff and the Applicants.

The Public Staff and the Applicants agree on the following charges and tariff items:

Connection Charges:

Water (except where excluded by contract)	$400.00
Sewer (except where excluded by contract)	$400.00

Reconnection Fees:

If water service cutoff by utility for good cause or at customer's request:	$ 15.00
If water service cutoff by utility for good cause when there is no cutoff valve: (to cover installation of cut off valve)	$ 50.00
If sewer service cutoff by utility for good cause when water utility service is not provided by utility company:	$ 75.00

Returned Check Charge: $ 10.00

Bills Due: On billing date

Bills Past Due: 20 days after billing date

Finance Charge for Late Payment: 1% per month on unpaid balance of all bills still past due 25 days after billing date.

The Commission concludes that above charges and other tariff matters, being fair and reasonable and agreed to by the parties, should be approved.

The Applicant and the Public Staff disagree on the following charges and tariff item:

Reconnection Charge: If water service cut off by utility at customer's request and there is no cutoff valve -

Applicants' requested rate	$50.00
Public Staff's recommended rate	$15.00

The Applicants did not oppose the recommendation of the Public Staff, as it relates to this matter, in either its proposed order or in the testimony of its witness at the hearing. The Public Staff points out in its proposed order that if a customer does not have a cutoff valve, it is not the fault of the customer. The Applicants accepted the system without cutoff valves knowing that, from time to time, a customer may need to have his water service cutoff. The Public Staff further points out that the extra expense of installing a cutoff valve should not be the responsibility of the customer if his water service is discontinued for reasons other than good cause, i.e., nonpayment of bill.

The Commission is of the opinion and hereby concludes that the Public Staff's recommendation is fair and reasonable and should be approved.

Charge for Filling Swimming Pools on Flat Rate Systems -

Applicants' requested rates	$ 2.50/1,000 gals (based on pool size)
Public Staff's recommended rates	Utility may install meter as per Rule R7-22(c).

The Applicants did not oppose the recommendation of the Public Staff, as it relates to this matter, in either its proposed order or in the testimony of its witness at the hearing. The Public Staff points out in its proposed order that Rule R7-22(c) applies to all cases of waste and abuse and that, on a flat rate system, filling swimming pools can be considered abuse.

The Commission is of the opinion and hereby concludes that the Public Staff's recommendation is fair and reasonable and should be approved.

Billing Frequency on Flat Rate Systems -

Applicants' request	Monthly in advance
Public Staff's recommendation	Monthly in arrears

The Applicants did not oppose the recommendation of the Public Staff, as it relates to this matter, in either its proposed order or in the testimony of its witness at the hearing. The Public Staff points out that flat rate billing in arrears is in line with the Applicants' present billing practices and is fair to all customers.

The Commission is of the opinion and hereby concludes that the Public Staff's recommendation is fair and reasonable and should be approved.

In addition, the Applicants have requested that the following language be included in their tariff:

> Monthly base charges and monthly flat rates will be charged whether or not unit is occupied.

The Public Staff initially agreed with the inclusion of said language; however, the Public Staff now recommends that the Applicants' tariff include the following language:

Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period during which they were disconnected.

The Applicants have agreed with the above language. However, after review of these two requests, the Commission is of the opinion that it would be appropriate and clearer if the following language was included in the Applicants' tariff:

Monthly base charges or monthly flat rates will be charged whether or not unit is occupied unless disconnection is requested (see reconnection charges). Units that are sold or rental units that change occupants (where service is not in name of landlord) will not be charged these charges for the period that they were disconnected from the system.

Customers who have been disconnected and are reconnected at the same address within nine months of disconnection will be charged the monthly base charge or the monthly flat rate per month for the period during which they were disconnected.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

The evidence for this finding is found in the testimony of Public Staff witness Larsen.

Witness Larsen recommended that the Applicants conduct a feasibility study of metering their unmetered water systems. Witness Larsen indicated that the Applicants have 33 flat rate water systems serving approximately 1,000 customers. Witness Larsen further stated that it may be impractical or uneconomical to meter all of the unmetered systems. The Applicants did not disagree with witness Larsen's recommendation.

Commission Rule R7-22 requires that all water sold shall be by metered measurements unless it is impractical or uneconomical to do so. Therefore, the Commission is of the opinion that the Applicants should be required to perform a study to determine the feasibility of installing meters in all their unmetered systems. Furthermore, this study shall be filed by November 1, 1989, and shall indicate the name and location of each unmetered system, the age and material of the water laterals, whether or not there are cutoff valves and/or meter boxes on the customers' lines, the number of present and potential customers, the possibility of each system being annexed by a county or municipality in the foreseeable future, whether or not the system is a seasonal system, and the estimated cost of metering each system.

EVIDENCE AND CONCLUSION FOR FINDING OF FACT NO. 24

The evidence for this finding is found in the Companies' application and in the testimony of Public Staff witness Larsen.

The Applicants and Public Staff differ over certain elements of rate design for water usage that should be decided in this proceeding.

The Companies are recommending, on a metered rate, that the base charge for commercial customers be based on meter size and that the base charge vary from $8.00 for a 5/8" x 3/4" meter to $400.00 for a 6" meter. The Public Staff, through witness Larsen, recommends that the base charge be fixed, regardless of meter size.

Neither party presented any evidence, except for their proposed rate designs, that would persuade the Commission to vary from the rate design that is presently being used. Mid South presently has a rate design in which the base charge increases with meter size. The other Companies either have only one size meter, 5/8" x 3/4", or have not previously asked for a rate design which increases with meter size.

Based on the fact that the present tariff allows the base charge to increase with the increase in meter size and the lack of evidence to change this method, the Commission is of the opinion that the base charge should increase as meter size increases. The Commission is further of the opinion that this rate design should apply to both residential and commercial customers.

EVIDENCE AND CONCLUSION FOR FINDING OF FACT NO. 25

The evidence for this finding is found in the application and in the testimony of Public Staff witness Larsen.

The Applicants, through their application and proposed order, and the Public Staff, through the testimony of witness Larsen, and in its proposed order, both recommended that uniform rates be set for the Applicants except for the usage charge for Lincoln. Both parties recommended that the usage charge for Lincoln be set lower; since, unlike the other Companies, Lincoln's water is purchased from the County for resale to its customers. This results in lower costs to the Company.

The Commission concludes that the proposals for uniform rates except for Lincoln, as requested by both parties, is appropriate and should be adopted. Based upon the foregoing, the Commission concludes that the rates contained in Appendix A, will provide for the increase approved herein and are fair to the Applicants and their customers. Accordingly, the rates set forth in Appendix A are approved as the proper rates in this proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicants be, and hereby are, authorized to adjust their rates and charges to produce an annual increase in their water service revenues of $219,420 and sewer service revenues of $32,933.

2. That the Schedule of Rates, attached hereto as Appendix A, is hereby approved for the Applicants for providing water and/or sewer utility service to all their customers in North Carolina. Said rates and charges shall become effective for service rendered on or after the date of this Order.

3. That said Schedule of Rates is hereby deemed filed with the Commission pursuant to G.S. 62-138.

4. That the interim rates approved for the Applicants are just and reasonable and should be affirmed. The undertakings for refund filed by the Applicants are hereby discharged and cancelled.

5. That customers who requested to be disconnected from water and/or sewer utility service prior to the date of this Order shall not be required to pay monthly base charges or monthly flat rates during the period they were disconnected.

6. That within 60 days of the date of this Order, Mid South, Bethlehem, and Huffman shall file reports with the Commission explaining the status and proposed improvements to alleviate water quality problems in the following subdivisions:

Ashe Plantation - Mecklenburg County (Mid South)
Green Road - Gaston County (Mid South)
Springhaven - Catawba County (Mid South)
Starbrook Park - Gaston County (Mid South)
Fairfield Acres - Alexander County (Bethlehem)
Crestmont - Catawba County (Huffman)
Herman Acres - Catawba County (Huffman)

7. That, by November 1, 1989, Mid South shall file with the Commission a report explaining the feasibility of metering all its existing flat rate water utility customers. Said report shall indicate the name and location of each unmetered system, the age and material of the water laterals, whether or not there are cutoff valves and/or meter boxes on the customers' lines, the number of present and potential customers, the possibility of each system being annexed by a county or municipality in the foreseeable future, whether or not the system is a seasonal system, and the estimated cost of metering each system.

8. That the Notice to the Public, attached hereto as Appendix B, shall be delivered to all of the Applicants' customers in conjunction with the Applicants' next regular billing cycle. A copy of Appendix A shall be attached to the Notice to the Public.

9. That Mid South shall account for its investment in its Wexford properties in a manner consistent with the accounting methodology set forth under Evidence and Conclusions for Finding of Fact No. 10.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of June 1989.

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

Commissioner Hipp concurring in part and dissenting in part.

DOCKET NOS. W-720, SUB 94; W-259, SUB 5; W-95, SUB 11; AND W-335, SUB 4

HIPP, COMMISSIONER, CONCURRING IN PART AND DISSENTING IN PART. I concur with the majority decision except for its treatment of the cost of replacing water and/or sewer pumps, and I dissent from the action of the majority in

disallowing this cost as an operating expense and from the decision of the majority to treat such expense as a plant investment.

Mid-South and its affiliated companies have elected to file this case under the provisions of G.S. 62-133.1 which provides that the rates of small water and sewer utilities may be fixed on the ratio of the operating expense to the operating revenues. (The ratio for any particular utility is determined by the Commission.) This operating ratio statute was designed to cover utilities whose basic utility plant was contributed by developers, leaving the utility with no allowable rate base for a rate base rate of return under G.S. 62-133. Fixing the rates based on the operating ratio allows the utility to have some net earnings, as a result of operating substantial utility plants; to provide some incentive for the acceptance of such liability; and to provide some revenues for the extensive repairs and maintenance required to keep such contributed plant in operation, including the obligation to replace defective plant in the years ahead.

The applicants are operating water systems in 108 subdivisions in 18 counties serving 5,190 customers, plus sewer systems for 12 subdivisions in 5 counties with 559 sewer customers. The original cost of the contributed plant is unknown. However, if it is assumed that the original cost of the 108 water systems and 12 sewer systems averaged $50,000 each, the applicant's are managing and are responsible for the maintenance and continued operation of $6,000,000 of utility plant, for which the rate base of the contributed part is zero.

During the test period, the applicants incurred $21,859 of expenses in the cost of replacing or repairing unreliable or malfunctioning water pumps. The utility's books assigned this pump repair cost as an operating expense in the operating ratio. The majority disallowed the cost of this repair as an expense, and held that it should be treated as a plant investment. (See pages 16-18 of the majority decision.)

To assign pump repair cost to the rate base as additional investments, for an operating ratio utility, is to deny it any return on that investment and to also deny it any consideration for the expense in the rates fixed on the operating ratio basis. The majority contends that the allowance of depreciation of the investment account provides a recognition of the expense, but this denies a return or cost of money on the $21,859 during the 5 years period fixed by the majority for recovery of the depreciation expense.

In my view, to say that the cost of repairing water pumps is not an expense but is an investment in plant is to deny human understanding of the English language.

In Utilities Commission v. Edmisten, Attorney General, 294 NC 598, (1978), the North Carolina Supreme Court held that the cost of exploring and drilling for gas qualified as an operating expense under the circumstances of that case, which would include pumps, drills, wells and the whole gas drilling cost.

> At page 606, the Court said "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." (Underlining added)

The Court thus holds that operating expenses should be liberally construed to secure proper service to the public and allow the utility the expense of its operation.

The analogy is clear, that in the present case of an operating ratio water company with no return on rate base, the operating expense should include the cost of repairing and replacing pumps to keep the water and sewer systems operating. The water and sewer utility companies which are responsible for perpetual and continued operation of the contributed water and sewer systems with no allowable rate base must have a method of reimbursement for repairs, including replacement parts and other repair parts, or their customers face a slow deterioration and ultimate failure of the systems.

This case should serve as a basis for recognizing this unanswered obligation of operating ratio utilities for the long-range protection of their customers. This could include some consideration for the dedication of such reimbursement funds to the future repair and maintenance of such systems, if needed.

Edward B. Hipp

APPENDIX A

SCHEDULE OF RATES
for
MID SOUTH WATER SYSTEMS, INC., BETHLEHEM UTILITIES, INC.,
H. C. HUFFMAN WATER SYSTEMS, INC., and LINCOLN WATER WORKS, INC.
for providing water and sewer utility service in
All Their Service Areas in North Carolina

WATER SERVICE

Metered Rates: (both residential and nonresidential)

Base Charge* (based on meter size):

Meter Size	
3/4" x 5/8"	$ 8.00
3/4"	12.00
1"	20.00
1-1/2"	40.00
2"	64.00
3"	120.00
4"	200.00
6"	400.00

Usage Charge (Lincoln Water Works, Inc.)	$ 1.50/1,000 gallons
Usage Charge (All Other Service Areas)	2.05/1,000 gallons

Flat Rate*
Residential $ 13.00

Nonresidential	
Woodlawn Business	$ 18.00
Woodlawn Motel	60.00
Woodlawn Restaurant/Lumber	73.00
Woodlawn Manufacturing	130.00

The Companies, at their expense, may install a meter and charge the metered rate.

SEWER SERVICE

Metered Rate:*

Residential (Autumn Chase Subdivision)	
Base charge	$ 8.00
Usage charge	1.60/1,000 gallons
Nonresidential	
Base charge	$ 8.00
Usage charge	2.50

Flat Rate:*

Residential	$ 24.00

Connection Charges

Water (except where excluded by contract)	$400.00
Sewer (except where excluded by contract)	400.00

Reconnection Charges

If water service cut off by utility for good cause or at customer's request:	$ 15.00
If water service cutoff by utility for good cause when there is no cutoff valve: (to cover installation of cut off valve)	$ 50.00
If sewer service cut off by utility for good cause when water utility service is not provided by utility company:	$ 75.00

Customers who have been disconnected and are reconnected at the same address within nine months of disconnection will be charged the monthly base charge or the monthly flat rate per month for the period during which they were disconnected.

Returned Check Charge: $ 10.00

Bills Due: On billing date

Bills Past Due: 20 days after billing date

Billing Frequency: Monthly for service in arrears

Finance Charge for Late Payment: 1% per month on unpaid balance of all bills still past due 25 days after billing date.

Deposits: May be requested in accordance with NCUC Rules R12-1 through R12-6.

* Monthly base charges or monthly flat rates will be charged whether or not unit is occupied unless disconnection is requested (see reconnection charges). Units that are sold or rental units that change occupants (where service is not in name of landlord) will not be charged these charges for the period that they were disconnected from system.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket Nos. W-720, Sub 94, W-259, Sub 5, W-95, Sub 11, and W-355, Sub 4, on this the 9th day of June 1989.

APPENDIX B

DOCKET NO. W-720, SUB 94
DOCKET NO. W-259, SUB 5
DOCKET NO. W-95, SUB 11
DOCKET NO. W-335, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Mid South Water Systems, Inc., Bethlehem Utilities, Inc., H.C. Huffman Water Systems. Inc., and Lincoln Water Works, Inc., for Authority to Increase Rates for Water and Sewer Utility Service in All of Their Service Areas in North Carolina	)	NOTICE TO THE PUBLIC

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has approved a rate increase for Mid South Water Systems, Inc., Bethlehem Utilities, Inc., H. C. Huffman Water Systems, Inc., and Lincoln Water Works, Inc., for their water and/or sewer systems in North Carolina. The rates are fully described in Appendix A, attached hereto.

The Commission, after public hearings in Hickory, Charlotte, and Raleigh, approved the rates shown on Appendix A. These rates shall become effective for service rendered on and after the effective date of the Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of June 1989.

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

APPENDIX C
SCHEDULE 1

MID SOUTH WATER SYSTEMS, INC.
WATER AND SEWER COMBINED
Docket No. W-720, Sub 94
STATEMENT OF RATE BASE
For the Twelve Months Ended December 31, 1987

Item	Water Operations	Sewer Operations	Combined Operations
Plant in service	$590,672	$27,625	$618,297
Less - Accumulated depreciation	(124,733)	(5,333)	(130,066)
Average tax accruals	(10,958)	(1,195)	(12,153)
Contributions in-aid-of construction	(36,285)	(3,155)	(39,440)
Add - Cash working capital	75,475	9,745	85,220
Deferred charges	6,648	610	7,258
Total rate base	$500,819	$28,297	$529,116

APPENDIX C
SCHEDULE 2

BETHLEHEM UTILITIES, INC.
Docket No. W-259, Sub 5
STATEMENT OF RATE BASE
For the Twelve Months Ended December 31, 1987

Item	Amount
Plant in service	$120,641
Less - Accumulated depreciation	(3,258)
Average tax accruals	(917)
Contributions in-aid-of construction	(350)
Plant acquisition adjustment	(102,720)
Add - Cash working capital	6,708
Deferred charges	866
Total rate base	$ 20,970

APPENDIX C
SCHEDULE 3

HUFFMAN WATER SYSTEMS, INC.
Docket No. W-95, Sub 11
STATEMENT OF RATE BASE
For the Twelve Months Ended December 31, 1987

Item		Amount
Plant in service		$101,158
Less -	Accumulated depreciation	(720)
	Average tax accruals	(1,136)
	Contributions in-aid-of construction	(500)
	Plant acquisition adjustment	(93,885)
Add -	Cash working capital	10,858
	Deferred charges	1,378
Total rate base		$ 17,153

APPENDIX C
SCHEDULE 4

LINCOLN WATER WORKS, INC.
Docket No. W-335, Sub 4
STATEMENT OF RATE BASE
For the Twelve Months Ended December 31, 1987

Item		Amount
Plant in service		$11,929
Less -	Accumulated depreciation	(1,628)
	Average tax accruals	(303)
	Contributions in-aid-of construction	(5,062)
Add -	Cash working capital	2,301
	Deferred charges	610
Total rate base		$ 7,847

APPENDIX C
SCHEDULE 5

MID SOUTH WATER SYSTEMS, INC.
WATER OPERATIONS
DOCKET NO. W-720, SUB 94
STATEMENT OF NET OPERATING INCOME AVAILABLE FOR RETURN AND MARGIN ON OPERATING REVENUE DEDUCTIONS REQUIRING A RETURN
For the Twelve Months Ended December 31, 1987

Item	Present Rates	Increase Approved	After Approved Increase
OPERATING REVENUES:			
Water service revenues	$697,094	$130,970	$828,064
Other revenues	13,366	-	13,366
Uncollectible revenue	(4,113)	(773)	(4,886)
Total operating revenues	706,347	130,197	836,544
OPERATING REVENUE DEDUCTIONS:			
Operation and maintenance expenses	603,803	-	603,803
Depreciation and amortization	42,245	-	42,245
General taxes	30,515	-	30,515
Operating revenue deductions requiring a return	676,563	-	676,563
Gross receipts tax	28,254	5,208	33,462
State income taxes	107	8,749	8,856
Federal income taxes	213	36,261	36,474
Total operating revenue deductions	705,137	50,218	755,355
Net operating income for return	$ 1,210	$ 79,979	$ 81,189
Margin on operating revenue deductions requiring a return	.18%		12.00%

APPENDIX C
SCHEDULE 6

MID SOUTH WATER SYSTEMS, INC.
SEWER OPERATIONS
DOCKET NO. W-720, SUB 94
STATEMENT OF NET OPERATING INCOME AVAILABLE FOR RETURN AND MARGIN ON OPERATING REVENUE DEDUCTIONS REQUIRING A RETURN
For the Twelve Months Ended December 31, 1987

Item	Present Rates	Increase Approved	After Approved Increase
OPERATING REVENUES:			
Sewer service revenues	$ 70,197	$ 32,933	$103,130
Other revenues	-	-	-
Uncollectible revenue	(414)	(194)	(608)
Total operating revenues	69,783	32,739	102,522
OPERATING REVENUE DEDUCTIONS:			
Operation and maintenance expenses	77,962	-	77,962
Depreciation and amortization	2,722	-	2,722
General taxes	2,375	-	2,375
Operating revenue deductions requiring a return	83,059	-	83,059
Gross receipts tax	4,187	1,964	6,151
State income taxes	-	932	932
Federal income taxes	-	2,413	2,413
Total operating revenue deductions	87,246	5,309	92,555
Net operating income for return	$(17,463)	$ 27,430	$ 9,967
Margin on operating revenue deductions requiring a return	(21.02)%		12.00%

APPENDIX C
SCHEDULE 7

BETHLEHEM UTILITIES, INC.
WATER OPERATIONS
DOCKET NO. W-259, SUB 5
STATEMENT OF NET OPERATING INCOME AVAILABLE FOR RETURN AND MARGIN ON OPERATING REVENUE DEDUCTIONS REQUIRING A RETURN
For the Twelve Months Ended December 31, 1987

Item	Present Rates	Increase Approved	After Approved Increase
OPERATING REVENUES:			
Water service revenues	$ 39,599	$30,635	$70,234
Other revenues	72	-	72
Uncollectible revenue	(203)	(155)	(358)
Total operating revenues	39,468	30,480	69,948
OPERATING REVENUE DEDUCTIONS:			
Operation and maintenance expenses	53,664	-	53,664
Depreciation and amortization	1,405	-	1,405
General taxes	2,806	-	2,806
Operating revenue deductions requiring a return	57,875	-	57,875
Gross receipts tax	1,579	1,219	2,798
State income taxes	-	649	649
Federal income taxes	-	1,682	1,682
Total operating revenue deductions	59,454	3,550	63,004
Net operating income for return	$(19,986)	$26,930	$ 6,944
Margin on operating revenue deductions requiring a return	(34.53)%		12.00%

APPENDIX C
SCHEDULE 8

HUFFMAN WATER SYSTEMS, INC.
WATER OPERATIONS
DOCKET NO. W-95, SUB 11
STATEMENT OF NET OPERATING INCOME AVAILABLE FOR RETURN AND
MARGIN ON OPERATING REVENUE DEDUCTIONS REQUIRING A RETURN
For the Twelve Months Ended December 31, 1987

Item	Present Rates	Increase Approved	After Approved Increase
OPERATING REVENUES:			
Water service revenues	$ 55,069	$ 55,251	$110,320
Other revenues	148	-	148
Uncollectible revenue	(99)	(100)	(199)
Total operating revenues	55,118	55,151	110,269
OPERATING REVENUE DEDUCTIONS:			
Operation and maintenance expenses	86,862	-	86,862
Depreciation and amortization	291	-	291
General taxes	4,082	-	4,082
Operating revenue deductions requiring a return	91,235	-	91,235
Gross receipts tax	2,205	2,206	4,411
State income taxes	-	1,024	1,024
Federal income taxes	-	2,651	2,651
Total operating revenue deductions	93,440	5,881	99,321
Net operating income for return	$(38,322)	$ 49,270	$ 10,948
Margin on operating revenue deductions requiring a return	(42.00)%		12.00%

APPENDIX C
SCHEDULE 9

LINCOLN WATER WORKS, INC.
WATER OPERATIONS
DOCKET NO. W-335, SUB 4
STATEMENT OF NET OPERATING INCOME AVAILABLE FOR RETURN AND
MARGIN ON OPERATING REVENUE DEDUCTIONS REQUIRING A RETURN
For the Twelve Months Ended December 31, 1987

Item	Present Rates	Increase Approved	After Approved Increase
OPERATING REVENUES:			
Water service revenues	$21,624	$ 2,564	$24,188
Other revenues	203	-	203
Uncollectible revenue	(18)	(1)	(19)
Total operating revenues	21,809	2,563	24,372
OPERATING REVENUE DEDUCTIONS:			
Operation and maintenance expenses	18,409	-	18,409
Depreciation and amortization	1,082	-	1,082
General taxes	674	-	674
Operating revenue deductions requiring a return	20,165	-	20,165
Gross receipts tax	872	103	975
State income taxes	54	172	226
Federal income taxes	108	478	586
Total operating revenue deductions	21,199	753	21,952
Net operating income for return	$ 610	$ 1,810	$ 2,420
Margin on operating revenue deductions requiring a return	3.03%		12.00%

DOCKET NO. W-811, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Sentry Utilities, Inc., 346 Henderson Drive, Jacksonville, North Carolina, for Authority to Increase Rates for Sewer Utility Service in Springdale Acres Subdivision, Onslow County, North Carolina	)	FINAL ORDER GRANTING INCREASE IN RATES AND CHARGES

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, January 30, 1989, at 2 p.m.

BEFORE: Chairman Robert O. Wells, Presiding; and Commissioners Sarah Lindsay Tate, Edward B. Hipp, and William W. Redman, Jr.

APPEARANCES:

For the Applicant:

Keith E. Fountain, Lanier and Fountain, Attorneys at Law, 114 Old Bridge Street, Jacksonville, North Carolina 28540
For: Sentry Utilities, Inc.

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

BY THE COMMISSION: On May 12, 1988, Sentry Utilities, Inc. (Sentry, Applicant or Company), filed an application with the North Carolina Utilities Commission for authority to increase its rates for providing sewer utility service in Springdale Acres Subdivision in Onslow County, North Carolina.

On June 9, 1988, the Commission entered an Order in this docket declaring the matter to be a general rate case; suspending the Company's proposed residential rates; approving the Company's proposed monthly commercial rates on an interim basis subject to an undertaking to refund; and requiring public notice.

The matter came on for public hearing at the appointed time and place. Nine customers offered testimony in opposition to the proposed rate increase. The Company presented the testimony of John Samonas, its General Manager. The Public Staff presented the testimony of Jan Larsen, a Utilities Engineer with the Water and Sewer Division of the Public Staff.

On November 16, 1988, the Hearing Examiner entered a Recommended Order in this docket whereby Sentry was granted an increase in the rates and charges for sewer utility service which the Company provides to customers in the Springdale Acres Subdivision in Onslow County, North Carolina.

On November 28, 1988, the Public Staff filed a motion in this docket whereby the Hearing Examiner was requested to reconsider one aspect of his Recommended Order; i.e., the level of the commercial tap-on fee established for Sentry. The Public Staff stated that it did not object to allowing all uncontested rates to go into effect immediately pending a ruling on its motion for reconsideration.

On December 2, 1988, the Commission entered an Order in this docket concluding that good cause existed to allow all of the uncontested rates approved in the Recommended Order to become effective for service rendered on and after the date of that Order and that the Hearing Examiner would rule on the Public Staff's motion for reconsideration by separate Order.

On December 12, 1988, Sentry filed a response in opposition to the Public Staff's motion for reconsideration.

On January 4, 1989, the Hearing Examiner, after reconsideration, entered a further Recommended Order in this docket finding and concluding that the Public Staff had established good cause in support of its motion for reconsideration and that the commercial tap-on fee recommended by the Public Staff of $5.50 per gallon of daily sewer volume design as determined by DEM for each commercial unit should be approved. The Hearing Examiner stated that he reached these conclusions after reconsideration for all of the reasons set forth by the Public Staff in support of its motion.

On January 20, 1989, Sentry filed certain exceptions to the Recommended Order of January 4, 1989, and requested oral argument on those exceptions.

By Order dated January 23, 1989, the Commission scheduled an oral argument to consider the Applicant's exceptions. The matter subsequently came on for oral argument as scheduled on January 30, 1989. The parties were present, represented by counsel, and presented oral argument.

Upon consideration of the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant is a public utility as defined by G.S. 62-3(23). The Company is subject to the jurisdiction of this Commission and is properly before the Commission for a determination of the justness and fairness of its proposed rates and charges.

2. The appropriate test year for use in this proceeding is the 12-month period ended December 31, 1987.

3. Springdale Acres Subdivision is served by a 50,000 gallon per day (gpd) waste-water treatment facility operated by Sentry Utilities, Inc. As of the end of the test year, the Applicant was providing sewer utility service to 84 residential customers and no commercial customers. The average residential sewer volume usage during the 1987 test year was approximately 150 gallons per day. Beginning in May 1988, the Company began providing sewer service to two commercial customers; i.e., a church and a high school. The Applicant charges metered sewer rates based on water consumption. Onslow County provides water utility service in Springdale Acres Subdivision and collects for both water and sewer service. The Applicant pays Onslow County $1.00 per customer bill for this billing and collection service.

4. The Applicant is currently providing adequate service to its customers.

5. The Applicant's present rates for monthly metered sewer utility service are as follows:

MONTHLY METERED SEWER UTILITY SERVICE:
(Based on metered water usage)

	Present
Residential	
First 2,000 gallons/month	$10.00 (minimum charge)
All over 2,000 gallons/month	$ 2.00/1,000 gallons
Commercial	
First 2,000 gallons/month	None
All over 2,000 gallons/month	

6. The Applicant's proposed rates for monthly metered utility service are as follows:

MONTHLY METERED SEWER UTILITY SERVICE:
(Based on metered water consumption)

Residential	
First 2,000 gallons/month	$15.00 (minimum charge)
All over 2,000 gallons/month	$ 2.25/1,000 gallons
Commercial	
First 2,000 gallons/month	$30.00 (minimum charge)
All over 2,000 gallons/month	$ 2.25/1,000 gallons

7. The Public Staff has investigated the application and has concluded that the increase in monthly metered sewer rates requested by the Applicant is fully justified.

8. The Applicant currently has an approved residential connection charge of $1,000 per connection. The Applicant does not presently have an approved connection charge for commercial customers but is proposing a connection charge for new connections in this proceeding.

9. The following connection charges are reasonable and appropriate for Sentry and should be approved:

Residential	$1,840 per connection
Commercial	$12.25 per gallon of daily sewer volume for each commercial unit

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Sentry was granted a certificate of public convenience and necessity to provide sewer utility service in the Springdale Acres Subdivision in Onslow County, North Carolina, on May 14, 1986, in Docket No. W-811. This docket

involves the first request for a general rate increase filed by the Applicant. This matter was thoroughly investigated by the Public Staff. Public Staff witness Larsen testified that the sewer system in question is "generally well maintained and properly operated" and that he had discovered no complaints concerning the sewer service being provided by the Applicant. Witness Larsen further testified that the investigation conducted by the Public Staff found that the rate increase requested by the Applicant should be approved.

The only area of disagreement in this case between the Company and the Public Staff results from their recommendations regarding connection charges. The Applicant initially proposed to increase the current residential connection charge from $1,000 per connection to $2,000. The Applicant also proposed for the first time a connection charge for new commercial customers of $5,000 plus $250 per each 1,000 gallons of estimated daily sewage flow. Public Staff witness Larsen recommended approval of a residential connection charge for new customers of $1,840 per tap and a commercial connection charge for new customers of $5.50 per gallon of daily sewer volume design as determined by the Division of Environmental Management (DEM). At the hearing, Company witness Samonas testified that the Applicant agreed to accept the residential connection charge of $1,840 recommended by the Public Staff. The Company also amended its proposed connection charge for new commercial customers to $1,840 plus $250 per each 1,000 gallons of estimated daily sewage flow. In its brief, the Applicant requested a commercial connection charge of $2,000 plus $5.80 gpd of anticipated usage for each commercial unit. The Public Staff opposes the amended commercial connection charge proposed by the Company.

The Public Staff takes the position that the commercial connection charge proposed by the Applicant would be burdensome and unfair to low users, such as a small office or shop with minimum water fixtures. The Company asserts that the commercial connection charge proposed by the Public Staff would cause residential customers to subsidize commercial customers.

The total cost of the utility property in service in this case is $611,592 or approximately $12.25 per gallon of daily treatment capacity for the 50,000 gpd system.

The Commission believes that a connection charge of $12.25 per gallon of daily sewer volume should be approved in this case for commercial customers. The Commission concludes that the commercial connection charge proposed by the Public Staff of $5.50 per gpd is too low and would cause residential customers to subsidize commercial customers, while the commercial connection charge requested by the Company is too high and would be unduly burdensome and unfair to low users. The commercial connection charge adopted by the Commission will in fact spread the Applicant's investment in rate base uniformly over each gallon of the daily treatment capacity of the 50,000 gpd system and will allow the Company a reasonable opportunity to recover the cost of its plant. This methodology, if applied to residential customers, also produces the same residential connection charge of $1,840 recommended by Public Staff witness Larsen; i.e., $12.25 per gallon X 150 gpd = $1,837.50 or rounded to $1,840.

In reaching this decision, the Commission recognizes the validity of the concerns raised by the Public Staff in its motion for reconsideration that were, in effect, adopted by the Hearing Examiner in the Recommended Order of January 4, 1989. Nevertheless, we believe that, with certain safeguards in

place, the commercial connection charge of $12.25 per gallon of daily sewer volume for each commercial unit is reasonable and appropriate for the reasons previously set forth above. To prevent any overrecovery by Sentry of its total investment in this plant, we will require the Company to place any amounts by which it may ultimately overrecover its investment in the sewage treatment plant through collection of connection fees and contributions in aid of construction in an escrow account to be used solely to cover future maintenance and repair expenses applicable to the treatment plant in question. The Public Staff is hereby requested to cooperate with the Company in developing appropriate procedures to establish the escrow account and to ensure that any and all overrecoveries are placed in that account.

IT IS, THEREFORE, ORDERED as follows:

1. That the Schedule of Rates attached hereto as Appendix A, be, and the same is hereby, approved and deemed to be properly filed with the Commission pursuant to G.S. 62-138.

2. That the rates and charges approved by this Order shall become effective for service rendered on and after the date of this Order.

3. That Sentry Utilities, Inc., be, and the same is hereby, required to place any amounts by which it may ultimately overrecover its investment in the Springdale Acres sewage treatment plant through collection of connection fees and contributions in aid of construction in an escrow account to be used solely to cover future maintenance and repair expenses applicable to the treatment plant. The Public Staff is hereby requested to cooperate with the Company in developing appropriate procedures to establish the escrow account and to ensure that any and all overrecoveries are placed in that account. This plan shall be filed for Commission review and approval not later than Monday, May 15, 1989.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of February 1989.

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

APPENDIX A

DOCKET NO. W-811, SUB 3
SCHEDULE OF RATES
for
SENTRY UTILITIES, INC.
for providing sewer utility service in its
service area in Onslow County, North Carolina

SEWER UTILITY SERVICE
(based on metered water usage)

Residential	
First 2,000 gallons/month	$ 15.00 (minimum)
All over 2,000 gallons/month	$ 2.25/1,000 gallons
Connection Charge (new connections only)	$1,840/connection

Commercial	
First 2,000 gallons/month	$ 30.00 (minimum)
All over 2,000 gallons/month	$ 2.25/1,000 gallons
Connection Charge (new connections only)	$ 12.25 per gallon of estimated daily sewage flow for each commercial unit

Reconnection Charge: $15.00

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 overdue 25 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-811, Sub 3, on this the 13th day of February 1989.

DOCKET NO. W-6, SUB 13
DOCKET NO. W-6, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Regional Investments of Moore, Inc., to Transfer the Franchise of the Water and Sewer Utility Service in and around the Village of Pinehurst, North Carolina and for Rate Approval	ORDER APPROVING APPLICATIONS

HEARD: May 21, 1987, Municipal Building, Southern Pines, North Carolina

June 4 and 5 and September 9 and 10, 1987, 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 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

For the Using and Consuming Public:

Lorinzo L. Joyner and Lemuel W. Hinton, Assistant Attorneys General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

A. W. Turner, Jr., Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: 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 20, 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 on 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, responding 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, in Raleigh.

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 that oral argument on the Village's Motion to Dismiss 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 as scheduled in Southern Pines on May 21, 1987, at which time the Commission heard evidence from a number of public witnesses. Some testified in opposition to RIM's application and others testified in support of it. The public witnesses testifying were: Eugene Sheasby, Robert E. Best, Travis Brown, Henry V. Middleworth, Gordon Rauck, Richard Nelson, William F. Scott, James W. Good, Jr., Phillip S. Campbell, John McGuire, Carl Colozzi, Jane Clark, Emanuel S. Douglas, F. William Miller, Warren Lovejoy, Harris Blake, George Read, and Penny Hayes. The Commission also accepted several exhibits in connection with the above testimony.

Upon conclusion of the testimony of the public witnesses, the witnesses of the parties testified before the Commission on June 4 and 5, 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 Office of Pinehurst Enterprises, Inc.; and Robert W. Van Camp, President of Growth Management, and a shareholder of the Applicant. 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 the 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 Pinehust. 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 Wendell Snapp, Director of the Civil and Environmental Division for Wilbur, Smith & Associates, and Fred Hobbs, President of Hobbs-Upchurch & Associates, as rebuttal witnesses.

On January 6, 1988, the Commission issued its Order Deferring Ruling on Application. In the Order, the Commission found and concluded that a right of

first refusal contained in a 1973 consent judgment entered in the Moore County Superior Court constituted a cloud or bar on the ability of the Applicant Pinehurst Enterprises, Inc., to sell and transfer the water and sewer utilities of Pinehurst which were the subject of this proceeding. The Commission stated that it stood ready to determine the Applications in an expeditious manner, as it is required to do pursuant to G.S. 62-111(a); that the Commission was of the opinion that the Applicant RIM has made a prima facie case that the proposed transfer was justified by the public convenience and necessity; but that the Commission was unwilling to determine this ultimate issue until the questions surrounding the consent judgment and the right of first refusal were resolved in the Superior Court of Moore County. Adopting the recommendation of the Attorney General, the Commission deferred ruling on the application so as to allow the Village of Pinehurst to 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 and the right of first refusal contained therein. The Village was to notify the Commission when the action in the Superior Court was instituted and to keep the Commission informed of all pleadings and orders in that action and the progress thereof.

On March 1, 1988, the Village advised the Commission that it had filed a "collateral action" in the Superior Court of Moore County, as requested by the Commission.

On April 19, 1988, the Village filed with the Commission a copy of the Answer and Motion for Summary Judgment in the Superior Court action, which had been filed by the Defendants Regional Investments of Moore, et. al.

On September 29, 1988, the Village of Pinehurst filed a Motion with the Commission for a stay order in these dockets. In its Motion, the Village sought an interlocutory and permanent stay order "prohibiting the proposed transferee, Regional Investments of Moore, Inc., from diverting the profits from the utility operations to the wrongful enrichment of the would-be purchasers, and to the irreparable detriment of the rate-paying consuming public. . . "

On October 5, 1988, the Commission scheduled a hearing and oral argument on the Motion for an interlocutory stay order. The hearing was scheduled for October 7, 1988. The matter came on for hearing before the Commission. RIM filed several pleadings, including Objection to Subpoena to Produce Documents, Motion to Quash and for Sanctions, and Motion for Protective Order. Thereafter, on October 18, 1988, the Commission issued Order Denying Motion for Interlocutory Injunctive Relief and Scheduling Hearing. Other pleadings were filed by the parties during this period. A prehearing conference was scheduled and held on the Village's Motion for Stay Order on November 14, 1988. Thereafter, on November 18, 1988, the Commission issued an Order cancelling hearing on the permanent stay order, which had been scheduled for November 22, 1988.

On December 19, 1988, RIM filed Motion for Final Order in these dockets. In its Motion, RIM advised the Commission that on December 15, 1988, the Honorable Thomas W. Seay, Jr., of the Moore County Superior Court entered Summary Judgment in favor of RIM and other defendants on all issues raised by the Village in its civil action in the Moore County Superior Court. (Village of Pinehurst v. Regional Investments of Moore, Inc., 88 CVS 133.) A copy of

the Court's judgment was attached to the Motion as Exhibit A. RIM further alleged: "The Moore County Superior Court therefore has determined that the Village has no legally enforceable right of first refusal to acquire Pinehurst's water and sewer systems." RIM further alleged that the Commission should dismiss the Village's Motion for Stay, approve RIM's application to acquire the franchises and assets of the Pinehurst water and sewer systems, and approve RIM's application to pledge certain utility assets.

On December 21, 1988, the Commission issued an Order advising the parties in these dockets that any response to the Motion for a Final Order should be filed with the Commission on or before January 5, 1989.

On December 22, 1988, the Village of Pinehurst filed its Response to the Motion for Final Order. In its Response, the Village alleged in part as follows:

> "1. The Village has given Notice of Appeal to the Court of Appeals from the judgment entered in Superior Court on December 15, 1988. The Village has 60 days in which to perfect the appeal, and will advise the Commission in due course as to its decision to do so.
>
> "2. If the Village does perfect the appeal, the Commission should consider the matter stayed insofar as considering issuing an Order Approving Transfer and an Order Approving Financing.
>
> "3. Insofar as considering an Order Denying Approval of the Transfer and Denying Approval of Financing, the Commission might proceed to do so at this time on the merits."

On January 5, 1989, RIM filed a Reply to the Village's Response.

Upon careful consideration of all the evidence presented at the hearings, 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. (These two utilities are sometime referred to as "the Companies.") 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 purchasing 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 Company, 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, 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. Docket No. W-6, Sub 13.

6. On May 18, 1987, RIM applied for permission to pledge the utility assets, which it proposed to purchase. Docket No. W-6, Sub 14.

7. RIM has demonstrated ample financial strength to obtain and operate the water and sewer systems.

8. RIM's loan agreement with Wachovia Bank & Trust Company ("Wachovia"), for which RIM will use its utility assets as security, will not adversely affect RIM's ability to provide water and sewer service to the public.

9. Transfer of the franchise for providing water and sewer utility service in and around the Village of Pinehurst from Pinehurst Water Company and Pinehurst Sanitary Company to Regional Investments of Moore, Inc., will have no adverse effect on the service received by the utility customers. The customers now receive adequate service, and the evidence discloses that they will continue to receive adequate service after the transfer is approved.

10. Other issues relating to service, such as fire protection, infiltration, and availability rates, were satisfactorily addressed by the Applicant.

11. The purchase agreement between Pinehurst Enterprises, Inc., Pinehurst Sanitary Company, and Pinehurst Water Company, and RIM, which was made subject to Commission approval, complies with G.S. 62-111(a). Furthermore, § 7.02 of the purchase agreement, which restricts disposition by RIM of any of the allocated sewer taps outside the Pinehurst franchise area, is not contrary to the public interest.

12. The loan agreement between Wachovia and RIM, and the deed of trust executed by RIM purporting to encumber certain utility assets, which RIM is purchasing from Pinehurst Water Company and Pinehurst Sanitary Company, complies with G.S. 62-161.

13. Transfers of the utility assets of Pinehurst's water and sewer facilities, by previous owners, are irrelevant to this proceeding, and further, the Commission has previously approved these transactions.

14. The Superior Court of Moore County has determined that the Village of Pinehurst does not have an enforceable right of first refusal to purchase Pinehurst's water and sewer facilities.

15. There is no enforceable contract between Pinehurst Enterprises and the Village for the sale of Pinehurst's water and sewer facilities.

16. The Village's suitability as a potential purchaser of Pinehurst's water and sewer facilities, and its alleged superiority to the Applicant as a utility owner and operator, is not a controlling issue or of material relevancy in the present proceeding. Furthermore, the Village has failed to substantiate its claim that it is a more appropriate purchaser than the Applicant.

17. The Application for transfer in this proceeding is justified by the public convenience and necessity and should be approved.

18. The Motion of the Village of Pinehurst for a Stay Order in this proceeding should be dismissed.

CONCLUSIONS

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

Findings of Fact Nos. 1-6 are undisputed and uncontroversial.

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

The evidence supporting these Findings of Fact is contained in the testimony of Applicant witnesses Karscig, Ryan, and Van Camp and in the testimony and exhibits of Village witness Wood.

The Village maintains that the Applicant has failed to demonstrate that it has sufficient financial resources to maintain and operate the water and sewer systems. The Village also maintains that there is insufficient information concerning the financial well-being of the four principal stockholders in RIM to determine if the Applicant will be financially sound. The Village further maintains that the net operating income listed by the Commission in its rate order of February 28, 1986, in Docket No. W-6, Sub 10 and Sub 11, provides insufficient funds to enable RIM to meet the debt-service obligations, repay principal, and make capital additions that the Village deems to be necessary in the near-term future of the water and sewer systems. Finally, the Village maintains that there is little evidence except speculation as from where the necessary funds for improving the systems will come.

Applicant maintains that RIM is financially healthy in every respect and that the evidence in this case indicates that the utility operations currently are sound. Existing rates for the water and sewer systems were established by Commission Order dated February 28, 1986, in Docket No. W-6, Subs 10 and 11. The rates established in that Order were designed to yield a rate of return of 13% on original cost rate base. The Commission assumed a debt-equity ratio of

50% debt and 50% equity. The assumed rate of return on debt was 11.5% and on equity 14.5%. The combined rate base for water and sewer operations was $1,574,864. Rates were established based upon a test period of the twelve months ended February 28, 1985.

Subsequent to the test period in the case, the companies have added new investment of approximately $1,000,000. New customers have also been added to the systems subsequent to the test period. In spite of the substantial increase in the net original cost of the utilities' assets, both RIM and Wachovia Bank & Trust Company projected that the company could add additional capital over the life of the Wachovia loan and repay the debt obligation RIM proposes to incur and meet the debt-service obligations without obtaining any additional increase in rates.

The testimony in this case indicates that most of the major capital additions and improvements have been made to the systems. Water mains and sewer lines have been extended throughout the service territory. The sewer company has additional sewer capacity for customer growth well into the future. Because most of the capital costs already have been incurred, customers added at incremental cost in the future will be added at less than average embedded cost per customer. This means that growth will provide additional internally generated funds.

The evidence presented in this case indicates that without any rate adjustment, the water and sewer companies will be able to make any reasonably anticipated capital additions and provide an adequate return to the companies' investors. RIM witnesses Van Camp and Karscig testified that RIM has undertaken a cash-flow analysis in an attempt to determine the level of funds RIM should borrow to acquire the systems. RIM started its financial analysis by examining the revenues under current operations based upon the rates established in 1986. RIM calculated current cash-flow by adjusting net operating income, adding depreciation, and making other appropriate pro forma adjustments. The current level of expenses was analyzed and adjusted based upon expectations for the future. RIM projected growth in revenues based on an assumption of new customer hookups ranging from 175 to 250 per year. The cash-flow analysis conducted by RIM indicated that after the first year the annualized cash-flow would range from $400,000 to $500,000.

RIM ran sensitivity analyses upon these numbers. The sensitivity analyses were based on varying the interest rates from 7-3/4% up to 12% and using the low expected range for growth of 175 new hookups per year. RIM's analyses indicated that even with low anticipated growth and high anticipated interest rates, sufficient cash-flow was available to service the debt and make principal repayments without an increase in rates. In making its cash-flow projections, RIM assumed that capital expenditures would be incurred for new wells, new vehicles, and in the fifth year an elevated storage tank. Indeed, RIM determined the amount of capital it would borrow based upon what its financial projections indicated.

Based upon its financial analyses and cash-flow projections, RIM anticipates that it will amortize the $2,000,000 loan from Wachovia more quickly than the seven-year amortization schedule set forth in the Wachovia note. Witness Van Camp testified that RIM conservatively anticipates that by year five its actual debt-equity ratio will be 60/40 and by year seven 50/50.

Applicant witness Ryan, of Wachovia, verified that RIM is financially capable of operating the system and making any needed capital additions. Wachovia analyzed independently the financial well-being and projected financial viability of RIM. Wachovia satisfied itself that there were sufficient assets to serve as collateral for the loan and that the principal and interest payments could be repaid in a timely manner. The Commission places great weight on the fact that an independent financial agency with a conservative reputation placed sufficient confidence in the principals of RIM to loan RIM $2,000,000.

The Village appears to question RIM's financial strength because the initial debt/equity ratio will be 80/20. The debt/equity ratio poses no problems. There are three primary sources of additional capital for system improvements--equity investors, debt investors, and internally generated funds. A change in the debt/equity ratio has only a negligible effect on internally generated funds. A relatively high debt/equity ratio increases leverage and makes an investment more attractive to equity investors. The current investors are certainly capable of placing additional equity in RIM. Alternatively, RIM could sell stock to other investors. While a high debt/equity ratio might limit the funds a traditional business could borrow, for some purposes, a utility can adjust prices if additional borrowings required an adjustment to revenues. Therefore, the debt/equity ratio is not a limiting factor preventing a utility from issuing additional debt. If, for example, Pinehurst Water Company sought to finance a new water tank with debt, the tank could serve as security for the new loan. After completion the tank may be added to rate base so as to enable a rate adjustment to ensure repayment of the loan and service of the debt. The foregoing discussion, of course, assumes that all costs incurred were reasonable and prudent and necessary to the providing of adequate public utility service.

In this case, RIM intends to retain all earnings for the immediate future, so the debt/equity ratio will fall over time as retained earnings increase.

The primary criticisms that the Village voices concerning the financial soundness of RIM are without merit. The Village argues that the ratemaking net operating income approved by the Commission in Docket No. W-6, Subs 10 and 11, provides insufficient cash to enable RIM to make debt repayments, debt service payments, and capital additions. The Village's argument ignores the fact that there are sources of internally generated cash in addition to net operating income. The primary example is depreciation. Likewise, the tax expense utilized by the Commission in calculating net operating income is based upon the assumption that depreciation taken as a tax deduction is calculated on a straight-line basis. In reality, RIM may use accelerated depreciation so that the current tax liability is substantially lower than ratemaking tax expense, thereby providing an additional source of internally generated funds in the early years of an asset's life.

Likewise, the net operating income is based upon an historical test period as adjusted and assumes that the growth in revenues, rate base and expenses will yield the same net operating income and return into the future. This assumption upon which rates are based may change during the subsequent period that the rates are in effect.

The Village placed undue weight upon its inability to analyze the individual tax returns and balance sheets of the four stockholders of RIM during discovery. Under the laws of this State, the water and sewer companies should be able to raise capital based on the financial strength of the companies as going public utility concerns, not upon the financial strength of the shareholders. Even if the existing stockholders had limited resources, equity could be obtained from additional investors if earnings are adequate. The evidence reveals, however, that the four shareholders have a combined net worth of $4,000,000.

The Commission likewise finds without merit the Village complaints that the present owners have attempted to evade their responsibility and accountability as owners of public utilities. Pinehurst Enterprises Inc., has given the Village substantial amounts of information and subjected its principals to lengthy depositions. It has requested that the attorneys and consultants maintain certain tax returns as confidential. We see no attempt to keep this information from the Commission, its staff, the Public Staff, or the Attorney General.

A major premise underlying the Village's criticism of the financial well-being of RIM is that major capital additions are necessary now or in the near future. The primary capital addition that the Village anticipates is an elevated storage tank. As discussed elsewhere in this Order, an elevated storage tank is not necessary immediately. No other major capital addition has been identified by the Village which suggests that the companies will need to make substantial investments so as to require them to apply for rate relief once these additions have been added to the rate base within a five-year planning horizon. The Commission therefore determines that the Village has failed to show that RIM is financially incapable of owning, operating, and maintaining the water systems.

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

The evidence supporting these findings of fact are found in the testimony of the public witnesses, Company witnesses Karscig, Coleman, and Morris, Village of Pinehurst's witness Chief Robert Viall, the application for transfer filed in this docket, and the Order issued on February 28, 1986, in Docket No. W-6, Subs 10 and 11.

Pursuant to G.S. 62-111(a), the Commission must determine whether RIM's proposed transfer will adversely affect water and sewer utility service to the public.

On page 3 of the application filed on February 9, 1987, in Docket No. W-6, Sub 13, the Applicant made the following statements:

> "8. After the transfer the Pinehurst systems will be operated by those personnel currently operating them for Pinehurst Water Company, Inc. and Pinehurst Sanitary Company, Inc. Thus, the transfer will not adversely affect the ability of the utility systems to provide adequate service to their ratepayers.
>
> "9. Applicant presently plans to charge the water and sewer rates approved by the Commission for Pinehurst Water Company, Inc. and

Pinehurst Sanitary Company, Inc. in Docket No. W-6, Sub 10 through an order dated February 28, 1986.

"10. The proposed transfer is in the public interest and consistent with public convenience and necessity. The change in the identity of the owner of the utility assets will not, in and of itself, change the costs of providing water and sewer service to the customers."

As can be seen from the above statements, RIM anticipates that this transfer will have no effect on the management, operations, or rates, and that the service provided to the customers will be unaffected.

The uncontroverted evidence in this case is that the same individuals who presently manage and operate Pinehurst's water and sewer systems will continue to do so under RIM's ownership. This in itself is sufficient evidence that the level of service will not be affected adversely by the transfer.

Before addressing the specific allegations of service deficiencies, the Commission notes that it finds the Pinehurst utilities' service to be adequate.

First, no complaints or service deficiencies were noted in Pinehurst Enterprises' recent rate case. The Commission concluded that "the quality of service provided by the Pinehurst [utilities] is satisfactory. This conclusion is based on the fact that no service complaints were received by the Commission during these proceedings with the exception of the problems noted by Chief Brower." Second, the evidence in this proceeding, particularly the testimony of witnesses Karcsig, Wood, and Morris, indicates that no serious service complaints have been made. Although there has been a slight increase in the number of complaints since the rate increase, the complaints have addressed primarily minor matters (e.g., installation of irrigation meters and misbillings).

With respect to the specific allegations of service deficiencies, some witnesses, particularly Intervenor witnesses Sheasby and Coleman, criticized the Company of supporting excess capacity at the Moore County wastewater facility where the Company's wastewater is treated. In 1974, a predecessor company entered into a contract with Moore County for the establishment of a regional wastewater facility to serve Pinehurst Inc.'s customers; similar Moore County contracts were executed by the Towns of Southern Pines and Aberdeen. Pinehurst Sewer Company pays its share of the debt service associated with the plant on the basis of the capacity reserved for it--currently, 59% of the facility's 3,900,000 gallons. About 35% of that reserved capacity currently is in use.

The fact that not all capacity currently is in use does not make the unused capacity overcapacity, however. The evidence discloses that the Company was justified in reserving the capacity at the time that it did so. Part of the facility was paid for by outright grants from the Environmental Protection Agency, while some other financing was provided by the Farmers Home Administration at a 5% rate. Given the long lag-time associated with the construction of treatment facilities and the then-projected growth rate of Pinehurst (a growth rate favorably reviewed by the EPA in connection with its grant), the investment of Pinehurst, Inc., was an exceptionally good one.

Indeed, by reserving capacity at a low cost, Pinehurst Enterprises ensured that future expenditures, at higher present-day and future costs, would not be necessary.

Further, this Commission did not disallow the Company's investment in the extra reserved capacity in the Company's 1986 rate case. Rather, a portion of the debt service of the loan, which financed construction of the Moore County facility, was to be recovered through availability charges placed on certain lot owners and Pinehurst Enterprises, Inc. The cost effectively is being recovered from the developer and future users--a fact that will not be changed by RIM's acquisition of the system.

Another reason given by Village witnesses for opposing the transfer to RIM is an alleged lack of water storage capacity on the system. Specifically, witness Piver testified that he believed state regulations required Pinehurst to maintain elevated storage equal to 450,000 gallons. Although Pinehurst's two elevated tanks have a combined storage of 400,000 gallons, Mr. Piver concluded that, because the 150,000 gallon tank was dedicated to serving a hotel, Pinehurst's overhead storage was 200,000 gallons short. Witness Piver declined to include Pinehurst's 1.5 million gallon ground storage tank because of his belief that the tank was not to be included unless Pinehurst was located on a high-yield aquifer. Village witnesses also pointed to the three "water moratoria" the Company "imposed" between 1984 and 1986 as proof of this alleged lack of storage capacity. Based upon Mr. Piver's opinions and the moratoria, the Village concluded that Pinehurst needs a 1.0 million gallon elevated storage tank, and that the Village intends to construct such a tank immediately if it acquires Pinehurst's water system.

The Commission finds the three "moratoria" insignificant. They were strictly voluntary and extended only to requests to refrain from washing cars and to alternate watering of lawns on odd/even days. Further, the moratoria were the result of an unforeseeable situation--extreme droughts. Pinehurst Water Company added additional wells, and no subsequent moratorium was needed during the low-rain periods of 1987. The efficacy of these wells in solving the problem illustrates that the moratoria were the result of past supply shortages, not a shortage of storage.

Frank Morris, Regional Engineer with the South Central Region of the North Carolina Division of Health Services, Public Water Supply Branch, testified that the State requires Pinehurst to maintain a total of one day's storage in a combination of elevated tank and ground storage tank with auxiliary power. By Mr. Morris' calculations, the minimum acceptable storage capacity for Pinehurst would be 1,000,000 gallons. Mr. Morris testified that Pinehurst has 1.9 million gallons of storage; the 1.5 million ground storage tank, equipped with auxiliary pumps, is included in the total. Witness Morris further stated that he had not received very many complaints from Pinehurst customers in the past eight years. Witness Morris stated: "The Pinehurst system is a well-operated system; it's well maintained and again, I say it meets all federal and state standards."

Although Pinehurst Enterprises has considered building a one million gallon elevated tank, the evidence in this case show that it would be imprudent to construct this tank at the present time. Despite the testimony of Village witnesses Wood and Best, no architect suggested that the new elevated storage

tank was necessary. Rather, as testified by witnesses Snapp and Karscig, John Karscig approached Wilbur Smith & Associates with the belief that such a tank might become necessary and that a potential purchaser of the system should be aware of the cost of this future addition. The tank was designed, reduced to contract specifications, and permitted. The studies for the elevated tank, however, were performed prior to the interconnection study conducted by Pinehurst Enterprises. More importantly, the community of Pinehurst does not need a new elevated tank. As noted above, witness Morris testified that Pinehurst's current system "meets all federal and state standards."

Furthermore, there are other factors that must be considered before Pinehurst's need for more elevated storage in the future can be assessed. Another developer, Pinewild, is constructing a new elevated tank, and interconnection with the Pinewild system may make another elevated tank redundant. Also, Pinehurst Enterprises' interconnection studies suggest that interconnection with the surrounding municipalities is currently more feasible and cost effective than construction of the tank. The Commission concludes, therefore, that RIM should not be required to install additional elevated storage at this time.

Public witness Brown expressed concern with overflows from manholes around Lake Pinehurst into the lake. The evidence suggested that the problems occurred over a two-week period from December 1986 to January 1987, and it is clear that although the system is periodically inspected by the Division of Health Services, no violations of the health laws have been reported. Further, the manholes are inspected periodically by the engineering firm of Hobbs & Upchurch.

Applicant witness Karscig testified that the December 1986-January 1987 overflows were caused by a sewer break and consequent problems with the lift stations around the lake. During this period, Pinehurst experienced extremely heavy rains, which caused a break in the sewer main under the lake. The lift station problems were caused by sand and dirt from the pond flowing into the lift stations as a result of the break, which jammed the lift pumps. Because of the location and size of the break, two weeks were required to find and repair the break. During the repair period the Company used a septic tank truck to divert waste water. The Company responded to this situation in a satisfactory manner.

Finally, various minor customer complaints have been raised, which allegedly indicated the inadequacy of current service. For example, many public witnesses stated they experienced long delays in the installation of irrigation meters. These meters measure water used for watering lawns or washing cars. This allows customers to avoid paying sewer charges for such water, which does not enter the sewer system for treatment. At first, Mr. Karscig had serious doubts about the propriety of using irrigation meters because the Company did not have a separate tariff for these meters and the use of such meters increases demand. Further, Mr. Karscig felt that because the irrigation meter rates were too low, they would therefore be subsidized by other customers. Consequently, some customers were informed that irrigation meters were not available. However, after the Public Staff expressed the opinion that refusal to install the irrigation meters would be improper, the Company began to install the meters. Thereafter, Pinehurst Enterprises complied with every request for irrigation meters. Delays experienced by some

customers were caused by the virtual flood of requests for installations (60-80 requests in a 30 day period). Furthermore, installation of irrigation meters often had to give way to more pressing maintenance and installation needs. The Commission finds that there is no evidence of any impropriety or inefficiency on the part of Pinehurst Water Company with respect to these matters.

Also, public witness Nelson testified as to a problem encountered with misbillings. Applicant witness Karscig testified that, in connection with an interim increase during the rate case, he assumed that the interim increase would apply for the last meter reading date. After being informed by the Commission that the increase was to be billed from the specific date of authorization, the Company prorated the bills and refunded $4,500 to $5,500 to the customers.

Witness Nelson testified that he believed the tenants in a house he had purchased were billed for sewer charges when the house had a septic tank. Mr. Karscig explained that the companies had agreed with some of the septic tank users in the older section of the Village to take care of their septic tanks for a minimum charge. The Company had billed the tenants without realizing that the house had a new owner. The Company contacted the tenants and offered to discontinue the service and refund their money, which offer the tenants accepted.

Lastly, public witness Blake testified that he had had a problem getting service to some property he was developing along Midlin Road--that he could have tapped on to some contiguous lines with only a 200-foot connection, but was told that other development in the area had precluded this. Mr. Blake testified that, as only a more expensive 700-foot connection was available, he had used two septic tanks instead.

Company witness Karscig testified that the Company had, instead, notified Mr. Blake that the 700-foot connection would be less expensive than the 200-foot connection because of better gravity flow; the 200-foot connection would have required the addition of a lift station. Mr. Karscig testified that nothing would keep Blake from making the 200-foot connection if he so desired, but that Blake never had followed up with the Company regarding such a connection and that Karscig had simply assumed that Blake had decided not to bear the cost of a lift station.

In summary, the Commission finds that Pinehurst Enterprises has provided adequate water and sewer service and has managed these utilities prudently and efficiently. The Commission concludes, based on the identity of RIM's and Pinehurst Enterprises' personnel, that Pinehurst's water and sewer systems will continue to have adequate service under RIM's ownership.

Other Service Issues

(a) Fire Protection

Village of Pinehurst Witness Chief Robert Viall testified that the Pinehurst water system is inadequate for fire protection. Witness Viall alleged that the system had a low flow in the Old Town section of the Village, that at times pumper trucks must be used to supplement the water system pressure, that there are too few hydrants in some areas or the hydrants are too

far apart, that hydrant maintenance is inadequate, and that some hydrants are installed facing the wrong direction or are too low to the ground.

RIM contended that the operation and maintenance of the water system is not inadequate just because the system fails to contain eight-inch diameter mains in the Old Town section and because the fire flow at fire hydrants in that section is less than 1,000 gallons per minute. RIM further maintained that the alleged fire flow deficiencies are limited to a small portion of a relatively large system. According to RIM, the Old Town section system was installed in the 1920s when fire protection requirements and expectations were much lower; however, it is unrealistic to expect the system to meet modern-day standards.

The Village argued that the previous owners of the system had been negligent in failing to upgrade the system to present-day standards. RIM answered that it was not the usual practice to replace an older, workable system merely because it is not state-of-the-art for fire protection purposes. The mere fact that the Old Town section system does not have optimal fire fighting capacity does not necessarily justify the vast undertaking of upgrading the system.

The Commission previously addressed the issue of fire flows in the Old Town section in the Company's 1986 rate case, Docket No. W-6, Subs 10 and 11. In that case, Village Fire Chief Brower complained of inadequacy of the fire protection. The Commission ordered the Village and the Company to meet and discuss these alleged problems subsequent to the case. At the meeting which took place the Company indicated that remedying the fire flow problem was a long-term project that would be addressed over time. According to RIM the Village expressed no opposition to this approach.

While the current fire flow places some limits on fire fighting, the Commission cannot find that this situation is the result of poor utility management.

With regard to improper installation of hydrants (hydrants installed too low, facing the wrong way or too widely-spaced), the Commission finds that these problems have little to do with utility operations. The hydrants are installed by the developers. Furthermore, the evidence in this proceeding shows that Pinehurst Enterprises has rectified many of the developer's mistakes by raising or turning hydrants when these problems have been brought to Pinehurst Enterprises' attention.

As to leaking hydrants, witness Karscig testified that, although he had not calculated water loss from the leaks, they posed only a minor problem and one currently being corrected by the Company. Further, the Company has purchased new hydrants, but was forced to return the equipment to the manufacturer for retooling of the sleeves. Village's witness Piver, in fact, testified that only a small percentage of the hydrants represented a problem, and that all leaking hydrants had been repaired. Fire Chief Viall testified that 90-95% of the problem hydrants on the list given the company had been repaired. Thus, the Commission finds no service deficiency in this regard.

Nonetheless, because of the overall and continuing concerns expressed by the Village on this issue, the Commission will require the Applicant RIM, in

consultation with the Village, to undertake a further study on the fire hydrants, addressing the concerns of the Village, and report to the Commission in writing, within six months, the conclusions and recommendations of its study. A copy of the study shall be given to the Village, which may then file any additional response within 30 days after it receives the study.

(b) Infiltration

Another alleged shortcoming of Pinehurst Enterprises' utility operations is that the sewer system has an unacceptably high infiltration level. The Village relies on witness Piver in making this criticism. Witness Piver has concluded that it costs Pinehurst approximately $119,000 a year to treat "excess" infiltration. He arrived at this number by subtracting the amount of water used by Pinehurst customers from the amount of water treated, and multiplying the result by the cost of treatment.

RIM indicated that Pinehurst's sewer system has a high ratio of miles-of-pipe to customers and that many more customers could be added without laying additional pipe, thus increasing the amount of water used without increasing infiltration levels.

The current standard for allowable infiltration is 200 gallons per inch of pipe diameter per mile of pipe per day. In past years, the allowable level has been as high as 350 gallons. The Village's assertion was that the appropriate standard is 100 gallons. The Village was relying on an infiltration standard promulgated by the Division of Health Services, which oversees construction of septic tanks and similar systems, not centralized waste disposal and treatment systems.

Once the appropriate level of allowable infiltration is considered, it becomes obvious that the infiltration situation is not nearly as bleak as witness Piver portrays it. Witness Snapp, using current and past allowable infiltration levels, estimated that major alterations of the sewer system would have saved Pinehurst Enterprises $20,000-$30,000.

While the sewer system may experience some limited excess infiltration, the Commission cannot find that Pinehurst's decision to treat the infiltrated water, rather than alter the system at this time, is unreasonable. To the contrary, since it could cost three times as much to study the infiltration problem, and much more to solve it, it may be inappropriate to attempt to alter the system to stop infiltration completely, although Pinehurst Sanitary Company has attempted to discover and repair sewer line breaks.

(c) Availability Charges

The Village makes several criticisms with respect to the companies' use of their water and sewer availability charges. The Village alleges that the companies negligently failed to collect availability charges before its 1986 rate case; that the companies failed to list revenues from availability fees in the report submitted to the Commission for the year ended December 31, 1986; that the companies acted inappropriately when they charged themselves availability fees for the fiscal year ended February 28, 1986, by making a journal entry without imposing late fees; and that the companies failed to charge Pinehurst Enterprises, Inc., an appropriate amount for availability fees

in that the level of losses reported during an earlier period was too great and the profits too low in subsequent years because of the accounting for revenues from availability fees.

The companies contended that their treatment of availability fees is in all respects proper and in compliance with all Commission rules and regulations. Prior to implementing the currently approved availability rates in April 1986, the companies' authority to charge availability fees arose from the Order in Docket No. W-6, Sub 6, in 1979. In that case, the Commission approved availability charges of $2.50 per month per customer for both water and sewer service. The Commission Order stated that availability charges were "applicable where established by contract in accordance with North Carolina Utilities Commission rules." The Commission noted, however, that at the time of the hearing no lots were subject to an availability charge. Even at the time of the 1986 rate case, only 533 customers could be assessed availability charges. Witness Coleman testified that even though the companies were authorized to charge some customers availability rates beginning in 1980, he decided that it was improper to assess such charges when the infrastructure was still incomplete and the lots in question had no access to water and sewer facilities.

In the companies' 1986 rate case, the parties made an effort to assign costs attributable to excess capacity, if any, to future customers and reflect them in rates rather than disallow these expenses for ratemaking purposes altogether. An effort therefore was made to assign "excess capacity" costs to future customers and recover these costs through availability charges. The parties debated which costs in addition to a portion of the debt costs for the Moore County Wastewater Treatment facility assigned to unused equivalent units were assignable to future customers. The parties also debated the number of availability customers over whom the availability costs should be spread.

In the Recommended Order in Docket No. W-6, Subs 10 and 11, the Hearing Examiner determined that, in addition to a portion of the debt service for the Moore County Wastewater Treatment facility, a percentage of the maintenance and repair costs for the sewer collection and sewer pumping system, a percentage of the return on sewer plant, and a percentage of the depreciation on sewer plant should be recovered through availability rates from availability customers. The Hearing Examiner determined the percentage of these costs to be recovered through availability rates by dividing the lot equivalents owned by Pinehurst Enterprises, Inc. (3,343) plus the lots sold to third parties pursuant to contracts obligating such parties to pay availability fees (533) by the number of equivalent units reserved for Pinehurst in the Moore County Wastewater Treatment facility (10,406). After determining the costs which should be recovered through availability charges, the Hearing Examiner determined the number of availability customers who should be responsible for payment of this cost. The Hearing Examiner determined that the costs to be recovered through availability rates should be spread over 3,876 units (3,343 equivalents owned by Pinehurst Enterprises, Inc., and 533 owned by lot owners subject to contracts containing availability fee notices).

Consequently, a small percentage of the costs associated with excess capacity was to be recovered through availability rates to third-party lot owners. Eighty-six percent of the costs to be recovered through availability fees, however, was to be paid by Pinehurst Enterprises, Inc. Therefore, before

the 1986 cases, the costs associated with excess capacity were simply disallowed and reflected neither in ratemaking costs and expenses nor revenues. After the 1986 case, costs associated with excess capacity and substantial other costs were reflected as ratemaking costs and expenses and recovered through availability revenues. However, even after the 1986 case, the vast majority of the revenues collected through availability fees were recovered from Pinehurst Enterprises, Inc., the owner of the water and sewer systems. As far as profitability was concerned, nothing had changed except the manner of reflecting costs and revenues on the books. One significant difference however was that as Pinehurst Enterprises, Inc., sells property or lots to third-party owners the responsibility for paying the availability charges will shift away from Pinehurst Enterprises, Inc., and onto the new third-party owners. In this manner paper revenues will be converted into a source of outside cash revenues.

In order to account for the availability revenues collected under the formula approved in the 1986 rate case, the utilities charged the third-party property owners the appropriate availability charge once per quarter in arrears. At the end of the fiscal year, the companies determined the availability revenues for which Pinehurst Enterprises, Inc., was responsible by subtracting the units sold to third parties from the total equivalent units against which availability charges could be assessed, established by the Commission in its Order in Docket No. W-6, Subs 10 and 11. The companies accounted for the availability revenues that were the responsibility of Pinehurst Enterprises, Inc., by making appropriate journal entries on the books of the water and sewer companies. The impact of this accounting procedure was to either reduce operating losses and negative retained earnings or to increase operating profits and thereby increase retained earnings. In either event, revenues attributable to Pinehurst Enterprises, Inc., had the effect of decreasing the amount of capital that the owner had to plow into the utilities to offset losses or increase the amount of retained earnings on the utilities' books reflecting a greater investment by Pinehurst Enterprises, Inc., in its two operating utility subsidiaries. As far as Pinehurst Enterprises, Inc., and the water and sewer customers are concerned, whether costs are disallowed or included but recovered through revenues paid by Pinehurst Enterprises, Inc., for services that it does not receive, the only difference is one of accounting not one of economics.

The Commission determines that the companies' treatment of availability fees is proper. Witness Karscig testified that the availability revenues are included in reports to the Commission as miscellaneous revenues since there is no line item on the reports for availability revenues. This testimony is uncontradicted. The Village's criticism on this point is rejected.

The Commission finds without merit the Village's argument that the companies' treatment of availability charges after the February 28, 1986, Order in Docket No. W-6, Subs 10 and 11, is improper. The companies have calculated the charges to Pinehurst Enterprises, Inc., correctly based upon the Commission Order. Under the rate order revenues from availability fees assessed to Pinehurst Enterprises, Inc., will be attributable to the companies whether actually collected or not. The companies' accounting treatment during the 1987 fiscal year of making a journal entry to recognize the availability revenues from Pinehurst Enterprises, Inc., is appropriate.

Finally, the Commission rejects the argument the Village seems to make that the companies have understated their profitability by failing to collect availability fees. The Commission establishes rates to allow utilities to recover legitimate expenses and earn a return upon the rate base it establishes. If a utility fails to collect certain revenues in the test period, this factor has no bearing on the level of rates the Commission establishes for the future period for which rates are established.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence relied upon by the Commission for Finding of Fact No. 11 is found in the testimony of Applicant witness Karscig. Also, the Commission has relied on the agreement for purchase of assets, identified as Applicant Exhibit 5, and the memorandum of Utilities Commission Chairman Wells, identified as Public Staff Exhibit 1.

Pursuant to G.S. 62-111(a), a utility franchise may not be sold, assigned, or transferred, "except after application to and written approval by the Commission." The Village maintained that the purchase agreement between Pinehurst Enterprises, Pinehurst Water Company, and Pinehurst Sanitary Company (collectively referred to as "Pinehurst" with regard to the purchase agreement), as sellers, and RIM, as buyer, violates G. S. 62-111(a). Although Pinehurst and RIM entered into the purchase agreement on February 27, 1987, the Commission finds that the purchase agreement complies with G.S. 62-111(a).

Both Pinehurst and RIM understood that Commission approval was required before the proposed transfer could be consummated. In fact, the purchase agreement expressly makes Commission approval a condition precedent to the purchase agreement. Applicant Exhibit 5 at §§ 2.03(a) and 8.02. That this was the understanding and intent of Pinehurst and RIM is further illustrated by the provisions in the purchase agreement that ensure that all parties could be restored to status quo ante if the proposed transfer is not approved. See, e.g., Applicant Exhibit 5, § 6.03 (Pinehurst Enterprises to continue to operate utilities pending Commission approval); Id. §2.03(b) (purchase price held in escrow pending Commission approval); Id. § 2.03(c) (purchase price to be returned to RIM if proposed transfer is not approved).

By making the transfer contingent upon Commission approval, the purchase agreement complies with G.S. 62-111(a). As a 1986 Commission memorandum to all water companies stated: "In many cases, contracts to sell a utility system are made contingent upon Commission approval. . . . [Such a] provision [will] satisfy the requirements of G.S. 62-111(a)." Public Staff Exhibit 1.

The fact that Commission approval is not specifically referred to in certain documents relating to the transfer, such as the transfer of good will from Pinehurst to RIM, and the Articles of Dissolution for Pinehurst Water Company and Pinehurst Sanitary Company, does not require the conclusion that G.S. 62-111(a) has been violated. The evidence clearly establishes that the parties intended these documents to be subject to Commission approval. Additionally, as a matter of law, the condition precedent of Commission approval contained in the purchase agreement must be read into these documents because they were executed contemporaneously with, and related to, the same transaction as the purchase agreement. See Yates v. Brown, 275 N.C. 634, 640, (1969) ("All contemporaneously executed written instruments between the

parties, relating to the subject matter of the contract, are to be construed together in determining what was undertaken.") Thus, the Commission concludes that the purchase agreement between Pinehurst and RIM complies with G.S. 62-111(a).

One further matter with respect to the purchase agreement needs to be addressed. The Village has contended that Section 7.02 of the purchase agreement is contrary to the public interest in that it leaves the control over the transfer of sewage capacity in the hands of the seller, Pinehurst Enterprises, Inc., rather than assigning that right along with all other assets to the Applicant.

Section 7.02 of the purchase agreement reads as follows:

"7.02 Sewer Taps. Buyer shall not transfer, sell, lease or otherwise dispose of any of the allocated sewer taps it acquires from Seller outside of the franchise area designated in the Pinehurst area for the Utility Companies."

In its Reply Brief of November 16, 1987, RIM stated:

"The Village argues that Section 7.02 of the Transfer Agreement is an attempt by Pinehurst Enterprises, Inc., to retain control over the utility and reserve capacity for itself to the detriment of other developers or land owners within Pinehurst. Section 7.02 of the Transfer Agreement states only that RIM will not dispose of additional capacity reserved in the Moore County Wastewater Treatment facility without prior approval from Pinehurst Enterprises, Inc. As long as RIM chooses not to dispose of the capacity by, for instance, selling it to Southern Pines for use by customers of Southern Pines instead of customers served by RIM, Pinehurst Enterprises, Inc., has no control over RIM's use of this capacity. Section 7.02 serves as protection for those in Pinehurst and is fully consistent with the public interest. If the Village had a legitimate desire to advance the interests of Pinehurst's residents, Section 7.02 would be the last part of the Transfer Agreement it would attack."

The Commission finds and concludes that Section 7.02 is not contrary to the public interest. The Commission finds it reasonable and proper for the Pinehurst companies to have made a contract provision to ensure that sewer taps will be available in the franchise area to accommodate any future development. The Commission further notes that any disposition of these taps would require Commission consideration and approval. Therefore, the Commission will have the further opportunity to review this matter.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence relied upon by the Commission for Finding of Fact No. 12 is found in the testimony of Applicant witnesses Karscig and Ryan.

G.S. 62-161 prohibits a public utility from encumbering its property without first receiving Commission permission to do so. The Village contended that RIM has violated this statute by entering into a loan agreement, secured by a deed of trust for utility assets, before receiving Commission approval.

Unlike the purchase agreement between Pinehurst and RIM, the loan agreement and deed of trust do not specifically refer to Commission approval as a condition precedent. However, the evidence shows that both RIM and Wachovia considered the entire loan transaction as being subject to Commission approval. Furthermore, like the purchase agreement, the loan transaction is structured so that the parties may be returned to their original position if Commission approval is withheld. Specifically, the proceeds of the loan are being held in escrow and the deed of trust is being held by RIM's attorneys pending the outcome of this proceeding. Thus, the Commission concludes that the parties to the loan transaction did not intend for the utility assets to be encumbered until the Commission gave its approval; therefore, there is no violation of G.S. 62-161.

Additionally, the Commission finds that as a matter of law there has been no violation of G.S. 62-161 since the deed of trust is not effective at this time. First, the purchase agreement transferring the utility property, purportedly encumbered by the deed of trust, is not effective until Commission approval is obtained for the transfer. Thus, until such approval is given, the deed of trust does not encumber the property. See, Planter's National Bank and Trust Co. v. South Carolina Insurance Co., 263 N.C. 32 (1963) (deed of trust purporting to encumber property not owned by debtor is ineffective until such property is obtained by debtor); Hickson Lumber Co. v. Gay Lumber Co., 150 N.C. 282 (1909) (to the same effect). Second, the deed of trust has not been delivered; therefore, it is not effective to encumber the utility property. Cf. Daniel Boone Complex, Inc. v. Furst, 43 N.C. App. 95, (1979), cert. den., 299 N.C. 120 (1980) (to be valid deed of trust must comply with all requirements for conveyances of property); Roberson v. Swain, 235 N.C. 50 (1952) (contract for conveyance of real property must be delivered to be effective). Thus, regardless of the intent of the parties, the deed of trust is not yet effective to encumber the utility property. Consequently, there is no violation of G.S. 62-161.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence relied upon by the Commission for Finding of Fact No. 13 is contained in the testimony of Intervenor witness Wood. The Commission has also relied upon the purchase agreement identified as Applicant Exhibit 5 and this Commission's Order in Docket No. W-6, Subs 10 and 11.

The Village contended that the Pinehurst's water and sewer systems have been transferred in the past without Commission approval, in violation of G.S. 62-111(a). Specifically, the Village contends that transfers from Purcell Co., Inc., to Pinehurst Inc. to Pinehurst Sanitary Company and from Pinehurst, Inc., to Pinehurst Water Company violate G.S. 62-111(a). Regardless of the accuracy of the Village's contentions, this argument is irrelevant to the present proceeding. In passing upon RIM's application to purchase these facilities, this Commission must determine whether the transfer is "justified by the public convenience and necessity." G.S. 62-111(a). The question before the Commission, therefore, is whether RIM will provide adequate service to the public. Transactions entered into by previous owners of the utilities have no bearing on the issue of RIM's ability adequately to operate Pinehurst's water and sewer systems, and thus, have no place in the present proceeding.

Through a series of transactions in 1982 and 1983, the franchises and assets of Pinehurst's water and sewer systems passed from Purcell Co., Inc., to Resort Holding Corporation, a wholly-owned subsidiary of Purcell's major creditors. The assets were placed in Pinehurst, Inc., Resort Holding Corporation's wholly-owned subsidiary, and ultimately passed to Pinehurst Water Company and Pinehurst Sanitary Company, Pinehurst Inc.'s wholly-owned subsidiaries. The New York attorney who handled these transactions was not aware of the requirement of Commission approval for these transactions and failed to obtain Commission approval. Furthermore, the transfer of Purcell's Pinehurst assets constituted a massive land transfer in the nature of a transfer in lieu of foreclosure. The utility assets were a relatively minor part of the transaction. When this issue was raised in 1985, Pinehurst Enterprises (successor to Pinehurst, Inc.) promptly sought Commission approval in Docket No. W-6, Sub 11.

This entire series of transactions was presented to the Commission in Docket No. W-6, Sub 11. In the Order in that case, this Commission noted the past transactions and approved the ultimate transfer of the franchises to Pinehurst Water Company and Pinehurst Sanitary Company. At that time, the Commission saw no need to penalize any party for the oversight. The Commission approves the transfer in this case, but the Commission also expressly reaffirms its 1986 memorandum to the water and sewer companies advising them of the requirements of G.S. 62-111(a).

Additionally, the Village contended that Pinehurst Water Company and Pinehurst Sanitary Company have been "collapsed" by Pinehurst Enterprises and the utility assets transferred to Pinehurst Enterprises. The Village, however, has presented no evidence to establish such an intracorporate transfer of the utility assets.

The Village maintained that Pinehurst Enterprises is designated as the seller in the purchase agreement for the utility assets. The purchase agreement, however, clearly states that Pinehurst Enterprises, Pinehurst Sanitary Company, and Pinehurst Water Company are the sellers. Applicant Exhibit 5 at 1. Pinehurst Enterprises was included because it held certain pieces of realty that were being transferred, not because Pinehurst Enterprises had taken the utility assets from its subsidiaries.

Similarly, there is no significance to this proceeding in the fact that Pinehurst Sanitary Company and Pinehurst Water Company are listed as "inactive" in Resort Holding Corporation's consolidated tax return. This merely means that these companies have no employer identification number for tax purposes, and does not indicate any transfer of assets to Pinehurst Enterprises, or that either of Pinehurst's utility companies had been "collapsed." Furthermore, that Pinehurst Enterprises is listed as the owner of the utility assets in a form provided to the real estate broker who handled the transaction is irrelevant. Pursuant to 26 U.S.C.A § 6045 (1987), real estate brokers must report certain information pertaining to transactions to the Internal Revenue Service. The form, identified as Intervenor's Exhibit I, is a request by the real estate broker for such information. For the purposes of the broker's reporting requirements, Pinehurst Enterprises must be considered the "owner" of the property sold. The broker must report the seller's tax identification number, but as noted above, neither Pinehurst Sanitary Company nor Pinehurst Water Company have tax identification numbers. Thus, Intervenor's Exhibit I

shows that Pinehurst Enterprises is the property "owner" only for the purposes of the broker's return under Section 6045, and does not indicate any intracorporate transfer of the utility assets.

The Village has presented no other evidence of the alleged "collapsing" of the utility companies. Thus, there being no evidence to support this allegation, the Commission does not accept the Village's argument on this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

In 1973, several Pinehurst lot owners, seeking greater restrictions on development in Pinehurst, filed suit against Diamondhead Corporation, Pinehurst, Inc., and other defendants in Moore County Superior Court. Erle Christian et al, Plaintiffs v. Diamondhead Corporation, Pinehurst, Inc., Malcolm McLean, and the Village Council of Pinehurst, Defendants, 73 CVS 594. To settle this dispute, the parties entered into a Consent Judgment, which provided in pertinent part:

> "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."

Intervenor's Exhibit A-2 at 9.

In its Motion to Dismiss Application filed in this docket 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, on information and belief, that the proposed transferor was 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 the above-cited case; 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 Enterprises 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 RIM 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 Judgment 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 Judgment 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 addressed 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:

"14. The Village does not have a valid right of first refusal to purchase Pinehurst's water and sewer facilities.

"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 Judgment 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 were 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 competent jurisdiction and that its terms remain valid and is an impediment to a final transfer of the franchises at issue in these dockets. The Attorney General urged the Commission to defer ruling on the transfer application until the Superior Court of Moore County resolves the 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 carefully considered the issue of the Consent Judgment, which was a question of first impression for the Commission, and issued its Order Deferring Ruling on Application on January 6, 1988. In this Order, the Commission initially concluded that the ultimate issue in this proceeding was whether or not the approval of the Application of RIM is justified by the public convenience and necessity. G.S. 62-111(a). After considering the arguments of the parties on the issue of the Consent Judgment, the Commission then concluded that "the Consent Judgment must be addressed as the threshold issue in this proceeding." After reviewing what the Commission considered as the applicable and controlling law on the interpretation of judgments, the Commission concluded that it was unable to make any interpretation of the Consent Judgment that would not be tantamount to a collateral attack thereon.

The Commission then concluded:

> "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."

Upon the recommendation of the Attorney General, the Commission deferred ruling on the Application until the Superior Court of Moore County could be given the opportunity to resolve the questions raised by the parties concerning the validity of the Consent Judgment and the right of first refusal. The Village of Pinehurst, having agreed to do so in its Reply Brief, was ordered to institute an action in the Superior Court of Moore County, within 60 days, to resolve the questions raised in this proceeding concerning the 1973 Consent Judgment and the right of first refusal. The Village was further ordered to notify the Commission when the action was instituted and to inform the Commission on the progress of the lawsuit. The Commission deferred further action in these dockets pending further order of the Commission.

The Village filed its Complaint in the Moore County Superior Court on February 24, 1988. In the Complaint, the Village asked that the Court "declare the rights of the parties hereto and declare that the 'Judgment' of the Honorable A. Pilston Godwin, Jr., dated September 17, 1973, be declared valid and binding upon the parties hereto;" that the purported conveyance of assets and real estate by the Defendant Pinehurst utility companies and Pinehurst Enterprises, Inc., to RIM be declared null and void; that the Defendants be ordered specifically to perform that part of the Consent Judgment granting the right of first refusal to the Village; and that purported conveyances to RIM and the deed of trust from RIM to Wachovia Bank and Trust Company be declared null and void and set aside.

On April 4, 1988, the Defendants RIM and Pinehurst filed Answer and Motion for Summary Judgment in the Superior Court proceeding. In its Answer RIM prayed the Court to "declare the Consent Judgment void and of no effect, or alternatively, declare the Plaintiff's alleged right of first refusal void and of no effect."

On December 19, 1988, RIM filed with the Commission its Motion for a Final Order. In its Motion, RIM requested the Commission to enter a final order on RIM's application to receive the franchises and assets of the water and sewer systems serving the area in and around the Village of Pinehurst and to pledge such utility assets. In its Motion, RIM recited the background of these dockets and the pending proceeding in the Moore County Superior Court to establish the validity of the 1973 Consent Judgment and the right of first refusal contained in the judgment. RIM alleged, in part, as follows:

"2. Pursuant to the Commission's January 6, 1988 Order, the Village commenced an action in Moore County Superior Court, Village of Pinehurst v. Regional Investments of Moore, Inc., 88 CVS 133, and prayed that the court declare the consent judgment valid and enforceable. On December 15, 1988, the Honorable Thomas W. Seay, Jr., of the Moore County Superior Court entered summary judgment in

favor of RIM and the other defendants on all issues raised by the Village. A copy of the court's judgment is attached hereto as Exhibit A. The Moore County Superior Court therefore has determined that the Village has no legally enforceable right of first refusal to acquire Pinehurst's water and sewer systems.

"3. The Commission, in its January 6, 1988 order, stated that it stood ready to rule on the application in an expeditious manner, as required by G.S. § 62-111(a). The Commission further stated that it declined to do so only because the Village's alleged right of first refusal constituted a cloud on Pinehurst Enterprises, Inc.'s ability to transfer the water and sewer utilities to RIM. The decision of the Moore County Superior Court has removed that cloud. The Commission therefore should proceed to rule on RIM's application.

"4. After the parties argued and briefed the issues in this docket, the Commission observed that RIM had made a prima facie showing that the proposed transfer is justified by the public convenience and necessity. Based upon the evidence presented in this docket, the Commission should approve RIM's application."

Upon careful consideration of the above events and pleadings, the Commission concludes that the Judgment of the Superior Court of Moore County entered on December 15, 1988, "for the Defendants as to all issues in this action" removes the cloud on the ability of Pinehurst Enterprises, Inc., to transfer the water and sewer utilities to RIM. The concerns of the Commission expressed in its January 6, 1988, Order Deferring Ruling on Application have been fully addressed by the Superior Court.

On December 22, 1988, the Village filed its Response to Motion for Final Order. In its Response, the Village alleged that it has given Notice of Appeal to the Court of Appeals from the judgment of the Moore County Superior Court entered on December 15, 1988. "The Village has 60 days in which to perfect the appeal, and will advise the Commission in due course as to its decision to do so." The Village further alleged:

"2. If the Village does perfect the appeal, the Commission should consider the matter stayed insofar as considering issuing an Order Approving Transfer and an Order Approving Financing.

"3. Insofar as considering an Order Denying Approval of the Transfer and Denying Approval of Financing, the Commission might proceed to do so at this time on the merits."

On January 5, 1989, RIM filed a Reply to the Village's Response, addressing the Village's argument that the Commission may not enter a final order approving RIM's applications until the Village exhausts its appeals. RIM alleged, in part:

"Such a proposition is contrary to the applicable legal principles and inconsistent with the Commission's Order Deferring Ruling on Application entered in this case. A judgment is not stayed on appeal unless the appellant actually obtains a stay order. See Rule 62(d) of the North Carolina Rules of Civil Procedure. The Village suggests

that it may not perfect its appeal and has made no application to the Court for a stay. Therefore, there is no reason for the Commission to consider the proceedings in this docket stayed while the Village pursues its appeal. By urging the Commission to deny RIM's application, the Village has waived any right to assert that an approval should be delayed."

No stay order has been cited to us by any party. The Commission's Order Deferring Ruling on Application has been complied with, in that the Superior Court of Moore County was given the opportunity to rule on the validity of the 1973 Consent Judgment and has done so. This proceeding has been pending since February 9, 1987, more than two years ago. The public interest requires that the Commission now proceed to a final determination of these dockets. It would be unfair to require RIM to experience additional and more costly delays.

Consequently the Commission issues this Order approving the applications of RIM in these dockets.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence relied upon by the Commission for Finding of Fact No. 15 is contained in the testimony of Applicant witness Coleman and Intervenor witnesses Grant and Wood. The Commission also relies upon Intervenor's Exhibits C-6 and C-9.

The Village maintained at the hearing that it has a contract with Pinehurst Enterprises for the purchase of Pinehurst's water and sewer facilities. Thus, the Village argued, the Commission should deny RIM's application. The Commission, however, concludes that the Village has failed to present any evidence to establish that an enforceable contract exists. Moreover, the Commission takes notice of the Judgment of the Moore County Superior Court, entered on December 15, 1988, ordering that judgment be entered for the Defendants as to all issues in that action. As pointed out by the Applicant RIM in its Motion for a Final Order filed December 19, 1988, the decision of the Moore County Superior Court has removed the cloud of the Village's alleged right of first refusal on the ability of the Pinehurst companies to transfer the water and sewer systems to RIM. The effect of that Judgment on this proceeding is discussed elsewhere in this Order.

In its Order Deferring Ruling on Application, issued on January 6, 1988, the Commission found as a fact the following:

"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."

The Commission notes that the Village in its Proposed Order and Brief in this docket did not seriously contend that a contract for the sale of the systems had been reached during the negotiations in 1986 between the Village and Pinehurst. We reaffirm our earlier findings that the 1986 negotiations were "inconclusive" and did not result in a contract.

First, even if a contract between Pinehurst Enterprises and the Village existed, the Village has failed to produce a document that would satisfy the North Carolina statute of frauds. G.S. § 22-2 provides that "all contracts to sell or convey any lands . . . shall be void unless said contract, or some memorandum or note thereof, be put in writing and signed by the party to be charged therewith, or by some other person by him thereto lawfully authorized." Because the Village is asserting the existence of such a contract, the Village has the burden of producing a document, signed by an authorized agent of Pinehurst Enterprises, evidencing the contract. Yaggy v. B.V.D. Co., 7 N.C. App. 590 (1980). The record in this proceeding is devoid of any such contract, document, or memorandum. The Village has produced a number of its own documents relating to the negotiations between Pinehurst Enterprises and the Village. However, the Village has not presented a single memorandum signed by Pinehurst Enterprises which would satisfy the North Carolina statute of frauds. Consequently, the Commission concludes that, even if an oral agreement between the Village and Pinehurst Enterprises existed, it would be unenforceable under Section 22-2. See Carr v. Good Shepherd Home, Inc., 269 N.C. 241 (1967) (oral contracts to convey real property are void under Section 22-2); Henry v. Shore, 18 N.C. App. 463 (1973) (unexecuted oral contract to sell land is void).

Furthermore, based upon the evidence presented in this proceeding, the Commission concludes that no contract between Pinehurst Enterprises and the Village exists. The essence of the Village's argument is that the statement of Edward Coleman that the utility facilities were for sale for $2.5 million constituted an offer, and that the memorandum agreement subsequently drafted by the Village constituted an acceptance. The Commission does not accept the Village's arguments. Mr. Coleman was stating a price, not making an offer that would give the Village the power to accept and create a binding contract. Such statements, in the context of preliminary negotiations, do not constitute an offer. Corbin, 1 Corbin on Contracts § 26 at 77; see also Seawell v. Continental Casualty Co., 84 N.C. App. 277 (1987) (proposal intended to open negotiations that leaves material terms open for future negotiation is not an offer to enter into a contract).

More importantly, the Village's position that Mayor Grant's delivery of the unsigned memorandum agreement to Mr. Coleman constituted an acceptance is without merit. Mayor Grant testified that he had not signed the memorandum agreement at the time it was delivered. In fact, Mayor Grant admitted that he had no authority to sign the memorandum agreement and that he informed Mr. Coleman of his lack of authority. Obviously, the delivery of an unsigned memorandum, by an agent who had neither actual nor apparent authority to sign, was not sufficient to bind the Village to a contract.

Furthermore, the memorandum agreement specifically required the Village to tender a binder of $5,000 to Pinehurst Enterprises, contemporaneous with the signing of the memorandum agreement. When Mayor Grant delivered the memorandum agreement, he did not tender the earnest money to Mr. Coleman, and the Village has not tendered this amount to Pinehurst Enterprises subsequently. Thus, the Village not only failed to bind itself to the contract it purported to accept, but it failed to comply with the conditions, which the Village had imposed upon itself, set forth in the memorandum agreement. Viewed in this light, the Village's purported "acceptance" was of no legal effect.

Finally, whatever else the memorandum agreement might be, it is insufficient to constitute a contract. The only term recited in the memorandum agreement is the amount of the purchase price. Even in this, the memorandum agreement is deficient because it lists only an amount and provides no insight into the terms of payment. More importantly, the memorandum agreement discusses no other terms of the alleged contract between Pinehurst Enterprises and the Village. As the evidence in this proceeding shows, all the negotiations between Pinehurst Enterprises and the Village focused on a single issue: the purchase price for Pinehurst's water and sewer facilities. "It is axiomatic that a valid contract between two parties can only exist when the parties 'assent to the same thing in the same sense, and their minds meet as to all terms.'" Normile v. Miller, 313 N.C. 98, 103 (1985) (quoting Goekel v. Stokely, 236 N.C. 604, 607 (1952) (emphasis added). If any portion of the proposed terms is unsettled or no mode agreed on by which they may be settled, there is no agreement. At the time Mayor Grant delivered the memorandum agreement to Mr. Coleman, none of the numerous, material terms essential to a contract to transfer utility assets, aside from the amount of the purchase price, had even been discussed, much less agreed upon, by Pinehurst Enterprises and the Village. The Commission, therefore, concludes that the agreement on the amount of the purchase price for Pinehurst's water and sewer facilities is insufficient, standing alone, to establish an existing and enforceable contract between Pinehurst Enterprises and the Village.

In summary, the Village has presented no documents signed by either party that establishes a contract. There is no evidence that either Pinehurst Enterprises or the Village ever indicated to the other party that it believed a contract had been formed. Only one issue, the purchase price, was ever agreed upon. Indeed, Mayor Grant testified there was never so much as a handshake. The Commission therefore concludes that no enforceable contract exists between Pinehurst Enterprises and the Village.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

In making Finding of Fact No. 16, the Commission has relied upon G.S. 62-111(a), and other authorities cited below.

G.S. § 62-111(a) provides the authority by which the Commission may approve or disapprove RIM's application to purchase Pinehurst's water and sewer systems. Section 62-111(a) provides in pertinent part:

> No franchise now existing or hereafter issued under the provisions of this Chapter . . . shall be sold, assigned, pledged or transferred . . ., except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. (Emphasis added).

Thus, Section 62-111(a) clearly requires that the Commission must approve applications for transfers if the standard of "public convenience and necessity" is satisfied.

The Commission has consistently held that the standard of public convenience and necessity, within the meaning of Section 62-111(a), is satisfied when the proposed transfer will not adversely affect utility rates or service to the public. See, In the Matter of Application of Aluminum

Company of America to Convey its Stock Interests in Nantahala Power and Light Co., Docket No. E-13, Sub 51, Recommended Order dated September 11, 1984 (Commission concludes that the appropriate tests under 62-111(a) is whether rates and service to utility customers will be adversely affected by the proposed sale); In the Matter of the Purchase of Mooresville Telephone Co., Docket No. P-37, Sub 35, Order dated January 11, 1967 (sale or transfer which does not affect the rates or service of the public utility should not be enjoined under G.S. 62-111(a). See also State ex rel. Utilities Commission v. Carolina Coach Co., 269 N.C. 717 (1967) (proposed transfer is justified by public convenience and necessity, within the meaning of 62-111(a), if it will not adversely affect service to the public). Clearly, therefore, the focus of the Commission's inquiry under G.S. 62-111(a) is to the applicant's ability to serve the public adequately, and the effect that the applicant's ownership of the utility will have on the current level of service enjoyed by the public. It follows that the existence or nonexistence of other potential purchasers is no materially relevant in the context of a G.S. 62-111(a) proceeding.

In In the Matter of Applications by Carolina Water Service, Inc., Docket No. W-354, Subs 39, 40, and 41, this limitation on the scope of proceedings under Section 62-111(a) was recognized. In Carolina Water Service, the Hearing Examiner was presented with a situation similar to the present case. An intervenor, representing the interests of the utility customers and supported by a number of public witnesses, sought to block the transfer of the utility franchise to the applicant on the basis that the intervenor was a more appropriate purchaser. The intervenor's argument was rejected by the Hearing Examiner and the transfer was approved. Specifically, the Hearing Examiner held that Section 62-111(a) did not

> "allow the Commission to choose among competing purchasers of a utility franchise the one the Commission prefers. The law does not require that a utility offer its system to its customers when it desires to sell. G.S. 62-111(a) allows the holder of a utility franchise to offer and negotiate the sale of the franchise. It provides that the Commission must approve the sale beforehand, but it provides that such approval shall be given if justified by the public convenience and necessity." (First emphasis added; second emphasis is original).

In this regard, the Commission agrees with the Hearing Examiner's statement. G.S. 62-111(a) requires the Commission to approve applications for transfers when such transfers are justified by the public convenience and necessity, that is, that they will not adversely affect rates or service to the public. Therefore, when the Commission finds justification by the public convenience and necessity, the application must be approved. Thus, the Village's ability to purchase and operate Pinehurst's water and sewer utilities is not materially relevant to the present proceeding.

Nevertheless the Commission determines in the exercise of its discretion that the Village has failed to show that it is a more suitable purchaser. The evidence analyzed in reaching this determination is contained in the testimony of Applicant witnesses Hobbs, Morris, Snapp, and Coleman; the testimony of Intervenor witnesses Wood, Piver, Coleman, Greenwood, Grant, and Leary; and the testimony of public witnesses Clark and Sheasby. Also, the Commission has relied upon the exhibits introduced in connection with the foregoing testimony.

The Village asserts that, for many reasons, it would be a more appropriate purchaser than RIM. Specifically, the Village maintains that, for various reasons, it would be able to charge lower rates than RIM. The Village maintains that it would better serve the public by making capital improvements and being more responsive to customer needs. Also, the Village claims that interconnection of the water systems of Pinehurst, Southern Pines, and Aberdeen is more likely if the Village owns the Pinehurst water utility. Finally, the Village maintains that municipal ownership of the utilities would be superior to private ownership because, unlike a private utility, a municipality can use a more flexible method of assessment charges for new service and can coordinate the extension of water and sewer service with a general development plan. Upon reviewing the evidence presented in this proceeding, the Commission in its discretion finds that the Village has failed persuasively to support its arguments on these points.

First, the Village has presented no evidence to substantiate its claims that it would charge lower rates than RIM. Primarily, the Village's position relies upon a municipality's tax-exempt status and its ability to use tax-exempt bonds and low-interest federal and state loans and grants to finance the purchase and operation of a utility.

According to Mr. Wood, Pinehurst's Village Manager, the Village has not yet completed an investigation in order to ascertain whether the Village could issue tax-exempt bonds. The Village has never issued bonds before, nor undertaken a project of the magnitude of acquiring the utilities. The Village has obtained no legal opinion as to whether it could issue tax-exempt bonds. The Village has not yet established a credit rating and has not obtained a rating from Moody's or Standard & Poor's. The Village does not know the interest rate that would be paid on its bonds. Furthermore, the Village has not quantified the costs associated with a bond issue, such as attorneys' fees and underwriting costs.

With regard to the Village's tax-exempt status, there would be some resultant savings. Here again, however, the Village has failed to support its position with evidence that would indicate the extent of these savings. In light of the Village's commitment to make substantial capital improvements soon after the acquisition, any tax savings may be easily offset by such expenditure and additional costs. The Commission notes that the rates of Aberdeen and Southern Pines, which enjoy tax-exempt status, are higher than the rates of Pinehurst's private utilities.

The Village did not present evidence explaining what its rates or rate structure would be. The Village has presented no suitable profit and loss projection to obtain a generalized concept of the level of revenues required to operate the utilities.

Some of the Village evidence weakens its claim that it will charge lower rates. The Village projects a lower customer growth rate than RIM (150-250). Also, the Village's predicted cashflow is virtually identical to RIM's ($360,000 for the Village, $350,000 in year 1 for RIM). However, the Village would incur a $4,000,000 debt to purchase and operate the utilities--twice the amount contemplated by RIM.

The Commission is satisfied that RIM, which has presented sufficient evidence of its financial position and would be subject to Commission oversight, will charge fair rates and provide a fair rate structure.

Second, the Commission finds that the Village failed to present sufficient persuasive evidence that Village ownership of Pinehurst's water and sewer facilities would enhance service. The Commission is not persuaded that the Village, by making the substantial capital improvements it advocates, would be operating the utilities in the most cost-effective manner. The Village intends to construct immediately a million-gallon elevated tank at a cost of over one million dollars. The Village has indicated its intend to undertake this costly project without presenting evidence that makes a persuasive case that increased elevated storage is necessary at this time.

As to the need for increased elevated storage, the Village has relied on Mr. Piver's conclusion that Pinehurst is not in compliance with State regulations. As Mr. Morris of the North Carolina Division of Health Services, Public Water Supply Branch, testified, however, Pinehurst presently has almost twice the storage capacity required by State regulations. The Village has committed to building this elevated water tank without making any engineering studies or cost projections. In this context, the Commission agrees with Applicant's witness Hobbs that it is impossible to make an informed and intelligent decision on this matter without giving careful consideration to alternatives such as an interconnection with Southern Pines and Aberdeen and an elevated storage tank that may be built by the Pinewild development.

Third, the Commission is unpersuaded by the Village's contention that it would necessarily be more responsive to customer complaints than RIM. The Village argues that, as a municipality, it would be more responsive to consumers, who could voice their dissatisfaction in the Village's bi-annual elections. Whatever validity this argument may have in the abstract, the Commission notes that many of Pinehurst's water and sewer customers do not vote in these elections because they are absentee landowners or they live outside the Village's corporate limits. The Commission especially notes at this point that it has statutory authority to hear and determine complaints from all customers of regulated utilities and has established a comprehensive procedure--both formal and informal--to resolve and to adjudicate customer complaints. G.S. 62-73; Commission Rule R1-9.

Fourth, the Village maintains that interconnection between the water systems of Pinehurst, Southern Pines, and Aberdeen would be far more likely if Pinehurst's water facility was municipally owned. However, the only serious efforts to implement interconnection have come from Pinehurst Enterprises, and not the municipalities. The Commission notes that the Moore County wastewater facility is compelling evidence that private utility/municipal utility cooperation is not only possible, but a reality.

Fifth, the Commission finds insufficient evidence on this record to support the Village's claims on the general superiority of municipal utility ownership. Specifically, the Village claims that its assessment method for charging new customers for the cost of capital improvements required to provide service is superior to methods used by private utilities. However, a private utility certainly could apply a similar assessment procedure, subject to approval by this Commission.

Furthermore, the Village is in error in alleging that each time the water and sewer system is sold to a private utility the new purchase price is depreciated and this additional depreciation is recovered through rates. Under this Commission's ratemaking policy, if a water or sewer system is sold for a price less than the net original cost at the time of the transfer, rate base and depreciation are based on the lower purchase price except in extraordinary circumstances. The only instance in which the gross, as opposed to the net, plant in service is depreciated by the acquiring system is where the sale price is greater than the net original cost and the plant acquisition adjustment is amortized as a reasonable cost of providing public utility service. See In re Carolina Water Service, Docket No. W-354, Sub 26, 74th Report, North Carolina Utilities Commission, 683, 713-715 (1984).

Additionally, the Village did not adequately support its argument that municipal ownership of utilities is preferable because the municipality can coordinate property development with the extension of water and sewer service. Intervenor witness Leary presented these alleged benefits of municipal ownership in a broad and generalized manner. The Commission finds the Village's evidence insufficient to support the Village's claims on this issue.

In the final analysis, the Village has failed to substantial its claim that it would be a more appropriate purchaser of Pinehurst's water and sewer facilities than the Applicant.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Upon consideration of the above findings of fact and conclusions and the entire record in this docket, the Commission concludes that the application for transfer in this proceeding is justified by the public convenience and necessity and should be approved. G.S. 62-111(a).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

On September 29, 1988, the Village of Pinehurst filed a Motion for Stay Order in these dockets. In its Motion, the Village moved that the Commission issue a Stay Order, consisting of both an Interlocutory Stay Order and a Permanent Stay Order, "prohibiting the proposed transferee, Regional Investments of Moore, Inc., from diverting the profits from the utility operations to the wrongful enrichment of the would-be purchasers, and to the irreparable detriment of the rate-paying consuming public. . . "

On October 5, 1988, the Commission issued an Order scheduling the Village's Motion for an Interlocutory Stay Order for hearing on October 7, 1988.

On October 6, 1988, RIM filed various Motions to Quash Subpoenas issued at the request of the Village of Pinehurst, Motion for Protective Order, and Motion for Sanctions.

The matter came on for hearing as scheduled on October 7, 1988, and thereafter the Commission issued its Order Denying Motion for Interlocutory Injunctive Relief and Scheduling Hearing. In this Order, the Commission denied the Motion of the Village of Pinehurst for an Interlocutory Stay Order and scheduled a hearing on the Motion for a Permanent Injunction for November 22,

1988. A prehearing conference in these dockets on the Village's Motion for Stay Order was scheduled for November 14, 1988.

As a result of a Motion to Compel the Production of Certain Documents by RIM, which was filed by the Village on October 17, 1988, the Commission issued an Order requiring RIM and the Pinehurst companies to produce at the prehearing conference the documents which were more fully described in the Motion to Compel of the Village.

The prehearing conference was held as scheduled on November 14, 1988. As a result of the matters considered at the prehearing conference, the Commission, with the consent of the parties, issued an Order cancelling the hearing scheduled for November 22, 1988, and providing that the Commission would issue a subsequent Order at a later date.

On December 19, 1988, RIM filed Motion for a Final Order. The contents of this Motion, the Village's Response thereto, and the Commission's disposition thereof is more fully set forth in Finding of Fact No. 14 and the Evidence and Conclusions for Finding of Fact No. 14.

In its response of December 22, 1988, the Village of Pinehurst moved the Commission alternatively to either issue orders denying the pending applications in these dockets or keep the matter on hold, require compliance with the Order Compelling Production of Documents by way of a pretrial conference in early January, and schedule the matter for oral argument as soon as it is reasonably practical or consistent with such production. In support of its request, the Village alleged that its position with respect to "interim restrictions on self-dealing is simply that if one concedes that there is any reasonable belief that the Applicant will not ultimately prevail, then the Applicant, in possession of the assets but without clear title, owes an almost fiduciary duty which would appear to preclude unrestrictive withdrawal of 'profits', payments of principal (which enure directly to the benefit of the investment if it is sold) and would appear to at least require some oversight and accountability regarding payments of interest."

In its Motion for Final Order, RIM stated that the Commission should dismiss the Village's Motion for Interlocutory Injunctive Relief and all other Village requests filed in connection with such Motion on September 29, 1988. RIM alleged: "Presumably, because there is no longer any impediment to an entry of a final order on RIM's application, the Commission will now issue its final order. The issues raised by the Village's Motion for Stay Order therefore are moot." The Commission agrees. The purpose of the Village's Motion was to obtain certain interim relief from the Commission until the ultimate issues raised in these dockets were finally resolved. The Commission today issues this Order granting final approval to the applications that have been pending in these dockets for more than two years. Consequently, there is no need to consider the Village's Motion further, and the Motion should be dismissed.

IT IS, THEREFORE, ORDERED as follows:

1. That the transfer of the utility franchises of the water and sewer systems serving an area in and around the Village of Pinehurst, North Carolina, to Regional Investments of Moore, Inc., is approved.

2. That the transfer of the utility assets of Pinehurst Sanitary Company and Pinehurst Water Company to Regional Investments of Moore, Inc., is approved.

3. That the pledging of various utility assets by Regional Investments of Moore, Inc., to secure the loan from Wachovia Bank & Trust is approved.

4. That the Motion of the Village of Pinehurst for a Stay Order in these dockets, filed September 29, 1988, be and the same is hereby, dismissed.

5. The Applicant RIM, in consultation with the Village of Pinehurst, shall undertake a further study on the fire protection issue, addressing the concerns expressed by the Village, and report to the Commission in writing, within six months after the date of this Order, its conclusions and recommendations with respect to the fire hydrants. A copy of the study shall be given to the Village, which may then file any additional response within 30 days after it receives the study. The Commission will examine the study and any response thereto and issue a further Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of February 1989.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-812, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by CAC Utilities, Inc., Post Office Box 7085, Greenville, North Carolina 27835, for Authority to Increase Its Tariff Schedule for Sewer Service at Windsor Oaks Subdivision in Wake County, North Carolina	) INTERLOCUTORY ORDER) APPROVING INTERIM EMERGENCY) RATES SUBJECT TO REFUND;) ORDER ESTABLISHING A GENERAL) RATE CASE, SUSPENDING RATES,) SCHEDULING HEARING, AND) REQUIRING PUBLIC NOTICE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 16, 1989, at 7 p.m., and August 17, 1989, at 9:30 a.m.

BEFORE: Commissioner Ruth E. Cook, presiding, Chairman William W. Redman, Jr., and Commissioner Charles H. Hughes

APPEARANCES:

For CAC Utilities, Inc.:

William E. Grantmyre, Post Office Box 1246, Cary, North Carolina 27512-1246

For the Public Staff:

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

BY THE COMMISSION: On July 28, 1989, CAC Utilities, Inc. (CAC, Applicant or Company), filed its Application to Increase Sewer Tariff Schedule for Windsor Oaks Subdivision to Reflect the Increase from Converting to Sewage Treatment and Disposal by the Town of Cary. CAC requested that the application be treated as compliant proceeding under G.S. § 62-136(a) and that the Company be granted an immediate emergency rate increase. The application further indicated that CAC would file a general rate case for Windsor Oaks Subdivision within 10 days.

On August 3, 1989, the Commission issued an Order scheduling a hearing on CAC's application for August 16, 1989, and requiring CAC to give notice to its customers in Windsor Oaks Subdivision of its request.

On August 11, 1989, CAC, through its attorney, filed its Certificate of Service and also exhibits and supporting documents for its emergency rate increase request.

The public hearing was held as scheduled. At the public hearing the following public witnesses testified: Richard E. Shepherd, Richard J. Sieger, William Habetz, Eugene Annuziata, James Baas, John Paulos, Louise Bradley, Matthew Flemming, and David Burnett.

The Company presented the testimony and exhibits of John Melvin, president of CAC Utilities, Inc. The Public Staff presented the testimony of Andy Lee, Director of the Public Staff Water Division, the testimony and exhibits of George Dennis, Supervisor of the Water and Sewer Section, Accounting Division, and Ronald P. Singleton, Director of Utilities for the Town of Cary.

The public witnesses testified of past problems they had experienced with bad odor from the sewer system, and the present problems of back up in their sewer system, warning alarms going off at times, and their objection to the rate increase requested.

The Public Staff witnesses testified that the system had never been designed or installed properly, causing excessive infiltration, and that CAC and the developer were at fault.

The Company, through its witness Melvin, presented several exhibits in support of the requested rate of $89.91 per month. The Public Staff recommended a rate increase to $36.93 per month and presented its own exhibits.

On August 27, 1989, CAC filed a general rate increase for Windsor Oaks Subdivision.

The Commission, after reviewing the testimony and exhibits and the entire docket in this matter, is of the opinion that CAC should be granted interim emergency rates subject to refund, that the application filed on August 25, 1989, constitutes a general rate case, that the proposed new rates should be suspended pending investigation, and that the matter should be set for hearing.

FINDINGS OF FACT

1. CAC is a North Carolina corporation with certificates of public convenience and necessity to provide sewer service to six franchised service areas in Wake County, North Carolina, including Windsor Oaks Subdivision, which is south of Cary.

2. On July 28, 1989, CAC filed an application with the Commission to increase the sewer rate for Windsor Oaks Subdivision from a flat rate of $18.00 per month per residence to a flat rate of $89.91 per dwelling per month on an interim, emergency basis. The application was filed primarily because of the increase costs associated with the treatment of the subdivision's sewage by the Town of Cary. The application alleged that unless CAC is granted an immediate rate increase for Windsor Oaks Subdivision, the Company will have its sewer treatment and disposal service terminated by the Town of Cary and that the customers of Windsor Oaks would be without sewer service since the drain fields of the original sewage plant are now "totally out of service."

3. On August 25, 1989, the Company filed application and notice of a general rate case for the Windsor Oaks Subdivision. The rate requested in the general rate application is $96.04 per month per residence.

4. The Windsor Oaks sewer system was originally a low-pressure sewer system whereby the sewage was treated in individual septic tanks and the effluent disposed of through two drain fields. However, the two drain fields

were unable to properly dispose of the septic-tank-treated sewage and were abandoned. The Windsor Oaks sewer system is now connected to the Town of Cary sewer system, and the subdivision sewage is being treated and disposed of by the Town.

5. The Applicant, at the hearing on August 16, 1989, established the need for some increase in the sewer rate in Windsor Oaks Subdivision on an interim, emergency basis pending hearing on the Applicant's general rate case application which was filed on August 25, 1989.

6. The Public Staff recommended an interim sewer rate of $36.93.

7. The interim emergency rate approved by this Interlocutory Order is $40.00, effective for service rendered on and after the date of this Order.

8. The interim emergency rate approved herein allows for the pump and haul expenses owed to the Department of Natural Resources and Community Development.

9. The interim emergency rate approved herein will be subject to an undertaking to refund.

10. The interim rate of $89.91 requested by the Applicant should be denied.

11. The interim emergency rate approved herein is approved as a part of the Applicant's general rate case, which was filed on August 25, 1989.

CONCLUSIONS

The Commission concludes that the Applicant CAC should be granted an interim emergency rate of $40.00 per month in the Windsor Oaks Subdivision pending hearing and investigation on the Company's general rate increase application. The evidence at the hearing discloses that the Applicant has experienced a substantial increase in its operating expenses since the subdivision sewer system was connected to the Town of Cary for treatment and disposal of the subdivision's sewage. The Applicant, however, is not entitled to the $89.91 rate requested by it. The exhibits offered by the Applicant have not been quantified with any degree of accuracy. The operating expenses of the Applicant in Windsor Oaks await further investigation, quantification, and hearing in the Company's general rate case. Evidence was also presented which sharply questioned the appropriateness of many of the expenses testified to by the Applicant. For example, there was evidence that the meter readings from the Town of Cary were excessively high or that the meter itself was not calibrated correctly. The Town of Cary and the Applicant further agreed to test the meter and make report thereon to the Commission.

The Public Staff, after its preliminary investigation, recommended an interim rate of $36.93. (Dennis Exhibit I.) The Commission is of the opinion that the Public Staff's recommended rate should serve as the basis for the interim rate approved herein. The Public Staff recommendation, however, did not allow for the pump and haul expenses owed to DEM. The incurring of these expenses were of an emergency nature and were necessary to comply with the Commission's Order of April 6, 1988. The Commission concludes that the Public

Staff's recommended rate of $36.93 should be adjusted to include a reasonable allowance to cover the costs associated with the amortization of the pump and haul expenses, as requested by the Applicant.

Consequently, the interim rate approved herein is $40.00.

The findings and conclusions reached in this Order are interlocutory in nature only and are not binding on the Commission in the consideration of the Company's general rate case.

IT IS, THEREFORE, ORDERED as follows:

1. That this proceeding be, and hereby is, declared a general rate case pursuant to G. S. § 62-137.

2. That the proposed new rates are hereby suspended for up to 270 days pursuant to G. S. § 62-134.

3. That the application is hereby scheduled for public hearing on Tuesday, December 5, 1989, in Commission Hearing Room 2115, Dobbs Building, Raleigh, North Carolina, at 9:30 a.m. The hearing will continue on Wednesday, December 6, 1989, if additional time is needed.

4. That the Applicant is hereby allowed to increase its rates to $40.00 on an interim emergency basis. This interim emergency increase is approved for service rendered on and after the date of this Order.

5. That said interim emergency rate shall be subject to an undertaking to refund, with 10% interest, all amounts not ultimately found just and reasonable after the final decision concerning the rates in this docket.

6. That the Applicant shall complete and file the undertaking, attached hereto as Appendix B, within 10 days of the date of this Order.

7. That an officer or representative of the Applicant is hereby required to appear in person before the Commission at the time and place of the hearing to testify concerning any of the information contained in the application. If the Applicant desires to cross-examine any witnesses at the hearing, the Applicant shall be represented by legal counsel at said hearing.

8. That a copy of the Notice to Customers attached as Appendix C be mailed with sufficient postage or hand delivered by the Applicant to all customers affected by the proposed new rates; that said Order be mailed or hand delivered no later than 5 days after the date of this Order; and that the Applicant submit to the Commission the attached Certificate of Service properly signed and notarized no later than 20 days after the date of this Order.

9. That the test period for this proceeding is hereby established as the 12-month period ended June 30, 1989.

10. That the Applicant shall report to the Commission, within 30 days after the date of this Order, the results of the meter test it and the Town of Cary agreed to undertake.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of August 1989.

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

APPENDIX A

DOCKET NO. W-812, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by CAC Utilities, Inc., Post Office Box 7085, Greenville, North Carolina 27835, for Authority to Increase Its Tariff Schedule for Sewer Service at Windsor Oaks Subdivision in Wake County, North Carolina	)	NOTICE OF $40.00 INTERIM EMERGENCY RATE AND NOTICE OF APPLICATION FOR GENERAL RATE INCREASE

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has approved an interim emergency rate increase for the sewer system of CAC Utilities, Inc. (CAC or Company), in Windsor Oaks Subdivision in Wake County, North Carolina. The interim emergency rate approved by the Commission is $40.00 per month per residential dwelling effective for service rendered on and after August 30, 1989. This interim emergency rate is subject to an undertaking and any portion of the interim emergency rate that exceeds the rate approved by the Commission after a full evidentiary hearing will be refunded to the customers with 10% interest.

The interim rate requested by the Company was $89.91.

The Commission approved the interim rate after a hearing on August 16 and 17, 1989, in which the Company, the Public Staff, the Town of Cary, and a number of customers appeared and offered testimony. The Public Staff recommended an interim rate of $36.93.

The $40.00 interim rate approved by the Commission reflects the substantial increase in the Company's operating expenses due to the connection of the subdivision sewage system to the treatment facilities of the Town of Cary. The increase also reflects expenses incurred by the Company in the pumping and hauling of sewage from the subdivision during the winter of 1988-89 as required by the Company and the N.C. Department of Environmental Management.

The interim rates are to continue in effect pending the Commission's decision in the Company's upcoming general rate case.

General Rate Case

On August 25, 1989, CAC filed an application for a general rate increase in Windsor Oaks Subdivision. The amount of the new rate requested by the Company is $96.04. A comparative schedule of rates for the sewage system in Windsor Oaks Subdivision, including the interim emergency rate of $40.00 is as follows:

Present Rate	Interim Rate	Requested Rate
$18.00 per month	$40.00 per month	$96.04 per month

The application filed on August 25, 1989, will effect the monthly sewer rates only, i.e., all other rates and charges shall remain the same. The Commission may consider additional or alternative rate design proposals which were not included in the application and may order increases or decreases in the sewer rate schedule which differ from those proposed by CAC. However, any rate structure considered will not generate more overall revenues than that requested by the Company.

Public Hearing

The Commission has scheduled a hearing on the Company's application for a general rate increase in Windsor Oaks Subdivision. The time and place of the hearing is as follows:

Tuesday, December 5, 1989, at 7:00 p.m.
Commission Hearing Room, Dobbs Building,
430 North Salisbury Street, Raleigh, N.C.

Wednesday, December 6, 1989, at 9:30 a.m.,
Commission Hearing Room, Dobbs Building,
430 North Salisbury Street, Raleigh, N.C.

The hearing on Tuesday night is scheduled for the convenience of the customers of the Applicant who wish to appear and testify on the proposed increase. Customers may also appear and testify on Wednesday.

The Public Staff is authorized by statute to represent the consumers in proceedings before the Commission. Written statements to the Public Staff should include any information which the writer wishes to be considered by the Public Staff in its investigation of the matter, and such statements should be addressed to Mr. Robert Gruber, Executive Director, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520.

The Attorney General is also authorized by statute to represent the consumers in proceedings before the Commission. Statements to the Attorney General should be addressed to The Honorable Lacy H. Thornburg, Attorney General, c/o Utilities Commission, Post Office Box 629, Raleigh, North Carolina 27602.

Written statements are not evidence unless those persons appear at a public hearing and testify concerning the information contained in their written statements.

Persons desiring to intervene in the matter as formal parties of record should file a motion under North Carolina Utilities Commission Rules R1-6, R1-7, and R1-19 not later than 10 days before the date of the hearing. Such motion should be filed with the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of August 1989.

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

APPENDIX B

DOCKET NO. W-812, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by CAC Utilities, Inc., Post Office Box 7085, Greenville, North Carolina 27835, for Authority to Modify Its Tariff Schedule for Sewer Service at Windsor Oaks Subdivision in Wake County, North Carolina	)	UNDERTAKING

NOW COMES the Applicant, CAC Utilities, Inc., and files this Undertaking as follows:

UNDERTAKING

The Applicant, by and through its undersigned owner/executive officer, does hereby make its written undertaking to the North Carolina Utilities Commission that is will make refund to its customers at 10% interest, if any refund is required by Final Order of the Commission, any amount of the interim emergency rates approved herein that may be finally determined by the Commission to be excessive.

This the _____ day of _____ 1989.

CAC UTILITIES, INC.

By: _____
(Owner, President)

ORDERS AND DECISIONS - PRINTED

TABLE OF CONTENTS

GENERAL ORDERS

ELECTRICITY

CERTIFICATES

COMPLAINTS

PURCHASED POWER ADJUSTMENT

RATES

MOTOR BUSES

DISCONTINUED SERVICE

MOTOR TRUCKS

AUTHORITY GRANTED - CONTRACT CARRIER

RATES

TELEPHONE

CERTIFICATES

TABLE OF CONTENTS
ORDERS AND DECISIONS LISTED

P-100, Sub 84 - Order Clarifying Bench Order (11-9-89)

P-100, Sub 95 - Order Regarding Conformity to New Federal Rules on Link-Up Program (3-9-89)

P-100, Sub 96 - Order Denying Petition to Continue the Universal Wats Access Line Surcharge (3-30-89)

P-100, Sub 97 - Order to Circulate Tax Opinion Letter Concerning the Shared Use and Resale of Telephone Services (1-20-89)

P-100, Sub 97 - Order Establishing Rulemaking and Requesting Comments (8-17-89)

P-100, Sub 103 - Order Denying Request for Proprietary Treatment of Nonregulated Financial Data and Granting Extension of Time (1-31-89)

P-100, Sub 105 - Order Concerning Experimental Areas (4-12-89)

P-100, Sub 105 - Order Authorizing Experiments (7-19-89)

P-100, Sub 107 - Order Requiring Notice in Telephone Directories Regarding Recording of Telephone Conversations (10-10-89)

P-100, Sub 109 - Order Suspending Tariffs (7-31-89)

WATER

W-100, Sub 9 - Order Restricting Water Use and Requiring Public Notice (7-27-89)

ELECTRICITY

CERTIFICATES

Cogentrix of Rocky Mount, Inc. - Order Issuing a Certificate of Public Convenience and Necssity for Construction of a Cogeneration Facility to be Located Near the Plant of Abbott Laboratories, Near Battleboro in Edgecombe and Nash Counties
SP-16, Sub 8 (2-16-89)

Gaston County - Order Issuing Certificate of Public Convenience and Necessity for Contruction of a Small Power Production Facility to be Located at the Gaston County Landfill Approximately Four and One-Half Miles North of the Town of Dallas along Philadelphia Church Road, Gaston County
SP-70 (9-13-89)

North Carolina Electric Membership Corporation of Raleigh - Order Issuing Certificate of Public Convenience and Necessity to Construct Diesel Generator Facility in Wake County
EC-67 (10-25-89)

North Carolina Electric Membership Corporation of Raleigh - Order Issuing Certificate of Public Convenience and Necessity to Construct Diesel Generator Facility in Wake County
EC-67, Sub 2 (10-25-89)

Panda Energy Corporation - Order Issuing Certificate of Public Convenience and Necessity for Construction of a Cogeneration Facility to be Located Near the North West Corner of 13th Street and Roanoke Avenue, Roanoke Rapids
SP-73 (5-2-89)

Shipyard Power and Light Company - Order Granting Certificate of Public Convenience and Necessity and Approving Rates
E-47 (10-12-89)

COMPLAINTS

Carolina Power & Light Company - Recommended Order Denying Complaint of Captain M. P. Sohnlein
E-2, Sub 545 (3-21-89)

Carolina Power & Light Company - Order Closing Docket in Complaint of Susan McFadyen
E-2, Sub 551 (2-3-89)

Carolina Power & Light Company - Recommended Order Denying Complaint in Dr. R. R. Robinson and The Day of Pentecost Apostolic Church Complaint
E-2, Sub 555 (7-27-89)

Carolina Power & Light Company - Order Closing Docket in Complaint of Murray L. Pelt
E-2, Sub 557 (7-26-89)

Carolina Power & Light Company - Order Closing Docket in Complaint of John Strickland
E-2, Sub 558 (7-26-89)

Carolina Power & Light Company - Order Closing Docket in Complaint of Jarvis Lee Gwaltney
E-2, Sub 559 (7-26-89)

Carolina Power & Light Company - Order Closing Docket in Complaint of Victor Williford, Farm Bureau Insurance Company
E-2, Sub 560 (6-30-89)

Carolina Power & Light Company - Order Closing Docket in Complaint of Francis J. Hale
E-2, Sub 561 (6-8-89)

Carolina Power & Light Company - Recommended Order Denying Complaint of Steve Webb
E-2, Sub 564 (9-22-89)

Carolina Power & Light Company - Order Dismissing Complaint and Closing Docket in Complaint of Clyde Louis Beck
E-2, Sub 565 (9-1-89)

Carolina Power & Light Company - Order Allowing Withdrawal of Complaint and Closing Docket in Complaint of Mary Katherine Lance
E-2, Sub 566 (12-21-89)

Duke Power Company - Order Closing Docket in Complaint of James G. Vanderbeck
E-7, Sub 444 (10-16-89)

Duke Power Company - Order Keeping Docket Open for Six Months and Serving Request for Additional Information in Complaint of Bertha Baxter
E-7, Sub 455 (11-30-89)

Duke Power Company - Reissued Order Keeping Docket Open for Six Months in Complaint of Bertha Baxter, and Serving Request for Additional Information
E-7, Sub 455 (12-13-89)

North Carolina Power - Order on Complaint of Lowell E. Nelson, AIA, General Partner, Outer Banks Sails Ltd. Ptr., Quality Inn, Sea Oatel
E-22, Sub 307 (8-29-89)

North Carolina Power - Final Order Dismissing Complaint of Lowell E. Nelson, AIA, General Partner, Outer Banks Sails Ltd Ptr., Quality Inn, Sea Oatel and Requiring Payment of Security Deposit within 10 days
E-22, Sub 307 (10-25-89)

North Carolina Power - Order Approving Agreement of the Parties and Dismissing Complaint with Prejudice in Complaint of State of North Carolina, Department of Natural Resources and Community Development and The Albemarle Commission, Joe Hollowell, Chairman
E-22, Sub 309 (9-20-89)

APPROVING PURCHASE POWER ADJUSTMENT

Company	Cents per kWh	Docket No.	Date
Nantahala Power and Light Company	3.3778	E-13, Sub 133	1-25-89
Nantahala Power and Light Company	3.0410	E-13, Sub 134	2-21-89
Nantahala Power and Light Company	2.9579	E-13, Sub 135	3-30-89
Nantahala Power and Light Company	2.3866	E-13, Sub 137	4-26-89
Nantahala Power and Light Company	2.3379	E-13, Sub 138	5-16-89
Nantahala Power and Light Company	1.7015	E-13, Sub 139	6-27-89
Nantahala Power and Light Company	1.2185	E-13, Sub 140	7-24-89
Nantahala Power and Light Company	0.2101	E-13, Sub 141	8-23-89

RATES

Carolina Power & Light Company and Virginia Electric & Power Company - Order Modifying Applicability of Rate and Closing Docket
E-2, Sub 457 (11-30-89)

Carolina Power & Light Company - Order Approving Rate Schedules
E-2, Sub 562 (9-22-89)

Duke Power Company - Order Approving Rate Reductions and Tariffs
E-7, Sub 408 (4-7-89)

Duke Power Company - Order Approving Refund Plan
E-7, Sub 408 (4-26-89)

Duke Power Company - Order Approving Revised Rate Schedule RC
E-7, Sub 450 (3-22-89)

Nantahala Power and Light Company - Order Ruling on Interest Issue fo Authority to Adjust and Increase Its Rates and Charges
E-13, Sub 29 (11-3-89)

New River Light and Power Company - Order Approving Rate Adjustments an Requiring Notice
E-34, Sub 26 (12-5-89)

North Carolina Power - Order Allowing Rates Subject to Refund and Requirin Public Notice
E-22, Sub 308 (11-29-89)

North Carolina Power, Virginia Electric and Power Company d/b/a - Orde Approving Experimental Schedules 10, CS, SG and 6TS
E-22, Sub 310 (9-26-89)

SALES AND TRANSFERS

Craven County Wood Energy Limited Partnership - Order Transferring Certificat Granted to Carolina Cogeneration Company, Inc.
SP-72 (2-2-89)

Panda Energy Corporation - Order Transferring Certificate for Construction of a Cogeneration Facility to be Located Near the North West Corner of 13th Street and Roanoke Ave., Roanoke Rapids
SP-73; SP-73, Sub 1 (6-30-89)

SECURITIES

Carolina Power & Light Company - Order Granting Authority to Issue and Sell Additional Securities (Long-Term Debt)
E-2, Sub 549 (1-12-89)

Carolina Power & Light Company - Order Granting Authority to Issue and Sell Additional Securities (Common Stock)
E-2, Sub 568 (9-12-89)

Duke Power Company - Order Granting Authority under G.S.§ 62-161 to Issue and Sell Securites (Long-Term Debt)
E-7, Sub 422 (11-22-89)

Duke Power Company - Order Approving Financing Arrangement
E-7, Sub 454 (8-9-89)

Duke Power Company - Order Approving the Issuance and Sale of Medium Term Notes
E-7, Sub 457 (10-19-89)

TARIFFS

Carolina Power & Light Company - Order Approving Experimental Schedule Without Prejudice
E-2, Sub 548 (1-25-89)

Carolina Power & Light Company - Order Approving Revised Tariff
E-2, Sub 563 (5-16-89)

Carolina Power & Light Company - Order Approving Dispatched Power (Experimental) Rider No. 68
E-2, Sub 567 (8-30-89)

Duke Power Company - Order Approving Revisions on Rider IS, Rider SG, and Standby Generator Agreement Form
E-7, Sub 446 (1-31-89)

MISCELLANEOUS

Brunswick Electric Membership Corporation - Order Approving Experimental Load Leveling Plan Project
EC-40, Sub 13 (3-9-89)

Carolina Power & Light Company and Carteret-Craven Electric Membership Corporation - Order Reassigning Service Areas, Carteret County
ES-101 (11-22-89)

Carolina Power and Light Company - Order Approving Revised Meter Testing Procedures and Requiring Further Proposals
E-2, Sub 238 (12-20-89)

Carolina Power & Light Company - Order Approving Enhancements without Prejudice
E-2, Sub 435 (12-20-89)

Carolina Power & Light Company - Order Authorizing Conveyance of Access Easement
E-2, Sub 537; E-2, Sub 333 (12-21-89)

Duke Power Company - Order Approving Meter Testing Program
E-7, Sub 458 (10-3-89)

Duke Power Company and Carolina Power & Light Company - Order Reassigning Service Areas in Wake County and Durham County
ES-99 (1-18-89)

Duke Power Company and Piedmont Electric Membership Corporation - Order Reassigning Service Areas in Durham County
ES-100 (1-18-89)

Jones-Onslow Electric Membership Corporation - Order Approving a Load Leveling Plan
EC-43, Sub 58 (9-26-89)

Nantahala Power and Light Company - Order Approving Accounting Treatment
E-13, Sub 136 (12-12-89)

Nantahala Power and Light Company - Further Order Approving Accounting Treatment
E-13, Sub 136 (12-22-89)

North Carolina Electric Membership Corporation - Order Approving of Two Load Leveling Plans
EC-67, Sub 3 (6-14-89)

North Carolina Electric Membership Corporation - Order Approving Modifications of Existing Load Leveling Plan
EC-67, Sub 3 (11-8-89)

North Carolina Electric Membership Corporation - Order Approving Three Load Leveling Plans
EC-67, Sub 4 (10-25-89)

FERRY BOATS

COMMON CARRIER

Austin, Rudy L. - Order Granting Common Carrier Authority to Transport passengers and their personal effects from Ocracoke Harbor to Portsmouth Island via water and return
A-30 (7-19-89)

Beaufort Tours, Martin E. Muns, d/b/a - Recommended Order Granting Authority to Transport Passengers and personal effects from Beaufort to the West End of Shackelford Banks National Seashore Park via Water and Return
A-31 (9-12-89) Final Order Overruling Exceptions and Affirming Recommended Order (10-26-89)

Charter Carteret, Inc. - Order Granting Common Carrier Authority to Transport Passengers via Water in Ferry Boat Operations
A-35 (10-18-89)

Marshall, Conly - Order Granting Common Carrier Authority to Transport Passengers and their Personal Effects from Atlantic Beach to the West End of Shackleford Banks National Seashore Park via Water and Return
A-33 (11-1-89)

Topsail Marine Supply, William E. Kwaak, d/b/a - Order Granting Common Carrier Authority for Transportation of Passengers and their Personal Effects from Beaufort to the West End of Shackleford Banks National Seashore Park via Water and Return
A-29 (4-5-89)

NAME CHANGE

Beaufort Belle Tours, Inc. - Order Approving Name Change from Topsail Marine Supply, William E. Kwaak, d/b/a, Certificate No. A-29
A-32 (7-27-89)

GAS

COMPLAINTS

Piedmont Natural Gas Company - Order Closing Docket in Complaint of Debbie Steed
G-9, Sub 287 (4-6-89)

Piedmont Natural Gas Company - Order Closing Docket in Complaint of Camel City Laundry & Cleaners
G-9, Sub 293 (8-25-89)

Public Service Company of North Carolina - Recommended Order Dismissing Complaint in Complaint of Eaton corporation
G-5, Sub 226 (4-12-89)

Public Service Company - Recommended Order Awarding Refund in Complaint of Blue Ridge Textile Printers, Inc.
G-5, Sub 227 (4-12-89)

Public Service Company - Order Confirming Calculation in Complaint of Chemical Industry Institute of Toxicology
G-5, Sub 228 (5-18-89)

Public Service Company - Recommended Order Awarding Refund in Complaint of Chemical Industry Institute of Toxicology
G-5, Sub 228 (4-12-89)

Public Service Company - Order Granting Motion to Withdraw, Cancelling Hearing and Closing Docket in Complaint of Scott Mills
G-5, Sub 236 (6-22-89)

Public Service Company - Order Allowing Withdrawal of Complaint in Complaint of Sanford Finishing
G-5, Sub 238 (3-28-89)

Public Service Company - Order Dismissing Complaint in Complaint of Bruce R. Grier
G-5, Sub 241 (8-9-89)

EXPLORATION AND DEVELOPMENT - Order Approving E and D Refund Plan

Company	Docket Number	Date
North Carolina Natural Gas Corporation	G-21, Sub 275	4-11-89
North Carolina Natural Gas Corporation	G-21, Sub 277	10-5-89
Pennsylvania & Southern Gas Company	G-3, Sub 156	4-4-89
Pennsylvania & Southern Gas Company	G-3, Sub 158	10-5-89
Piedmont Natural Gas Company, Inc.	G-9, Sub 290	4-4-89
Piedmont Natural Gas Company, Inc.	G-9, Sub 294	10-5-89
Public Service Company of North Carolina, Inc.	G-5, Sub 245	4-4-89
Public Service Company of North Carolina, Inc.	G-5, Sub 250	10-5-89

RATES - PURCHASED GAS ADJUSTMENT (PGA)

North Carolina Natural Gas Corporation - Order Allowing Application to Become Effective Subject to Further Review Upon Complaint and Hearing
G-21, Sub 274 (2-1-89)

Pennsylvania & Southern Gas Company - Order Allowing Petition to Become Effective Subject to Further Review Upon Complaint and Hearing
G-3, Sub 155 and G-3, Sub 138 (2-1-89)

Pennsylvania & Southern Gas Company - Order Allowing Recovery of the November 1, 1989, PGA Decrease and Permitting Decrement to Refund Rider D Savings
G-3, Sub 159 (10-31-89)

Piedmont Natural Gas Company, Inc., - Order Allowing Petition to Become Effective Subject to Further Review Upon Complaint and Hearing
G-9, Sub 289 (2-1-89)

Public Service Company of North Carolina, Inc. - Order Allowing Application to Become Effective Subject to Further Review Upon Complaint and Hearing
G-5, Sub 207, G-5, Sub 240 (2-1-89)

Public Service Company of North Carolina, Inc. - Order Allowing PGA Changes
G-5, Sub 253; G-5, Sub 207 (10-31-89)

RATES

North Carolina Natural Gas Corporation - Order Allowing Rate Reduction Effective June 1, 1989
G-21, Sub 274 (6-7-89)

North Carolina Natural Gas Corporation - Order Allowing Rate Reduction Effective August 1, 1989
G-21, Sub 276 (8-8-89)

North Carolina Natural Gas Corporation - Order Allowing Reduction in Rates Effective November 1, 1989
G-21, Sub 278 (10-31-89)

Piedmont Natural Gas Company, Inc. - Order Granting Motion to Amend for an Adjustment of Its Rates and Charges
G-9, Sub 278 (2-22-89)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Reduction, In Part, Effective November 1, 1989
G-9, Sub 296 (10-31-89)

Public Service Company of North Carolina, Inc. - Order Approving Special Fuel Tax Rider Increase
G-5, Sub 183 (10-3-89)

Public Service Company of North Carolina, Inc. - Order on Clarification for an Adjustment of Its Rates and Charges
G-5, Sub 246; G-5, Sub 247 (12-28-89)

Public Service Company of North Carolina, Inc. - Order Allowing Reduced Reconnect Fee Under Certain Conditions
G-5, Sub 248 (7-24-89)

Public Service Company of North Carolina, Inc. - Order Authorizing Additional Decrement January 1, 1990
G-5, Sub 253; G-5, Sub 207 (12-20-89)

SECURITIES

Piedmont Natural Gas Company, Inc. - Order Approving Sale of $60,000,000 Principal Amount Senior Notes
G-9, Sub 292 (6-6-89)

Public Service Company of North Carolina, Incorporated - Order for Authority to Issue and Sell an Additional 200,000 Shares
G-5, Sub 242 (2-1-89)

Public Service Company of North Carolina, Incorporated - Order Granting Authority to Issue and Sell Common Stock
G-5, Sub 243 (2-22-89)

Public Service Company of North Carolina, Incorporated - Order Granting Authority to Issue and Sell Senior Debentures
G-5, Sub 258 (12-1-89)

TARIFFS

Piedmont Natural Gas Company, Inc. - Order Approving Tariff Rates and Refund Plan
G-9, Sub 278 (2-22-89)

Piedmont Natural Gas Company, Inc. - Order Rejecting Tariffs and Requiring Tariff Filing
G-9, Sub 278 (3-23-89)

Piedmont Natural Gas Company, Inc. - Order Approving Tariffs
G-9, Sub 278 (4-12-89)

Piedmont Natural Gas Company, Inc. - Order Suspending Tariffs and Scheduling Hearing
G-9, Sub 295 (11-8-89)

Public Service Company of North Carolina, Inc. - Order Approving Tariffs, Riders and Notice to Customers
G-5, Sub 246; G-5, Sub 247 (11-21-89)

MISCELLANEOUS

North Carolina Natural Gas Gorporation - Order Denying Motions to Dismiss and Issuing Preliminary Injunction
G-21, Sub 279 (12-14-89)

Piedmont Natural Gas Company, Inc. - Order Waiving Rule R6-25 and Amending Order in Docket No. G-9, Sub 142
G-9, Sub 142 (1-31-89)

MOTOR BUSES

APPLICATIONS WITHDRAWN

Travelease Bus Line, Inc. - Order Allowing Withdrawal of Protest and Cancelling Hearing
B-510 (6-13-89)

AUTHORITY GRANTED - COMMON CARRIER

Company	Charter Operations	Docket No.	Date
Adventure Tours, Ann B. Clement, d/b/a	Statewide	B-503	3-15-89
Albemarle Charter Service Fred Warren Hahn, d/b/a	Statewide	B-508	5-17-89
Bear Grass Tours, Inc.	Statewide	B-513	9-8-89
Carolina Sightseeing Tours, Doital International, Inc.	Statewide	B-516	9-29-89
Hills' Christian Tours, Inc.	Statewide	B-509	7-24-89
Island Enterprises, Incorporated	Statewide	B-505	2-21-89
Island Hoppers, Inc.	Statewide	B-505	4-13-89
Ollison Coach Lines, Inc.	Statewide	B-133, Sub 5	3-14-89
Piedmont Transit, Inc.	Statewide	B-403, Sub 4	5-18-89
Regional Storage & Transport, Inc.	Statewide	B-500	2-13-89
Seaboard Bus Service, Ltd.	Statewide	B-504	2-3-89
Travelease Bus Line, Inc.	Statewide	B-510	6-28-89
United Bus Lines Garver Enterprises, Inc., d/b/a	Statewide	B-502	2-1-89
United Bus Lines Garver Enterprises, Inc., d/b/a	Statewide	B-502	6-19-89

BROKER'S LICENSE

Creation Tours, Joan C. Sammons, d/b/a - Order Granting Brokers's License
B-512 (11-30-89)

Custom Travel Services, Inc. - Order Cancelling Broker's License
B-348, Sub 1 (5-23-89)

E. T.'s Country Lane Tours, E. T. Taylor, d/b/a - Order Granting Broker's License
B-514 (9-28-89)

Executive Guest Tours & Services, Inc. - Order Granting Broker's License
B-515 (9-18-89)

4 Wynnes Inc. Tours and Travels - Order Granting Broker's License
B-482 (4-5-89)

Getaway Unlimited Tours, Rober E. Kirby, Linda H. Kirby and Ronald E. Wilkins, d/b/a - Order Granting Broker's License
B-511 (6-29-89)

Tours and Functions, Laura Lacy, d/b/a - Order Granting Broker's License
B-498 (1-3-89)

Travel Masters, Dennis K. Brooks, d/b/a - Order Granting Broker's License
B-499 (1-9-89)

CERTIFICATES CANCELLED

Dillahunt, John T. - Order Cancelling Permit No. B-128
B-128, Sub 3 (10-31-89)

Island Hoppers Transit, Inc. - Recommended Order Cancelling Operating Authority of Certificate No. B-505 - Termination of Liability Insurance Coverage
B-505, Sub 3 (11-9-89)

LUV Transportation Company, Johnny B. Potter, d/b/a - Recommended Order Cancelling Operating Authority of Certificate No. B-470 - Termination of Liability Insurance Coverage
B-470, Sub 1 (4-12-89)

Sun-Land Tours, Inc. - Order Cancelling Certificate No. B-445
B-445, Sub 2 (10-23-89)

DISCONTINUE SERVICE

Greyhound Lines, Inc. - Order Granting Discontinuance of Service over its Route Between Charlotte and Boone, via Lincolnton and Hickory
B-7, Sub 109 (7-25-89)

NAME CHANGE

Island Hoppers Transit, Inc. - Order Approving Name Change from Island Hoppers, Inc., for Certificate No. B-505
B-505, Sub 1 (5-1-89)

Regional Coach, Regional Storage & Transport, Inc., d/b/a - Order Approving Name Change from Regional Storage & Transport, Inc., for Certificate No. B-500
B-500, Sub 1 (3-3-89)

Triad Lines, M & W Charters, Inc., d/b/a - Order Approving Name Change from M & W Charters, Inc., for Certificate No. B-359
B-359, Sub 5 (6-1-89)

SALE AND TRANSFER

Greyhound Lines, Inc. - Order Approving Transfer of Certificate No. B-69 from Trailways Lines, Inc.
B-7, Sub 107 (6-28-89)

M & W Charters, Inc. - Order Approving Sale and Transfer of Certificate No. B-359 from Triad Lines, Inc.
B-506 (3-29-89)

MOTOR TRUCKS

APPLICATIONS AMENDED

Aeronautics Express, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3127 (5-15-89)

Anderson, James Trucking, James Anderson, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3169 (8-17-89)

Anderson Truck Line, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-26, Sub 2 (12-7-89)

Associates Express, Jill B. Moore & Victor H. Moore, d/b/a - Order Amending Application and Cancelling Hearing
T-3126, Sub 1 (8-17-89)

Associates Express, Victor H. Moore and Jill B. Moore, d/b/a - Order Amending Application and Cancelling Hearing
T-3126, Sub 2 (11-2-89)

B & J Enterprises, Ben R. Cox & Jean H. Cox, d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-3138 (5-15-89)

Baker's Delivery Service-Same Day Service, Joseph Baker, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Granting Temporary Authority
T-3076 (1-17-89)

Billy's Mobile Home Moving, Robert W. Gooden, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3095 (3-21-89)

Billy's Mobile Home Moving, Robert W. Gooden, d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-3095 (3-24-89)

Blake Hyde Trucking, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2766, Sub 1 (4-14-89)

Brubaker Transfer, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3145 (6-20-89)

Carlson, Bertis Trucking, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3140 (6-1-89)

Carr Trucking Company, Daniel W. Carr, Jr., d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-3104 (3-14-89)

Coastal Transport, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-214, Sub 6 (5-9-89)

Commercial Grading, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3084 (2-8-89)

Craco Freight Carriers, Robert Craver, Richard Coleman & Gene Murr, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3185 (9-20-89)

Daily Express, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3189 (10-18-89)

Daniel Delivery Service, Daniel H. Wyatt, d/b/a - Order Amending Application
T-3117 (7-6-89)

Eagle Express, J. O. Enterprise, Inc., d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-3038 (2-7-89)

Floyd & Beasley Transfer Company, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3057 (1-18-89)

Frito-Lay, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-2630, Sub 2 (10-25-89)

G & M Transport Company - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3060 (1-4-89)

Gemini Transportation Services, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3086 (2-16-89)

Gibson, Boyce Ray Trucking Company - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3175 (8-23-89)

Harris, Peter David - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3088 (3-23-89)

Hodgin Express Service, Robert Hodgin, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3099 (3-16-89)

Hornet Delivery & Courier Service, Thurman C. Dowless, d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-3203 (10-19-89)

Howard Transportation, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3239 (12-15-89)

Howard Transportation, Inc. - Order Amening Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3239, Sub 1 (12-15-89)

International Transport, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3188 (10-18-89)

Investment Resources Company - Order Amending Application and Allowing Withdrawal of Protest
T-3146 (6-14-89)

Iredell Milk Transportation, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-1647, Sub 11 (9-20-89)

Iredell Milk Transportation, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-1647, Sub 11 (10-26-89)

J & B Delivery Service, John McNeill, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3133 (5-17-89)

J & B Delivery Service, John McNeill, d/b/a - Order Amending Application and Allowing Withdrawal of Protests
T-3133 (5-24-89)

J & O Trucking Co., William Jacobs, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3223 (11-22-89)

J & R Transportation & Brokers, Jack Thompson, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3232 (12-7-89)

Jackson Trading Company - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2082, Sub 1 (2-22-89)

Kelly Farms, Oscar Wayne Kelly, Gary Michael Gunter, and David Wayne Kelly, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3158 (7-27-89)

Lattimore Trucking, Barbara Lattimore, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3073 (1-26-89)

Lee Brothers Trucking, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3085 (2-8-89)

Little, P. D. & Son Trucking, Percy Dale Little, d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-3193 (9-13-89)

Loose Change, Peggy Cobb Edmunds, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3210 (10-26-89)

Loose Change, Peggy Cobb Edmunds, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3210, Sub 1 (11-17-89)

MEP Express, Michael E. Potter & Kathy C. Potter, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3093 (3-9-89)

Marchionda, Steve & Associates, Steven C. Marchionda, d/b/a - Order Amending Application, Allowing Withdrawal of Protests and Cancelling Hearing
T-3229 (12-7-89)

Merritt Trucking Company, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2143, Sub 12 (11-9-89)

Messenger, Carl Service, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-2694, Sub 1 (2-3-89)

Metrolina Freezer and Delivery, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3184 (9-29-89)

Mid Atlantic Transport, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3152 (6-14-89)

Mike's Limousine and Executive Service, Mike Boyd, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3147 (6-22-89)

Miller Truck Lines, Patricia A. Miller, d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-3150 (6-14-89)

Modern Office Mechanics, Mark Baldwin, Richard Nellis & Craig Parr, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3123 (5-10-89)

Morgan Trucking Co., Glenn Morgan, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3094 (3-14-89)

Morris, Mack Grey - Order Amending Application and Allowing Withdrawal of Protest
T-3246 (12-21-89)

Paragon Freight Systems, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3238 (12-8-89)

Parsons, G. G. Trucking Company - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-1784, Sub 6 (3-2-89)

Partner's Trucking, Frank W. Fender and Lee P. Pender, d/b/a - Order Amending Application, Allowing Withdrawal of Protests and Cancelling Hearing
T-3162 (7-24-89)

Phelps, Timmie C. Trucking, Timmie C. Phelps, d/b/a - Order Amending Application, Allowing Withdrawal of Protests and Rescheduling Hearing
T-3071 (1-23-89)

Piedmont Security Services, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3144 (6-29-89)

Respess Trucking, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2940, Sub 2 (4-28-89)

Roadworthy Leasing, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3190 (10-18-89)

Rogers, L. J. Jr., Trucking, Inc. - Order Amending Application, Allowing Withdrawal of Protests and Cancelling Hearing
T-3072 (2-2-89)

Schneider National Carriers, Inc. - Order Amending Application, Allowing Withdrawal of Protests and Cancelling Hearing
T-3182 (9-27-89)

Service Delivery & Transportation, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3231 (11-30-89)

Smith's Wrecker Service, Etheridge Z. Smith, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3124 (5-16-89)

Su-Ann Trucking Co., Otha L. Stroud d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3159 (7-18-89)

Sundance Enterprise, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3112 (4-14-89)

Taylor, Laura Lee - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3220 (11-17-89)

Warren Transport, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3200 (10-18-89)

APPLICATIONS DENIED/DISMISSED

Associates Express, Jill Bacon Moore & Victor Hendon Moore, d/b/a - Recommended Order Dismissing Application
T-3126 (7-7-89)

Carter's Transfer, John E. Carter, d/b/a - Recommended Order Dismissing Application
T-3115 (4-21-89)

APPLICATIONS WITHDRAWN (COMMON OR CONTRACT CARRIER AUTHORITY)

Company	Docket Number	Date
Amundsen Moving & Storage, Inc.	T-3091	3-9-89
Asheboro Ford Tractor, Inc.	T-2844	9-28-89
Coats, Kenneth L. Mobile Home Moving Company, Kenneth L. Coats, d/b/a	T-2049, Sub 1	10-31-89
Daniel Delivery Service Daniel H. Wyatt, d/b/a	T-3117	7-19-89
Great American Lines, Inc.	T-3137	6-1-89
Hornet Delivery & Courier Service, Thurman C. Dowless, d/b/a	T-3203	10-25-89
M & J Trucking, Melvin Thomas Mangum, d/b/a	T-3156	7-11-89
Med-Express, Inc.	T-3166	8-22-89
Paradise Trucking, Inc.	T-3217, Sub 1	11-17-89
Ray's Towing, Raymong Lloyd Hagerhorst, d/b/a	T-3132	11-20-89
Triangle Express, Charles P. Gould, d/b/a	T-2074, Sub 1	3-27-89

AUTHORITY GRANTED - COMMON CARRIER

Aeronautics Express, 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-3127 (6-14-89)

AG-Liquids, Inc. - Order Granting Common Carrier Authority to Transport Group 6, Agricultural Commodities; Group 8, Dry Fertilizer and Dry Fertilizer Materials; and Group 21, Liquid Fertilizer and Liquid Feed, Statewide, Under Contract with Southern States Cooperative, Inc., McLain Beef and Grain, Eaton Farms, James Farms, Inc., and Arcadian Corporation
T-3226 (11-17-89)

America's Best Movers, Ricky Leon Sellers, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile, Modular, and All Related Trailers, Statewide
T-3078 (3-15-89)

American Messenger Services, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Unmanufactured Tobacco and Accessories, Class A & B Explosives, and Commodities in Bulk), Statewide
T-3148 (8-10-89)

American Mobile Home and Auto, Timothy Lee Braswell, d/b/a - Order Grating Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3069 (5-26-89)

Ashley Mobile Home Service, Walter Ravaughn Ashley, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between all Points Within a Sixty (60) Mile Radius of Wilkesboro
T-3092 (4-4-89)

Associates Express, Victor H. Moore and Jill B. Moore, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (for Exceptions see Official Copy of Order in Chief Clerk's Office.)
T-3126, Sub 2 (11-9-89)

Autofix Corporation - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk Unmanufactured Tobacco, Statewide
T-3201 (11-27-89)

BCJ Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Restricted Against Transporting Group 19, Unmanufactured Tobacco, Tobacco Products and Accessories), and Group 10, Building Materials, Statewide
T-3068 (8-10-89)

B & J Enterprises, Ben R. Cox & Jean H. Cox, 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-3138 (7-7-89)

Baker's Delivery Service - Same Day Service, Joseph Baker, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Unmanufactured Tobacco and Accessories and Motion Picture Film and Special Service), from Wilson County to the Counties of Wake, Durham, Pitt, Wayne, Edgecombe, Nash, Franklin, Johnston, Lenoir and Greene, and from these Name Counties Back to Wilson County
T-3076 (2-8-89)

Barefoot Mobile Home Movers, Clyde W. Goad, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3130 (6-20-89)

Barnes, O. F. Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3209 (11-16-89)

Beam Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Liquid and Dry Commodities in Bulk and Unmanufactured Tobacco and Accessories), Statewide
T-3036 (4-19-89)

Big Apple Mobile Home Movers, Robert Dale Riffle & Dennis Ray Spake, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3114 (5-3-89)

Billy's Mobile Home Moving, Robert W. Gooden, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3095 (4-5-89)

Billy's Mobile Home Service, Billy Bullock, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Manufactured Homes, Parts and Accessories, Statewide
T-3198 (12-12-89)

Blue Ridge Produce & Plant Co., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Group 19, Unmanufactured Tobacco and Accessories), Statewide
T-3128 (5-25-89)

Brubaker Transfer, 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-3145 (11-17-89)

Budget Freight, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Bulk Commodities in Tank Vehicles and Unmanufactured Tobacco), Statewide
T-3178 (10-9-89)

Builders Transport, Inc. - Order Granting Common Carrier Authority to Transport General Commodities, Except those requiring Special Equipment and Except Unmanufactured Tobacco, Statewide
T-1638, Sub 8 (4-24-89)

Burlington Trailer Sale & Service, Inc. - Order Granting Common Carrier Authority to Transport Group 17, Textile Mill Goods and Supplies, and Group 21, Building Insulation Materials and Automotive Parts and Accessories, Statewide
T-3134, Sub 1 (9-28-89)

CCC Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Commodities in Bulk and Unmanufactured Tobacco), Statewide
T-3101 (4-28-89)

Callihan's Mobile Home Service, Johnny Callihan, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3196 (10-20-89)

Cantrell, Charles Associates, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-1969, Sub 3 (5-12-89)

Carl Messenger Service, Inc. - 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-2694, Sub 1 (7-26-89)

Carlson, Bertis Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except Commodities in Bulk and Unmanufactured Tobacco; and Group 21, Structural Steel and Iron, Statewide
T-3140 (6-27-89)

Carmar Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3082 (3-14-89)

Carolina Express, Michael E. Medley & James R. Allison, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3192 (11-15-89)

Carolina Trailer Rentals, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, from Wake County to Points in the State and from Points in the State Back to Wake County
T-3050 (2-8-89)

Carpet Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Between all Points in North Carolina East of and Including the Counties of Yancey, McDowell and Rutherfordton
T-3218 (11-14-89)

Carter's Transfer, John E. Carter, d/b/a - Recommended Order Granting Authority to Transport Group 18, Household Goods, within a 45-mile Radius of China Grove
T-3115, Sub 1 (7-21-89) Recommended Order Dismissing Application (7-19-89)

Chandler Trucking, Darriell Chandler, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3111 (5-17-89)

Cheetah Transportation Co. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3191 (11-27-89)

Coastal Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Commodities in Bulk and Unmanufactured Tobacco), Statewide; Group 2, Heavy Commodities, Between Points in Wayne County and Between points in Wayne County, on the one hand, and, on the other points in the state; and Group 21, Bulk Storage Tanks, Statewide
T-214, Sub 6 (7-5-89)

Coats, Kenneth L. Mobile Home Moving Company, Kenneth L. Coats, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes Within the Counties of Wake, Johnston, Harnett, Sampson and Franklin and from these Counties to Points within North Carolina and from Points within North Carolina Back to these Counties
T-2049, Sub 2 (12-12-89)

Combs, Carson Lee - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, in the Counties of Wilkes, Ashe, Alleghany, Watauga, Iredell, Yadkin, Alexander, Caldwell and Surry
T-3059 (1-5-89)

Commercial Grading, Inc. - 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-3084 (4-4-89)

Cooper's Mobile, Timothy B. Cooper, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Mobile Office Units, Only from the Counties listed on the Official Copy of the Order in the Chief Clerk's Office
T-3163 (7-12-89)

Crete Carrier Corporation - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Excluding Unmanufactured Tobacco and Accessories) and Group 17, Textile Mill Goods and Supplies, Statewide
T-1900, Sub 2 (4-19-89)

Crystal Coast Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3230 (12-27-89)

DCV Corporation - 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-3075 (3-6-89)

D. F. Mobile Home Movers, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Manufactured and Modular Houses and all Commodities Related to the Manufactured Housing Industry, Statewide
T-3120 (4-19-89)

Delancey Street North Carolina - Recommended Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except Commodities in Bulk and Unmanufactured Tobacco; and Group 18, Household Goods, Statewide (Restriction: This Operating Authority can not be sold or Transferred but must remain with the Original Holder of the Authority.)
T-3214 (11-17-89)

Elkins & Son Mobile Home Moving and Service, Herbert Elmore Elkins, Jr., and Carroll Dennis Elkins, d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Prefabricated Modular Homes, From and Between all Points in the Following Counties: Cherokee, Graham, Clay, Macon, Swain, Haywood, Jackson, Transylvania, Henderson, Buncombe, Madison, Mitchell, Yancey, McDowell, Rutherford, Polk, Cleveland, Burke, Caldwell, Avery, Wilkes, Ashe, Allegheny, Watagua, Alexander, and Catawba
T-3011 (1-12-89)

Family Dollar Stores, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Except Unmanufactured Tobacco and Accessories), Statewide
T-3090 (6-5-89)

Flash Courier Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Household Goods, Commodities in Bulk, Classes A and B Explosives and Unmanufactured Tobacco) and Group 20, Motion Picture Film and Special Service, Statewide
T-3026 (2-7-89)

G. and H. Transportation, Bud Monroe Hawley, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Except Unmanufactured Tobacco and Accessories); Group 16, Furniture Factory Goods and Supplies; Group 17, Textile Mill Goods and Supplies and Group 21, Plastic Bottles, Statewide
T-3007 (1-26-89)

Gemini Transportation Services, Inc. - 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-3086 (3-14-89)

General Transport Systems of Delaware, Inc., General Transport Systems, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-2875, Sub 2 (6-23-89)

Gibson, Boyce Ray Trucking Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 21, Petroleum Products in Drums, Between Points in Gaston, Mecklenburg, Cleveland, Iredell, Cabarrus and Lincoln Counties (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3175 (9-7-89)

Grand View Acres, WBT Services, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3131 (11-27-89)

H & M Wood Preserving, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3215 (11-27-89)

Harris Trucking, Peter David Harris, 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-3088 (5-18-89)

Hart Mobile Home Movers, Ronnie Glenn Hart and Julian David Hart, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3081 (10-9-89)

Hite Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Commodities in Bulk and Unmanufactured Tobacco), and Group 14, Dump Truck Operations, Statewide
T-3183 (11-27-89)

Howard's Mobile Home Movers, Robert F. Howard, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3067 (1-18-89)

Hyde, Blake Trucking, 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-2766, Sub 1 (6-14-89)

Investment Resources Company - 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-3146 (8-7-89)

J & B Delivery Service, John McNeill, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 15, Retail Store Delivery Service, in the Counties of Harnett, Robeson, Moore, Hoke, Sampson, Bladen, Lee, Scotland, Chatham, Johnston, Wayne and Cumberland (See Official File in Chief Clerk's Office for Restrictions.)
T-3133 (6-13-89)

J.H.M. Leasing, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Excluding Unmanufactured Tobacco and Accessories) and Group 5, Solid Refrigerated Products, Statewide
T-3051 (2-7-89)

J & K Mobile Home Movers, J. A. Summerford & Kim P. Summerford, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, House Trailers, Modular Homes and other Manufactured Houses or Offices, Statewide
T-3221 (12-27-89)

Johnson, Shelba D., Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Liquid and Dry Commodities in Bulk, Statewide
T-2757, Sub 1 (3-9-89)

Jordan Mobile Home Movers, Ronnie Long Jordan, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2684, Sub 3 (7-11-89)

Kershner, Gregory Lynn - Order Granting Common Carrier Authority to Transport Group 21, Structural Components of Pre-engineered Buildings, Building Materials, Air Handling Components and Related Items, (Excluding Group 19, Tobacco Products), Between Points in Richmond and Scotland Counties, and from these Counties to all Points in North Carolina
T-3171 (9-7-89)

Larry's Mobile Home Repairs, Moves & Setups, Larry Gene Barnard, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3008 (2-15-89)

Lattimore Trucking, Barbara Lattimore, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Unmanufactured Tobacco and Accessories); Group 9, Forest Products and Group 10, Building Materials, From McDowell, Burke and Catawba Counties to Points in North Carolina and From Points in North Carolina Back to McDowell, Burke and Catawba Counties
T-3073 (2-16-89)

Lee Brothers Trucking, Inc. - 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 Acessories, is not Authorized.)
T-3085 (4-19-89)

M & J Trucking, Melvin Thomas Mangum, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Bulk Cement, Between Points and Places East of and Including the Counties of Stokes, Forsyth, Davidson, Randolph, Moore, Hoke, Robeson, Columbus and Brunswick
T-3156 (7-25-89)

Macfield, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide (See Restrictions on Official Copy in Chief Clerk's Office)
T-3061 (1-17-89)

Marlowe's Mobile Home Repair, Archie Rudolph Marlowe and Thomas Archie Marlowe, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide (See Note on Official Copy in Chief Clerk's Office)
T-1806, Sub 2 (1-18-89)

MEP Express, Michael E. Potter & Kathy C. Potter, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide (Restriction: Transport of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3093 (3-15-89)

MediQuik Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3211 (11-30-89)

Mighty Movers, James L. Horne, d/b/a - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Statewide
T-3010 (3-22-89)

Miller Truck Lines, Patricia A. Miller, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Excluding Unmanufactured Tobacco and Accessories); Group 9, Forest Products; Group 10, Building Materials; and Group 21, Printing Paper and Scrap Paper, Statewide
T-3150 (7-27-89)

Mills, A. R. Trucking, Archie Ray Mills, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Bulk Tobacco Barns, Statewide
T-3107 (5-10-89)

Mobile Home Movers, L.K.N., Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Manufactured Homes, Statewide
T-3157 (8-18-89)

Moore's Mobile Manor and Service, Arrell Lennon Moore, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-1285, Sub 3 (7-25-89)

Morgan Drive Away, Inc. - Order Granting Common Carrier Authority to Transport Group 13, Motor Vehicles, Statewide
T-1069, Sub 10 (3-22-89)

Morgan Trucking Co., Glenn Morgan, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Except Unmanufactured Tobacco and Accessories), Statewide
T-3094 (4-18-89)

National Freight, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco; Statewide (See Note in File Copy in Chief Clerk's Office)
T-1717, Sub 2 (5-10-89)

P.T.S. Investments, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Excluding Unmanufactured Tobacco and Accessories, Statewide
T-3063 (10-9-89)

Parsons, G. G. 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, is not Authorized.)
T-1784, Sub 6 (4-4-89)

Phifer Trucking, Larry Parks Phifer, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Unmanufactured Tobacco and Accessories), Statewide
T-3177 (9-7-89)

Phil's Mobile Home Repairs, Phillip Monroe Eudy, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3135 (6-13-89)

Piedmont Fuel & Distributing Co., Inc. - Order Granting Common Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, and Liquefied Petroleum gas, in Bulk in Tank Vehicles, from all Existing Originating Terminals at or Near Wilmington, Morehead City, Beaufort, River Terminal, Thrift, Friendship, Salisbury, Apex, Fayetteville and Selma to Points and Places in Watuaga and Alexander Counties
T-1062, Sub 10 (4-20-89)

Prestige Auto Transporters, Inc. - Order Granting Common Carrier Authority to Transport Group 13, Motor Vehicles, Statewide
T-3074 (1-30-89)

Quesinberry's Garage, Wrecker Service & Truck Sales, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Commodities in Bulk and Unmanufactured Tobacco), Statewide
T-3105 (4-5-89)

R & H Motor Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Unmanufactured Tobacco and Household Goods), and Group 21, Storage Trailers and Contents therein, Statewide
T-3212 (11-15-89)

R. W. Trucking Co., L. Randy Williams, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Empty Plastic Bottles, from Enka to Charlotte, Durham, Morganton, Sanford, Fayetteville and Goldsboro and Empty 12 oz. cans from Rowan County to Burke County
T-3087 (4-25-89)

Rapid Run, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3029 (2-15-89)

Reavis, Bobby Mobile Home Moving, Bobby Reavis, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Modular Homes, Statewide
T-3012, Sub 1 (8-16-89)

Roadworthy Leasing, 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-3190 (11-9-89)

SAS Wrecker Service, Inc. - Order Granting Common Carrier Authority to Transport Group 13, Motor Vehicles and Group 21, Office Trailers and Storage Trailers, Statewide
T-3000 (3-15-89)

SAS Wrecker Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and House Trailers, Statewide
T-3000, Sub 1 (3-15-89)

Sandhill Express, 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-2953 (5-4-89)

Shea, M. J. & Co., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Except Household Goods, Commodities in Bulk, Classes A and B Explosives, and Specifically Excluding Group 19, Unmanufactured Tobacco and Accessories), Statewide
T-3122 (6-29-89)

Silver Bullet Carrier Corporation - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3149 (11-30-89)

Southern Western Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3080 (4-4-89)

Stephens, Daniel Edward - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, in the Counties of Gaston, Cleveland, Lincoln and Mecklenburg
T-2095, Sub 1 (3-22-89)

Suits, Earnest E. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3121 (5-10-89)

Sunco Carriers, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Commodities in Bulk and Unmanufactured Tobacco), Statewide
T-3165 (9-8-89)

Sundance Enterprise, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 5, Solid Refrigerated Products, Statewide
T-3112 (8-15-89) Errata Order (8-17-89)

Taylor's, J. D. Mobile Home Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points in Pender, Duplin, New Hanover, Onslow, Sampson, Bladen and Brunswick Counties
T-2992 (9-7-89)

The A. G. Boone Company - 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-24, Sub 12 (2-10-89)

Torque Storage Trailers, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3083 (4-4-89)

Transit Express, Inc., U. S. Transit Corporation, d/b/a - 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-3062 (2-22-89)

Wagram Paper Stock, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3208 (12-15-89)

Walker Contract Service, Max Lee Walker, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Manufactured Homes, Statewide
T-3186 (10-2-89)

Widener, Roy Motor Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Between Points in Alamance, Alexander, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cleveland, Davidson, Davie, Forsyth, Gaston, Guilford, Iredell, Lee, Lincoln, Mecklenburg, Randolph, Rockingham, Rowan, Rutherford, Scotland, and Yadkin Counties
T-2874 (6-22-89)

Wyatt and Lemmond, George Wyatt and Tommy Lemmond, d/b/a - Recommended Order for Common Carrier Authority to Transport Group 18, Household Goods Over Irregular Routes within a 60-mile Radius of Kannapolis
T-3098 (3-29-89)

Zenith Freight Lines, Inc. - Order Granting Common Authority to Transport Group 1, General Commodities (Except Household Goods, Commodities in Bulk, Classes A and B Explosives, and Group 19, Unmanufactured Tobacco and Accessories), Between Points in Catawba, Alexander, Burke, Mecklenburg, Caldwell, Lincoln, and Cleveland Counties and from these Counties to all Points in North Carolina
T-3047 (7-14-89)

AUTHORITY GRANTED - CONTRACT CARRIER

Another Day Trucking, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities and Group 21, Pulp, Paper and Related Products, Between All Points and Places East of and Including I-95 from the South Carolina State Line to the Virginia State Line, Under Continuing Contracts with Southeastern Purchasing and Europam Paper and Fiber Corporation (See Official Copy in Chief Clerk's Office for Restrictions)
T-2980 (4-5-89)

Associates Express, Jill B. Moore & Victor H. Moore, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities; Excluding Group 19, Unmanufactured Tobacco and Accessories, Commodities in Bulk and Pharmaceuticals and Pharmacy Supplies; Statewide, Under Contract with Cargo U.K., Inc.
T-3126, Sub 1 (8-24-89)

Bass, Dennis L. - Order Granting Contract Carrier Authority to Transport Group 21, (for Specifics see Official Copy of Order in Chief Clerk's Office)
T-3004 (8-29-89)

Bill's Wheels, Billy G. Watson, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Telephone Equipment, Between all Points and Places East of and Including Granville, Durham, Orange Chatham, Moore and Richmond Counties, Under Contract with AT&T Technologies, Inc.
T-3118 (9-7-89)

Boatwright, Clyde J. - Order Granting Contract Carrier Authority to Transport Group 21, (for other Specific Commodities see Official Copy of Order in Chief Clerk's Office)
T-2502, Sub 2 (10-18-89)

Burlington Trailer Sales and Service, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Second Odd Lot of Fabric Yarn, (Excluding Group 19, Unmanufactured Tobacco and Accessories, Class A and B Explosives, Commodities in Bulk and Household Goods), Statewide, Under Contracts with Sara Lee Knit, Inc., Adam Millis, Inc. and B. C. Matthews and Associates
T-3143 (9-8-89)

Burnham Service Company, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with BellSouth Services, Inc.
T-951, Sub 14 (8-31-89)

C. S. Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Flour, in Packages and in Bulk, Statewide, Under Continuing Contract with Midstate Mills, Inc.
T-2144, Sub 3 (2-3-89)

C. S. Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Muriatic Acid and Caustic Soda, in Bulk, in Tank Vehicles, Statewide, Under Continuing Contract with CPC International, Inc., Corn Products Unit
T-2144, Sub 4 (4-4-89)

C V & C Cartage, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Printing Ink, Ink Materials, and Materials used in the Manufacture thereof, from Winston Salem to all Points in North Carolina, Under Continuing Contract with Sun Chemical Corporation, General Printing, Inc., Division
T-3155 (8-31-89)

Charlotte Bay Trading Company - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Wrenn Handling, Inc.
T-2349, Sub 4 (11-9-89)

Coastal Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Ferrous Sulfate, in Bulk, Under Continuing Contract with Water Guard, Inc., Statewide
T-214, Sub 7 (12-15-89)

Cotten, James Ray - Order Granting Contract Carrier Authority to Transport Group 21 (for Specifics see Official Copy of Order in chief Clerk's Office)
T-2916 (8-31-89)

Craco Freight Carriers, Robert Craver, Richard Coleman & Gene Murr, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Craco Logistics (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3185 (10-18-89)

Custom Service, William C. Peeler, Jr., & Clyde Bond, d/b/a - Order Granting Contract Carrier Authority to Transport Group 16, Furniture Factory Goods and Supplies, from Rowan, Stanly and Cabarrus Counties to Points in North Carolina, Under Contract with H & M Wood Preserving, Inc.
T-3102 (5-4-89)

D and D Contractors, Inc. - Order Granting Contract Carrier Authority to Transport Group 19, Unmanufactured Tobacco, in Sheets, on Dollies or Jacks, in Shipments of 10,000 Pounds or Less Between Points in Bertie and Hertford Counties, Under Individual Bilateral Contract with R. J. Reynolds Tobacco USA
T-2994 (6-29-89)

Daily Express, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Self-Propelled Excavators, Excavator Parts, Attachments, Equipment and Accessories Used in Connection with Excavators, in Straight or Mixed Shipments, Between the Facilities of Derre-Hitachi in Kernersville on the one Hand, and, on the other, Points in the State, Under Continuing Contract with Deere-Hitachi Construction Machinery Corp.
T-3189 (11-27-89)

Dean's Wrecker Service, Inc. - Order Granting Contract Carrier Authority to Transport Group 13, Motor Vehicles, Between all Points and Places in North Carolina East of and Including the following Counties: Richmond, Montgomery, Randolph, Guilford and Rockingham, Under Continuing Contract with Ford Motor Credit Company
T-3033 (10-26-89)

Dillard Trucking, James Edward Dillard, t/a - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, viz (See Official Copy in Chief Clerk's Office for Restrictions)
T-3066 (1-17-89)

Floyd & Beasley Transfer Company, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, and Group 21, Commodities in Bulk, Statewide, Under Continuing Contracts with Avondale Mills, BASF Corporation, Clorox Company, E. I. DuPont DeNemours, Fruit of the Loom, The Lee Company and Monsanto Company (See Official Copy in Chief Clerk's Office for Restrictions)
T-3057 (4-20-89)

Frito-Lay, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Premier Quilting (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-2630, Sub 2 (12-27-89)

G & M Transport Company - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Statewide, Under Continuing Contracts with Gwaltney Oil and Gas Company, Inc.; Midway Oil and Gas Company, Inc.; McLeod Oil Company, Inc.; Home Oil Company, Inc. and T-Group Marketers, Inc.
T-3060 (1-25-89)

Gardner, William W., Jr. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (See Official Copy in Chief Clerk's Office for other specifics.)
T-3204 (10-31-89)

International Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Self-Propelled Excavators, Excavator Parts, Attachments, Equipment and Accessories Used in Connection with Excavators, in Straight or Mixed Shipments, Between the Facilities of Deere-Hitachi in Kernersville on the one hand, and, on the other, points in the State, Under Continuing Contract with Deere-Hitachi Construction Machinery Corp.
T-3188 (11-27-89)

Koerner, Christopher Todd - Order Granting Contract Carrier Authority to Transport Group 21, other Specific Commodities (See Official Copy in Chief Clerk's Office for other specifics.)
T-3064 (5-26-89)

Kopf Trucking, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities (Except Commodities in Bulk, in Tank Vehicles, and Group 19, Unmanufactured Tobacco and Accessories), Statewide, Under Continuing Contracts with Sara Lee Corporation
T-3125 (8-22-89)

Lisk, Howard, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Chemicals and Chemicals in Bulk, Statewide, Under Continuing Contract with Prior Chemicals
T-1685, Sub 15 (10-20-89)

Little, P. D. & Son Trucking, Percy Dale Little, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contracts with Jamco Southeast, Inc.; Siecor Corporation; Brown Products, Inc.; and Impact Furniture, Inc. (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3193 (10-10-89)

Merritt Trucking Company, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Sodium Hypochlorite, in Bulk, Statewide, Under Continuing Contract with Trinity Manufacturing, Inc.
T-2143, Sub 11 (11-14-89)

Merritt Trucking Company, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Fly Ash in Bulk, Under Continuing Contract with Monex Resources, (for Specifics see Official Copy of Order in Chief Clerk's Office)
T-2143, Sub 12 (12-27-89)

O'Neal, James Willard - Order Granting Contract Carrier Authority to Transport Group 21, (See Official Copy in Chief Clerk's Office for other specifics.)
T-3142 (6-16-89)

Piedmont Security Services, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Telephone Equipment and Miscellaneous Small Packages, Between Points within a 65-Mile Radius of Greensboro, a 65-Mile Radius of Raleigh and Between Points within the Two Territories, Under Contract with AT&T Information Systems, Inc.
T-3144 (7-27-89)

Rapid Transit, Trafficking Service, Inc., d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, (Except Group 19, Unmanufactured Tobacco and Accessories, and Class A and B Explosives, Commodities in Bulk and Household Goods), Statewide, Under Continuing Contracts with Culp Weaving, Inc., and Carolina Commercial Heat Treat, Inc.
T-2222, Sub 1 (9-8-89)

REE Trucking, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, viz (See Official Copy in Chief Clerk's Office for Restrictions)
T-3065 (1-17-89)

Respess Trucking, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, from Ahoskie to Burlington, Under Contract with Easco Aluminum (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-2940, Sub 2 (5-25-89)

Robinson, Jimmie A., Sr. - Order Granting Contract Carrier Authority to Transport Group 21 (for Specifics see Official Copy of Order in Chief Clerk's Office)
T-3173 (8-18-89)

Rorie, C. M. Transportation, Charles Michael Rorie, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Electronic Components, Fabricated Metal Parts, Necessary Hardware to Assemble said Parts, Insulated Copper Cable and Wire and Tools for Installation of this Material, from Greensboro to all Points in North Carolina, Under Contract with AT&T
T-3100 (8-30-89)

Smith's Wrecker Service, Etheridge Z. Smith, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, (Except Unmanufactured Tobacco and Accessories); Group 10, Building Materials; and Group 13, Motor Vehicles, Statewide, Under Contracts with Atlas Hydraulic Wreckers, Matthews Building Supply Company, Inc., and Davis Steet & Iron Co., Inc.
T-3124 (6-5-89)

Swing Transport, Inc. - Order Amending Contract Carrier Authority to Transport Group 21, Paper and Paper Products, Statewide, Under Continuing Contracts with Gaylord Container Corporation, Georgia-Pacific Corporation, NeKoosa Packaging, a Company of Great Nothern NeKoosa Corporation, and Divisions of each
T-1819, Sub 4 (12-29-89)

Terra First, Incorporated - Order Granting Contract Carrier Authority to Transport Group 21, Industrial Wastes and Hazardous Wastes, Statewide, Under Contract with Federal Environmental Services, Inc.
T-3079 (10-25-89)

WBT Services, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities (Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco), Statewide, Under Continuing Contract with Brendles, Inc.
T-3131, Sub 1 (6-20-89)

Warren Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Self-Propelled Excavators, Excavator Parts, Attachments, Equipment and Accessories used in Connection with Excavators, in Straight or Mixed Shipments, Between the Facilities of Deere-Hitachi in Kernersville on the one hand, and, on the other, points in the State, Under Continuing Contract with Deere-Hitachi Construction Machinery Corp.
T-3200 (11-27-89)

Webber, A. N., Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities and Group 17, Textile Mill Goods and Supplies, Statewide, Under Contract with Softcare Apparel, Division of Gerber Childrenswear
T-3046 (1-17-89)

West Delivery Service, Morris L. West, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, (for specifics see Official Copy in Chief Clerk's Office.)
T-3172 (10-30-89)

Wiggins, James W. Trucking, James W. Wiggins, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, (for specifics see Official Copy of Order in Chief Clerk's Office)
T-3168 (7-25-89)

AUTHORIZED SUSPENSION

Company	Certificate	Reason
American Distribution Systems, Inc. T-1758, Sub 3 (4-24-89)	C-173	Good Cause
B & R Transportation Service, BRTS, Inc., d/b/a T-2824, Sub 2 (1-13-89)	C-1531	Good Cause
Backwoods Mobile Home Service & Repair Hugh Zimbelman and Donald Kenneth Ward, Jr., d/b/a T-2990, Sub 1 (2-13-89)	C-1653	Good Cause
Bullock, Richard Edwin T-1546, Sub 4 (5-10-89)	C-993	Good Cause
C & H Nationwide, Inc. T-2096, Sub 3 (2-21-89)	C-1156	Good Cause
Council, Artice Lee T-1867, Sub 2 (11-9-89)	P-298	Good Cause
Davis, Wallace Trucking, Wallace Davis, d/b/a T-2716, Sub 3 (10-31-89)	C-1449	Good Cause
Dixon Trucking Company, Inc. T-1733, Sub 5 (12-21-89)	C-1285	Good Cause
Eagle Transport Corporation T-151, Sub 21 (3-16-89)	C-296	Good Cause
Eagle Transport Corporation T-151, Sub 21 (6-14-89)	C-296	Good Cause
Ed's Used Cars Walter Edward Radford, d/b/a T-2613, Sub 2 (7-24-89)	C-1385	Good Cause
Eggleston, Gorris Oil Transport, Inc. T-126, Sub 5 (4-14-89)	C-163	Good Cause
Godwin Transport Co., Inc. T-1739, Sub 1 (11-21-89)	P-265	Good Cause
Honeycutt, J. B. Co., Inc. T-94, Sub 15 (9-7-89)	C-217	Good Cause

Hood Moving & Storage, Inc. T-2452, Sub 2 (8-2-89)	C-1302	Good Cause
Hoyle Transfer Company, David Hoyle, d/b/a T-2585, Sub 2 (12-1-89)	C-1392	Good Cause
Liberty Transportation Lines, Inc. T-2837, Sub 4 (2-9-89)	C-1535	Good Cause
Louisiana-Pacific Trucking T-2249, Sub 2 (12-7-89)	P-419	Good Cause
Marsh's Trucking Company, Inc. T-2778, Sub 4 (1-4-89)	C-1487	Good Cause
Mobile Home Movers, Inc. T-2776, Sub 1 (7-11-89)	C-1485	Good Cause
Mooresville Oil Company, Inc. T-1944, Sub 1 (10-19-89)	P-319	Good Cause
P & Y Mobile Homes, Inc. T-1418, Sub 6 (12-21-89)	C-950	Good Cause
Pinebluff Mobile Home Park, Charles Curtis Ferguson, d/b/a T-2035, Sub 1 (9-13-89)	C-1141	Good Cause
Postmasters, Inc. T-2683, Sub 4 (5-24-89)	C-1113	Good Cause
Raleigh Furniture Storage Company, Inc. T-866, Sub 2 (12-6-89)	C-637	Good Cause
SAS Wrecker Service, Inc. T-3000, Sub 3 (9-14-89)	C-1630	Good Cause
Spears, Rodney Trucking, Rodney Spears, d/b/a T-2800, Sub 2 (2-21-89)	P-541	Good Cause
Southern Container Corporation T-2981, Sub 1 (3-27-89)	C-1636	Good Cause
Storr Office Environments, Inc. T-2860, Sub 3 (1-30-89)	C-1570	Good Cause
Storr Office Environments, Inc. T-2860, Sub 4 (7-24-89)	C-1570	Good Cause
Taylor Transfer & Storage Co., Inc. T-2733, Sub 1 (8-4-89)	C-1367	Good Cause

Tobacco Transport, William Heath Whiteheart, d/b/a T-2026, Sub 5 (5-4-89)	C-522	Good Cause
Tommy's Transporters, Tommy Cole, d/b/a T-2879, Sub 1 (4-7-89)	C-1560	Good Cause
2800 Corporation T-2042, Sub 5 (10-10-89)	CP-58	Good Cause
Village Homes of the Pamlico, Inc. T-1679, Sub 10 (9-28-89)	C-1047	Good Cause
Williams, A. T. Oil Company, Inc. T-3042, Sub 1 (1-30-89)	C-1066	Good Cause

CERTIFICATES/PERMITS CANCELLED

Ceased Operations

Company and Certificate No.	Docket Number	Date
Ausley, Cecil Thomas (P-285)	T-1842, Sub 2	12-19-89
Charlotte Bus Terminal, Inc. (C-1499)	T-2783, Sub 1	9-28-89
Dew Transport Co., Dew Oil Company, d/b/a (CP-86) Reinstating Order T-2664, Sub 3 (12-13-89)	T-2664, Sub 3	11-21-89
Farmers Oil Company, Inc. (C-113)	T-233, Sub 8	11-21-89
Gate City Delivery Service, Carl M. Smith, d/b/a (C-1271)	T-2368, Sub 3	12-13-89
Granville House, Incorporated (C-858)	T-390, Sub 13	2-8-89
Hopkins, D. O. Trucking, Inc. (C-1038)	T-1694, Sub 6	10-31-89
Indianhead Truck Line, Inc. (C-1046)	T-1676, Sub 7	12-21-89
Lawndale Transportation Company (R-3)	R-3, Sub 2	5-11-89
Owens & Minor, Inc. (P-445)	T-2356, Sub 1	11-2-89
Perry's Transfer Company, James Vernon Perry, d/b/a (P-182)	T-1292, Sub 1	12-19-89
Puryear, John L. (P-561)	T-2962, Sub 1	12-19-89
Reliable Delivery, Gravely & Gravely, Inc., d/b/a (C-1648)	T-3022, Sub 1	12-19-89
Self's Scrap Metal Co., Mack Self, d/b/a (P-282)	T-1818, Sub 1	11-27-89
Storr Office Environments, Inc. (C-1570)	T-2860, Sub 5	11-8-89
The News & Observer Publishing Co. (P-212)	T-1443, Sub 6	1-23-89
Thompson Distributor Preston Lindale Thompson, d/b/a (P-507)	T-2589, Sub 1	12-19-89
Tilton's Delivery Service, Betty D. Tilton, d/b/a (P-363)	T-2076, Sub 3	11-27-89
Tyndall Delivery Service Isaac Parker Tyndall, d/b/a (C-1713)	T-3141, Sub 1	12-27-89
Wagoner Trucking Company (C-1467)	T-2765, Sub 1	10-6-89
Woodring's Mobile Home Park, Ray Woodring, d/b/a (C-1541)	T-2834, Sub 2	12-6-89

Barrett Trucking Company, Jackie Ray Barrett, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1582 - Termination of Liability and Cargo Insurance Coverage
T-2893, Sub 2 (7-3-89)

Buckhorn Trucking Company - Recommended Order Cancelling Operating Authority Certificate No. C-1428 - Termination of Liability and Cargo Insurance Coverage
T-2671, Sub 4 (7-3-89)

Car Sea Enterprises, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1398 - Terminaiton of Liability Insurance Coverage
T-2636, Sub 5 (11-13-89)

Cox Trucking, Ben R. Cox, Inc., d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1196 - Termination of Liability and Cargo Insurance Coverage
T-2053, Sub 5 (4-26-89)

Denham Moving & Storage, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-83 - Termination of Liability Insurance Coverage
T-1931, Sub 4 (4-12-89)

Edwards Moving Connection, Bobby A. Edwards, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1536 - Termination of Cargo Insurance Coverage
T-2805, Sub 1 (4-12-89)

Farrar Transfer & Storage Warehouse, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-668 - Termination of Liability Insurance Coverage
T-910, Sub 11 (9-28-89)

Hutchens Trucking Company, Inc. - Recommended Order Cancelling Operating Authority Permit No. P-543 - Termination of Liability Insurance Coverage
T-2798, Sub 2 (6-20-89)

Industrial Asphalt Transport, Inc. - Recommended Order Cancelling Operating Authority Certificate No. CP-84 - Termination of Liability Insurance Coverage
T-1619, Sub 5 (5-2-89)

L & J Motor Lines, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1364 - Termination of Cargo Insurance Coverage
T-2530, Sub 1 (5-16-89)

Lewis, Lionel Bert - Recommended Order Cancelling Operating Authority Certificate No. C-1515 - Termination of Liability Insurance Coverage
T-2793, Sub 1 (9-28-89)

M & M Transport, M. K. Poythress Trucking Co., Inc., d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1304 - Termination of Cargo Insurance Coverage
T-2448, Sub 4 (1-24-89)

Ormond, W. W. Trucking Co. - Recommended Order Cancelling Operating Authority Certificate/Permit No. CP-17 - Termination of Cargo Insurance Coverage
T-862, Sub 5 (7-3-89)

Pelican Air Pak, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1273 - Termination of Liability Insurance Coverage
T-2614, Sub 3 (11-9-89)

Pilot Freight Carriers, Inc. - Recommended Order Cancelling Authority Certificate No. C-1146 - Termination of Liability Insurance Coverage
T-192, Sub 11 (6-5-89)

Porter, John E. - Recommended Order Cancelling Operating Authority Certificate No. C-1471 - Termination of Cargo Insurance Coverage
T-2744, Sub 3 (1-5-89)

R & O Transport, Richard Edward Ohmer, Jr., d/b/a - Recommended Order Cancelling Operating Authority Permit No. P-556 - Termination of Liability Insurance Coverage
T-2842, Sub 1 (6-20-89)

S & S Trucking Company - Recommended Order Cancelling Operating Authority Certificate No. C-1246 - Termination of Liability Insurance Coverage
T-2318, Sub 2 (5-16-89)

Turner's Moving Service, Thomas A. Turner, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1275 - Termination of Cargo Insurance Coverage
T-2387, Sub 1 (1-5-89)

Wall Delivery Service, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1223 - Termination of Liability Insurance Coverage
T-2871, Sub 4 (6-20-89)

Wainwright Transfer Company of Fayetteville, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1063 - Termination of Liability Insurance Coverage
T-861, Sub 7 (5-2-89)

Wilson, John C, III - Recommended Order Cancelling Operating Authority Permit No. P-502 - Termination of Liability Insurance Coverage
T-2563, Sub 4 (4-26-89)

COMPLAINTS

Action Moving & Storage, Inc. - Order Allowing Withdrawal of Complaint in Complaint of International Business Machines Corporation and Closing Docket
T-2007, Sub 4 (12-15-89)

NAME CHANGE/TRADE NAME

A & A Moving, Pitt Movers, Inc., d/b/a - Order Approving Name Change from Tyrone Artis and James McCotter, d/b/a A & A Moving Co., for Certificate No. C-1641
T-2939, Sub 1 (1-26-89)

Baker Transportation Company - Order Approving Name Change from Johnson Truck Lines, Inc., for Certificate No. C-1637
T-3077 (1-3-89) Errata Order (1-23-89)

Bass Mobile Home Moving, John William Bass, d/b/a - Order Approving Name Change from Bass Mobile Home Moving, Inc., for Certificate No. C-878
T-1958, Sub 5 (1-6-89)

Big Apple Mobile Home Movers, Dennis Ray Spake, d/b/a - Order Approving Name Change from Robert Dale Riffle and Dennis Ray Spake, d/b/a Big Apple Mobile Home Movers for Certificate No. C-1693
T-3114, Sub 1 (10-2-89)

Black Trucking Co., Inc. - Order Approving Name Change from Black Enterprises, Inc., d/b/a Black Trucking Company, for Certificate No. C-1526
T-2836, Sub 3 (3-1-89)

Blue Wing Courier, Inc. - Order Approving Name Change from Eunice Hammond and Robert Turner, Jr., d/b/a Blue Wing Courier, Inc.
T-2637, Sub 1 (8-9-89)

Bonus Motor Express, Inc. - Order Approving Name Change from McAlexander Cartage, Inc. for Certificate No. C-1607
T-3225 (10-10-89)

Brink Moving & Storage, Center Line, Inc., d/b/a - Order Approving Name Change from Center Line, Inc., for Certificate No. C-1278
T-2364, Sub 4 (2-21-89)

Budget Courier Service, Inc. - Order Approving Name Change from Judy Carroll, Sue Carroll and Steve Carroll, d/b/a Budget Courier Service, for Certificate No. C-1634
T-2993, Sub 1 (3-27-89)

Cummings-N-Cummings Mini Movers, Rodney F. Cummings, d/b/a - Order Approving Name Change from Triad Film Transport Co., Charlie Benson & Rodney F. Cummings, d/b/a, for Certificate No. C-1511
T-3129 (4-12-89)

Delancey Street Moving & Transportation, Delancey Street North Carolina, d/b/a - Order Approving Name Change from Delancey Street North Carolina, for Certificate No. C-1769
T-3214, Sub 1 (12-27-89)

Everette, W. Company, Inc. - Order Approving Name Change from Woodrow Everette, d/b/a W. Everette Company, for Certificate No. C-417
T-2968, Sub 1 (7-14-89)

Faircloth, Henry Trucking, Robert F. McLaurin, t/a - Order Approving Name Change from Robert F. McLaurin
T-3113, Sub 1 (5-8-89)

Fowler, Maylon H., Inc. - Order Approving Name Change from Maylon H. Fowler Contract Hauling, Inc.
T-2797, Sub 2 (5-12-89)

General Transport Systems of Delaware, Inc., General Transport Systems, Inc., d/b/a - Order Approving Name Change from General Transport Systems, Inc., d/b/a General Aviation, Inc., for Permit No. P-551
T-2875, Sub 3 (6-1-89)

Marco-Pascal Co., Inc. - Order Approving Name Change from Andrew G. Marcinko and Monica P. Marcinko, d/b/a Marco-Pascal Company, for Permit No. P-492
T-2438, Sub 1 (2-28-89)

Odum Trucking Company, Inc. - Order Approving Name Change from Ernest Odum for Certificate No. C-1406
T-2620, Sub 1 (2-14-89)

Pioneer Trucking Company - Order Approving Name Change from Bland Trucking Company, Inc., for Certificate No. C-1361
T-2548, Sub 3 (1-26-89)

Siler City Mobile Home Movers & Service, Suits Mobile Homes, Inc., d/b/a - Order Approving Name Change from Earnest E. Suits for Certificate No. C-1711
T-3154 (5-24-89)

Southeast Specialty Haulers, Gregory L. Kershner, d/b/a - Order Approving Name Change from Gregory L. Kershner for Certificate No. C-1742
T-3250 (11-17-89)

Special Transport Service, A Division of Commercial Equipment Company, Inc. - Order Approving Name Change from Commercial Equipment Company, Inc., for Certificate No. C-1660
T-3153 (5-22-89)

Triangle Building Supply, Inc. - Order Approving Name Change from Triangle Wholesale Building Supply, Inc., for Certificate No. C-1611
T-2872, Sub 1 (4-25-89)

Tru-Pak Moving Systems, Inc. - Order Approving Name Change from Tru-Pak Products Company, Inc., d/b/a Tru-Pak Moving & Storage for Certificate No. C-694
T-1429, Sub 4 (1-23-89) Errata Order (2-6-89)

White, Donnie Trucking, Inc. - Order Approving Name Change from Donald E. White, d/b/a Donnie White Trucking for Certificate No. C-1297
T-2414, Sub 1 (2-7-89)

RATES - MOTOR COMMON CARRIERS

Motor Common Carriers - Recommended Order Vacating Suspension of Commission Order of March 2, 1989, Increasing Rates and Charges Applicable to Shipments of General Commodities, Including Minimum Charges
T-825, Sub 306 (4-12-89) Order Adopting Recommended Order (4-12-89)

Motor Common Carriers - Recommended Order Vacating Order of Investigation and Allowing Tariff Filing to Become Effective as Scheduled
T-825, Sub 307 (6-22-89) Order Adopting Recommended Order (6-27-89)

Southern Oil Transportation Company, Inc. - Order Approving Tariff Providing a 5% Increase in Rates Applying on Transportation of Petroleum and Petroleum Products
T-202, Sub 10 (8-30-89)

United Parcel Service, Inc., (an Ohio Corporation) - Recommended Order Approving Supplement No. 5 to Tariff North Carolina Utilities Commission No. 5
T-1317, Sub 26 (2-2-89) Final Order (2-6-89) Errata Order (2-16-89)

Wendell Transport Corporation - Order Approving Tariff Providing for a 5% Increase in Rates Applying on Transportation of Petroleum and Petroleum Products
T-1039, Sub 13 (9-12-89)

SALES AND TRANSFERS/CHANGE OF CONTROL

Amundsen Moving and Storage, Inc. - Order Approving Sale and Transfer of Certificate No. C-654 from Alamance Transfer & Storage Company, Inc.
T-3091, Sub 1 (4-14-89)

Armstrong Transfer & Storage Co., Inc. - Order Approving Sale and Transfer of Certificate No. C-760 from Hood Moving & Storage, Inc.
T-3206 (10-19-89)

Belue Trucking Co., Inc. - Order Approving Sale and Transfer of Part (1) of Certificate No. C-296 from Eagle Transport Corporation
T-2717, Sub 5 (7-20-89) Order Granting Revision of Authority (7-25-89)

Bill's Mobile Home Movers, William Yarboro, d/b/a - Order Approving Sale and Transfer of Certificate No. C-845 from Bobby Reavis, d/b/a Bobby Reavis Mobile Home Moving
T-3108 (4-14-89)

Carretta Trucking, Inc. - Order Approving Transfer for Authority to Acquire Control of B & P Motor Lines, Inc., Holder of Certificate No. C-440, by Stock Transfer from E. Coy Lambert
T-3170 (8-17-89)

Clinton's Transfer and Storage, Inc. - Order Approving Sale and Transfer of the Household Goods Portion of Certificate No. C-355 from William C. Taylor, Jr., d/b/a AAA-Spruill Moving and Storage
T-3176 (8-17-89)

Continental Transport Systems, American Transportation, Inc., d/b/a - Order Approving Sale and Transfer of Certificate/Permit No. CP-90 from Continental Transport Systems, Inc.
T-2037, Sub 3 (6-19-89)

Courier Dispatch Group, Inc. - Order Approving Sale and Transfer of Certificate No. C-1616 from Speedy-Pak, Inc.
T-3110 (4-19-89)

Economy Transport, Inc. - Order Approving Sale and Transfer of Certificate No. C-1394 from David M. Warren, Trustee in Bankruptcy for Topco Enterprises, Inc.
T-3199 (8-17-89) Errata Order (8-28-89)

Edwards, William, Inc. - Order Approving Sale and Transfer of Certificate No. C-62 from American Freight System, Inc.
T-3096 (3-16-89)

Epes Carriers, Inc. - Order Approving Authority to Acquire Control of Certificate No. C-55, Held by Epes Transport System, Inc., by Stock Transfer from J. A. Wilson, Jr. and Raymond L. Adams, Co-executors and Co-trustees Under the Will and Agreement of W. G. Epes and also from Gladys Hardy and Elizabeth Koonce
T-688, Sub 8 (7-20-89)

Frankie's Mobile Home Service, Frank A. Baldwin, d/b/a - Order Approving Sale and Transfer of Certificate No. C-959 from Harold Maxton Price
T-3070, Sub 1 (6-19-89)

Fuquay Tobacco Contractors, Kenneth Lessard, Richard Currin & Kenneth Stephenson, d/b/a - Order Approving Sale and Transfer of Permit No. P-422 from Johnie Royster Baker
T-3179 (8-17-89)

McLaurin, Robert F. - Order Approving Sale and Transfer of Certificate No. C-1506 from Henry Faircloth, t/a Henry Faircloth Trucking, and Pledge of Certificate
T-3113 (4-14-89)

Morgan Drive-Away, Inc. - Order Approving Sale and Transfer of Certificate No. C-762 By Stock Transfer from CLC of America, Inc., to Lynch Services Corporation
T-1069, Sub 9 (1-23-89)

Pamlico Mobile Home Movers, Inc. - Order Approving Sale and Transfer of Certificate No. C-1504, Held by Pamlico Mobile Home Movers, Inc., By Stock Transfer from Harry W. Meredith to Raymond Earl Hardy, Jr.
T-2741, Sub 3 (2-16-89)

Pronto Delivery, Inc. - Order Approving Sale and Transfer of Certificate No. C-1240 from Package Delivery, Inc.
T-3202 (10-25-89)

Ronald's Mobile Home Movers, Ronald Dale McKeithan, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1370 from Charles Eugene Clark, d/b/a Clark's Mobile Home Movers
T-3187 (9-22-89)

SeaStar International, Inc. - Order Approving Transfer of Certificate No. C-157, Held by Cauthen Gin & Bag Co., by Stock Transfer from Junior Cauthen
T-3219 (10-20-89)

TSC Acquisition Corporation - Order Approving Transfer of Certificate No. C-1446, Held by TSC Express Company, by Stock Transfer from Cox Enterprises, Inc.
T-3207 (10-20-89)

Transus, Inc., (formerly TTD, Inc.) - Order Approving Transfer of Certificate No. C-1491 from Transus, Inc., (now Winship Group, Inc.)
T-2761, Sub 1 (8-18-89)

Triangle Express, Carolina Couriers, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-1151 from Charles P. Gould, d/b/a Traingle Express
T-3103 (3-15-89)

Tyson Foods, Inc. - Order Approving Transfer of Certificate No. C-779 from Holly Farms Foods, Inc.
T-1088, Sub 7 (11-15-89)

Wyatt and Son, George Wyatt and Billy Ray Wyatt, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1703 from George Wyatt and Tommy Lemmond, d/b/a Wyatt & Lemmond
T-3194 (9-22-89)

MISCELLANEOUS

Holly Farms Foods, Inc. - Order Approving the Pledging of Assets and the Assumption of Indebtedness for Affiliated Business Interests
T-1088, Sub 8 (12-21-89)

RAILROADS

APPLICATIONS AMENDED OR WITHDRAWN

Southern Railway Company - Order Allowing Withdrawal of Petition and Cancelling Hearing
R-29, Sub 764 (7-12-89)

Southern Railway Company - Order Allowing Withdrawal of Petition to Retire and Remove Track at Mile Post M-1.0 Formerly Serving Logan Porter Mirror Company at High Point
R-29, Sub 799 (9-6-89)

AGENCY STATIONS

CSX Transportation, Inc. - Order Granting Application to Retire Yard Tracks Located at Gastonia, and to Change Status in the Open and Prepay Station List From a Public to Private Siding Status
R-71, Sub 169 (3-8-89)

MOBILE AGENCY AND NONAGENCY STATIONS

CSX Transportation, Inc. - Order Granting Application to Abolish its Mobile Agency at Goldsboro, and to Place the Stations Presently Served by the Goldsboro Mobile Agency Under the Jurisdiction of the Goldsboro Agency
R-71, Sub 173 (9-13-89)

Southern Railway Company - Recommended Order Granting Petition for Authority to Discontinue the Agency Station at Waynesville; Assign Waynesville and Its Non-Agency Stations of Balsam, Addie, Sylva and Lake Junaluska (presently governed by Waynesville) to Mobile Route NC-1, Based at Canton; and Assign the Non-Agency Stations of Turnpike and Clyde (presently governed by Canton) to Mobile Route NC-1
R-29, Sub 752 (7-12-89)

Southern Railway Company - Order Granting Petition to Discontinue the Agency Station at High Point; Add High Point and the Non-Agency Stations of South High Point, Trinity and Clenola (Presently Governed by High Point) to Mobile Route NC-13 (Presently Based at High Point); and Relocate the Base Station for Mobile Route NC-13 from High Point to the Open Agency at Greensboro
R-29, Sub 793 (8-29-89)

Southern Railway Company - Recommended Order Approving Petition on a Six-Months' Trial Basis to Discontinue the Agency Station at Plymouth, and Add Plymouth and the Non-Agency Stations of Mackeys, Kemco, Lucian Park, and Mizzelle (Presently Governed By Plymouth) to the Agency at Chocowinity
R-29, Sub 811 (11-16-89)

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 174	10-12-89	Gordon, Delgado, 13th Street Team Track	Wilmington
R-71, Sub 175		6	Plymouth
R-71, Sub 176	10-12-89	House Team Track	Ayden
R-71, Sub 177	10-12-89	Team Track	Cameron
R-71, Sub 178	10-12-89	3	Winterville
R-71, Sub 179	11-13-89	Team Track	Bladenboro
R-71, Sub 180	11-13-89	1	Halifax
R-71, Sub 181	12-01-89	6	Maxton

SOUTHERN RAILWAY COMPANY (NORTH CAROLINA RAILROAD COMPANY)

Docket Number	Date	Track	Town
R-29, Sub 688	3-3-89	282-16, Mile Post 281.7	Greensboro
R-29, Sub 702	1-23-89	56-11	Oxford
R-29, Sub 706	11-30-89	281-1, Mile Post 280.5	Greensboro
R-29, Sub 710	1-18-89	H2-14, Mile Post H1.6	Greensboro
R-29, Sub 725	2-8-89	41-2, Mile Post H 40.6	Hillsborough
R-29, Sub 726	2-9-89	Mile Post 149.1	Greenville
R-29, Sub 733	5-24-89	16-1	Advance
R-29, Sub 736	1-31-89	1-2, Mile Post LO+1245	Winston Salem
R-29, Sub 742	6-26-89	98-1, Mile Post H 97.0	Clayton
R-29, Sub 743	1-18-89	14-11, Mile Post I-13.1	Henderson
R-29, Sub 749	2-9-89	26-21, Mile Post K-25+4207	Winston-Salem
R-29, Sub 750	2-28-89	Mile Post S-45.7	Conover
R-29, Sub 751	2-8-89	58-3, Mils Post H-57.5	Durham
R-29, Sub 753	6-23-89	Serving Palmer Fibers	Pineville
R-29, Sub 754	4-21-89	261-9(604'), Mile Post 260.7	Reidsville
R-29, Sub 756	6-30-89	287-59, Mile Post 286.6	Greensboro
R-29, Sub 757	2-9-89	27-6, Mile Post EC 26.5	Kinston
R-29, Sub 758	2-8-89	129-5, Mile Post 128.7	Goldsboro
R-29, Sub 759	2-8-89	21.5, Mile Post 21.L	Eden
R-29, Sub 760	2-9-89	27-8, Mile Post ES 26.6	Kinston
R-29, Sub 761	3-15-89	Mile Post 174.3	Greenville
R-29, Sub 762	3-3-89	83.3, Mile Post H-82.9	Raleigh
R-29, Sub 765	4-5-89	27.3, Mile Post H-26.0	Haw River
R-29, Sub 766	7-17-89	Mile Post 24.21	Eden
R-29, Sub 767	4-6-89	285-37, Mile Post 284.3	Greensboro
R-29, Sub 768	3-8-89	Mile Post H-1.6	Greensboro
R-29, Sub 769	3-2-89	301-10	High Point
R-29, Sub 770			
Sub 771			
Sub 772	3-9-89	41.8, 41.6, 41.5, Mile Post H-40.9	Hillsborough
R-29, Sub 773	2-16-89	285.38	Greensboro
R-29, Sub 774	3-22-89	Mile Post S-105	Greenlee
R-29, Sub 775	3-8-89	24.4, Mile Post H-23.2	Burlington
R-29, Sub 776	3-22-89	17-1, Mile Post K-16.2	Kernersville
R-29, Sub 777	4-21-89	Mile Post NS 213.3	Wendell
R-29, Sub 778	3-22-89	Serving Omark Industries	Zebulon
R-29, Sub 780	5-17-89	110-4, Mile Post H-109.2	Selma
R-29, Sub 781	4-21-89	15-1, Mile Post 14.5	Sophia
R-29, Sub 782	6-26-89	Mile Post NS 147.3	Greenville
R-29, Sub 783	5-24-89	1-8, Mile Post M-1.7	High Point
R-29, Sub 784	6-16-89	286-4, Mile Post 285.5	Greensboro
R-29, Sub 786	4-26-89	285-36	Greensboro
R-29, Sub 788	6-15-89	5, Mile Post H 1.6	Greensboro
R-29, Sub 790	5-24-89	28-24, Mile Post M-27.5	Asheboro
R-29, Sub 791	6-23-89	5-15	Friendship
R-29, Sub 792	6-23-89	284-31, Mile Post HO.1	Greensboro
R-29, Sub 795	6-15-89	S-164-1	Marshall
R-29, Sub 796	7-3-89	Mile Post M-27.5	Asheboro

R-29, Sub 797	9-27-89	Mile Post NB-8.6	Wilmar
R-29, Sub 800	7-12-89	Serving Export Tobacco Co.	Wilson
R-29, Sub 802	7-12-89	300-22	High Point
R-29, Sub 806	7-14-89	260-3	Reidsville
R-29, Sub 807	7-17-89	J	Durham
R-29, Sub 814	11-2-89	7.2, Mile Post K-6.7	Friendship
R-29, Sub 818	11-2-89	2-1, Mile Post EC-1.6	Goldsboro
R-29, Sub 830	11-2-89	Mile Post H-126.5	Goldsboro
R-29, Sub 819	12-21-89	291-1, Mile Post 290.4	Greensboro
R-29, Sub 707	12-27-89	66-2	Greensboro

Southern Railway Company - Recommended Order Granting Petition to Retire and Remove Track No. 287-52-C, Formerly Serving Mosaic Tile Company, at Milepost 286-5 at Pomona
R-29, Sub 689 (8-10-89)

Southern Railway Company - Recommended Order Granting Petition to Retire and Remove Track Nos. 287-54-C and 287-45-C at Mile POst 286.6 Formerly Serving H. J. Heinz Company at Pomona
R-29, Sub 755 (8-10-89)

TELEPHONE

CERTIFICATES

Centel Cellular Company of Virginia, Virginia Metronet, Inc., d/b/a - Recommended Order Granting Certificate to Provide Wholesale and Retail Cellular Mobile Telephone Services and Approving Initial Rates, Charges and Regulations to Service in Currituck County
P-206 (6-16-89)

Florida Cellcom, Lynda B. Lovett, d/b/a - Recommended Order Granting Conditional Certificate to Provide Wholesale and Retail Cellular Telephone Services and for Approval of Initial Rates, Charges and Regulations to Serve the Hickory N.C. MSA
P-205 (8-9-89)

GTE Mobilnet Sales Corp. - Recommended Order Granting Certificate of Public Convenience and Necessity Athorizing Resale of Cellular Radio Telecommunication Service and Approving Tariffs
P-202; P-202, Sub 1; P-202, Sub 2; P-202, Sub 3 (4-13-89) Order on Reconsideration (5-8-89)

United TeleSpectrum, Inc. - Order Granting Permanent Operating Authority to Provide Retail and Wholesale Cellular Radio Communications Services in the Wilmington, Metropolitan Statistical Area
P-157, Sub 9 (11-30-89)

Vanguard Cellular Systems of Coastal Carolina, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Resell Cellular Service and for Approval of Initial Rates, Charges and Regulations
P-208; P-208, Sub 1 (11-16-89)

CERTIFICATES AMENDED

GTE Mobilnet Sales Corp. - Order Cancelling Hearing and Amending Certificate of Public Convenience and Necessity Authorizing Resale of Cellular Radio Telecommunications Service in the Fayetteville, Asheville, Wilmington, Jacksonville, and Burlington Metropolitan Statistical Areas
P-202, Sub 4 (11-14-89)

COMPLAINTS

Centel Cellular of Hickory - Order Closing Docket in Complaint of Distribution Services, Stephen Rauchfuss, d/b/a
P-190, Sub 1 (8-16-89)

GTE South Incorporated - Order Closing Docket in Complaint of Ryder Communications, Inc.
P-19, Sub 223 (1-24-89)

GTE South Incorporated - Order Dismissing Complaint of Chesson Group Developers/Partnerships and Closing Docket
P-19, Sub 227 (10-16-89)

General Telephone and Telegraph Company - Recommended Order Granting Complaint in Part in Complaint of Bill Taylor, Balloon Express
P-19, Sub 221 (3-14-89)

Southern Bell Telephone and Telegraph Company - Recommended Order Denying Complaint in Complaint of J. Daniel Fritz, Security Building Company
P-55, Sub 895 (4-6-89)

Southern Bell Telephone and Telegraph Company - Order Finding no Reasonable Grounds to Investigate Complaint and Closing Docket in Complaint of Diab J. Rabie
P-55, Sub 904 (2-27-89)

Southern Bell Telephone and Telegraph Company - Order Dismissing Complaint and Closing Docket in Complaint of Rick Garrett
P-55, Sub 912 (6-7-89)

Southern Bell Telephone and Telegraph Company - Order Allowing Withdrawal of Complaint and Closing Docket in Complaint of Capital Associates
P-55, Sub 919 (6-15-89)

Southern Bell Telephone and Telegraph Company - Recommended Order Denying Complaint But Requiring Tariff Change in Complaint of David Ryder, President, Ryder Communications, Inc.
P-55, Sub 921 (9-27-89)

Southern Bell Telephone and Telegraph Company - Order Finding No Reasonable Grounds to Investigate Complaint and Closing Docket in Complaint of Carolina Storage Barn Company, Keith Gree, d/b/a
P-55, Sub 922 (11-8-89)

EXTENDED AREA SERVICE (EAS)

Carolina Telephone and Telegraph Company - Order Approving Extended Area Service Arrangements
P-7, Sub 717; P-7, Sub 724; P-7, Sub 688 (4-26-89)

Carolina Telephone and Telegraph Company - Order Authorizing Onslow County Extended Area Service Poll
P-7, Sub 727 (3-13-89)

Carolina Telephone and Telegraph Company - Order Authorizing No-Protest Notice to Jacksonville Exchange Subscribers (Commissioners Tate and Wright dissent. Commissioner Cobb did not participate.)
P-7, Sub 727 (8-29-89)

Carolina Telephone and Telegraph Company - Order Approving Extended Area Service to Onslow County (Commissioner Tate dissents.)
P-7, Sub 727 (11-14-89)

Carolina Telephone and Telegraph Company - Order Authorizing Poll in Gatesville to the Albemarle Area Complex and Murfreesboro Extended Area Service
P-7, Sub 731 (8-30-89)

Carolina Telephone and Telegraph Company - Order Approving Implementation of Extended Area Service from Gatesville to the Albemarle Area Complex and Murfreesboro Extended Area Service
P-7, Sub 731 (12-13-89)

Carolina Telephone and Telegraph Company - Order Authorizing Poll from Plymouth to Williamston Extended Area Service
P-7, Sub 732 (9-6-89)

Carolina Telephone and Telegraph Company - Order Approving Implementation of Extended Area Service from Plymouth to Williamston
P-7, Sub 732 (12-13-89)

Carolina Telephone and Telegraph Company - Order Authorizing Poll from Oxford to Henderson Extended Area Service
P-7, Sub 733 (9-27-89)

Central Telephone Company - Order Authorizing Poll in Walnut Cove and Danbury to Winston-Salem Extended Area Service and Walnut Cove to Walkertown Extended Area Service (Commissioner Tate Dissents.)
P-10, Sub 432 (3-29-89)

Central Telephone Company and Southern Bell Telephone and Telegraph Company - Order Approving Implementation of Extended Area Service for Walnut Cove and Danbury to Winston-Salem EAS and Walnut Cove to Walkertown EAS
P-10, Sub 432 (10-19-89)

Central Telephone Company - Order Authorizing Poll from Milton and Yanceyville to Roxboro Extended Area Service
P-10, Sub 439 (9-27-89)

Central Telephone Company - Order Authorizing Extended Area Service Poll from Seagrove to Coleridge, Farmer, Jackson Creek, and Pisgah
P-10, Sub 440 (9-19-89)

Central Telephone Company - Order Approving Extended Area Service from Seagrove to Coleridge, Farmer, Jackson Creek, and Pisgah Extended Area Service
P-10, Sub 440 (12-5-89)

Central Telephone Company - Order Authorizing Poll from Catawba to Hickory Extended Area Service
P-10, Sub 441 (10-13-89)

Concord Telephone Company - Order Authorizing No-Protest Notices for Mt. Pleasant to Albemarle, Oakboro, and Kannapolis Extended Area Service (Commissioners Tate and Wright dissent. Commissioner Hughes did not participate in this case.)
P-16, Sub 158 (4-12-89)

Concord Telephone Company - Order Approving Extended Area Service from Mt. Pleasant to Albemarle, Oakboro, and Kannapolis
P-16, Sub 158 (5-23-89)

Concord Telephone Company - Order Dismissing Discount Toll Plan to Mt. Pleasant to Albemarle, Oakboro, and Kannapolis Extended Area Service
P-16, Sub 158 (5-30-89)

Concord Telephone Company - Order Denying Extended Area Service Incremental Cost Study and Authorizing Expansion of Optional Calling Plan
P-16, Sub 162 (12-5-89)

Southern Bell Telephone and Telegraph Company - Order Requiring Locust to Concord Extended Area Service
P-55, Sub 905 (3-8-89)

Southern Bell Telephone and Telegraph Company - Order Approving Implementation of Locust to Concord Extended Area Service
P-55, Sub 905 (6-29-89)

Southern Bell Telephone and Telegraph Company - Order Authorizing No-Protest Notices for Grantham to Mt. Olive Extended Area Service
P-55, Sub 918 (10-13-89)

Southern Bell Telephone and Telegraph Company - Order Approving Implementation of Extended Area Service from Grantham to Mt. Olive
P-55, Sub 918 (12-13-89)

MERGERS

Raleigh-Durham MSA and Fayetteville MSA - Order on Motion of Raleigh-Durham MSA Limited Partnership and Fayetteville MSA Limited Partnership to Merge Ownership
P-148, Sub 4; P-179, Sub 3 (9-20-89)

SouthernNet of North Carolina, Inc. and SouthernNet Systems, Inc. - Order Authorizing Merger
P-209 (11-22-89)

NAME CHANGE

United TeleSpectrum, Inc. - Order Approving Name Change to TeleSpectrum, Inc.
P-147, Sub 22; P-150, Sub 7; P-148, Sub 7 (11-30-89)

SALES AND TRANSFERS

Carolina Telephone and Telegraph Company - Order Authorizing Transfer of a Portion of the Smithfield Exchange to the Clayton Exchange
P-7, Sub 729 (6-29-89)

Southern Bell Telephone and Telegraph Company - Order Approving Transfer of the Portion of the Cleveland Exchange, Iredell County, to the Troutman Exchange
P-55, Sub 915 (5-31-89)

SECURITIES

Anserphone of Goldsboro, Inc. - Order Approving Transfer of Corporate Stock to Coastal Carolina Communications, Inc.
P-95, Sub 3 (5-3-89)

Communications Properties Associates - Order Approving Refinancing Transactions and Name Change
P-172, Sub 6 (5-31-89)

Contel of Virginia, Inc. - Order Granting Authority to Issue and Sell First Mortgage Bonds
P-38, Sub 47 (11-22-89)

General Telephone Company of the South - Order Clarifying Portions of Prior Commission Order of August 6, 1987
P-19, Sub 214 (9-20-89)

ITT Communications Services, Inc., and Metromedia Long Distance, Inc. - Order Approving Transfer of Control
P-207 (5-24-89)

Metro Mobile CTS of Charlotte, Inc. - Order Approving Assumption of Indebtedness
P-155, Sub 6 (9-7-89)

Metro Mobile CTS of Charlotte, Inc. - Order Approving Assumption of Indebtedness
P-155, Sub 7 (11-7-89)

Randolph Telephone Company - Order Approving Loan from the Rural Electrification Authority
P-61, Sub 72 (4-14-89)

Saluda Mountain Telephone Company, Inc., and Telephone Data Systems, Inc. - Order Approving Sale of Capital Stock of Saluda Mountain Telephone Company, Inc., to Telephone and Data Systems, Inc.
P-76, Sub 24 (12-29-89)

SPECIAL CERTIFICATES

Docket Number	Date	Company
SC-396	1-13-89	International Payphones of North Carolina
SC-397	1-13-89	Tele-America Communication Corporation
SC-398	1-13-89	Kelly Phones
SC-399	1-13-89	Time Saver Phones
SC-400	1-13-89	The Hot Dog King
SC-401	1-13-89	Gene's Stop & Shop
SC-402	1-13-89	Royster Oil Company
SC-403	1-24-89	Mei Fone-Tek, Inc.
SC-404	1-24-89	Tele-America Communications Partnership
SC-405	1-24-89	Investors Network and Security Services, Inc.
SC-406	1-24-89	Stantonsburg Quick Mart
SC-407	2-1-89	Valaree D. Grier
SC-408	2-1-89	Phoenix Packaging, Inc.
SC-409	2-1-89	Cross Roads Convenient Stores
SC-410	2-1-89	C.O.P., Claud E. Mabe, d/b/a
SC-411	2-15-89	George Scott
SC-412	2-15-89	Chase High School
SC-413	2-15-89	Kross Keys Country Store
SC-414	2-15-89	Home Real Estate Company
SC-415	2-15-89	Jerry P. Lackey
SC-416	2-17-89	Rutherford-Spindale High School
SC-417	2-17-89	Blue Flame Fuels, Inc.
SC-418	2-21-89	North Carolina Department of Correction
SC-420	2-28-89	Everett H. Waters
SC-420	2-28-89	Edward F. Grant
SC-421	2-28-89	Allied Triangle Telecom
SC-422	2-28-89	Sked-Inc., d/b/a Arden Dairy Queen
SC-423	3-6-89	Pizza Inn of Goldsboro, Inc.
SC-424	3-6-89	Francis Mack
SC-425	3-14-89	Sandra L. Dew
SC-426	3-14-89	Robert Scott Coats (Coin Tel Co.)
SC-427	3-14-89	Joe W. Barnes
SC-428	3-14-89	Key Largo Stores
SC-430	3-31-89	Bisty County Corporation (Transferred SC-407 from Valaree D. Grier)
SC-431	3-27-89	U.S. Communications of Westchester, Inc.
SC-429	3-27-89	Dan Wooden - Hooters of Raleigh
SC-432	3-27-89	Wadeco Services, Inc.
SC-433	3-27-89	Central Carolina Communications, Inc.
SC-434	3-27-89	Art Berkoski
SC-435	3-27-89	Call Control, Inc.
SC-436	4-27-89	Asheville Cellular Phone Center

SC-437	8-14-89	Public Pay Phone, Inc.
SC-438	4-13-89	Sherrill's University of Hairstyling
SC-439	4-13-89	Hidden Valley Pantry, Inc.
SC-440	4-13-89	W. B. Massey, Jr.
SC-441	4-21-89	RSM Communications, Inc.
SC-442	4-21-89	Yoshihko Shioda, d/b/a Tokyo Restaurant
SC-443	5-3-89	Louise's (Store) Kwick Stop
SC-444	5-3-89	East Rutherford High School
SC-445	5-3-89	D.D.&S. Construction
SC-446	5-3-89	Charlotte Mecklenburg Hospital Authority
SC-447	5-3-89	HRH Enterprises
SC-448	5-9-89	Carolina Phone & Alarms, Inc.
SC-449	5-8-89	Stallings Supermarket & Video/Moris Williams
SC-450	5-8-89	Twins Family Restaurant/Mrs. Ruth Crouse
SC-451	5-8-89	Prestige Pillow, Inc.
SC-452	5-24-89	James I. Burgess
SC-453	5-24-89	"Shook's Grocery", Mark Shook
SC-454	5-24-89	Multi- Comm
SC-455	5-24-89	Little Dan's
SC-456	6-6-89	Christy Halsey
SC-457	6-6-89	Patrick D. Quinn
SC-458	6-8-89	Southern Pay Telephone Company
SC-459	6-6-89	Norris R. Allen
SC-461	6-19-89	Get-N-Go
SC-462	6-19-89	Camp Ton-A-Wandah
SC-463	6-20-89	Florida Apartments Motel
SC-464	6-20-89	R. E. Brown Grocery
SC-465	6-20-89	New Topsail Market
SC-466	6-20-89	Pollard's IGA
SC-467	6-21-89	Hollis Oil Company
SC-468	6-20-89	Mermaid, Inc.
SC-469	7-3-89	Raleigh Putt Putt Golf & Games
SC-470	7-3-89	Tim Barnett, d/b/a Southcomm
SC-471	7-25-89	Shetelcom
SC-472	8-31-89	United Tele-Systems of S.C. Inc.
SC-474	8-8-89	Four Corners Variety, Inc.
SC-475	8-8-89	Stroker's
SC-476	8-8-89	Olde Brunswick General Store
SC-477	8-8-89	Hampstead Pharmacy
SC-478	8-9-89	Wesley's Grocery
SC-479	8-8-89	Patio Playground
SC-480	8-8-89	George D. Olsen
SC-481	8-8-89	New Hanover High School
SC-482	8-8-89	Joseph M. Gallenberger, PhD.
SC-483	8-8-89	Terry L. Butler
SC-484	8-8-89	Crosland-Erwin-Associates
SC-485	8-31-89	Phonetel Technologies, Inc.
SC-486	11-1-89	Richmond Senior High School
SC-487	8-31-89	Pizza Hut of Stanlyville
SC-488	8-31-89	Jenifer Lynn Strickland
SC-489	8-31-89	Lance, Inc.
SC-490	8-31-89	Kenny L. Ramsey
SC-491	9-11-89	Keith D. Smith

SC-492	9-12-89	Walter Schumacher
SC-493	9-12-89	Susan L. Goetze
SC-494	9-21-89	Larry Thomas Ellis
SC-495	9-11-89	Ward Drug Company of Nashville, Inc.
SC-496	9-21-89	Pinnacle Communication Systems, Inc.
SC-497	9-21-89	I.C.C.A., Inc.
SC-498	9-21-89	John Schneider
SC-499	9-21-89	Newton-Conover High School
SC-500	9-29-89	Hatcher Enterprises
SC-501	10-17-89	Jayantilal H. Patel
SC-502	10-17-89	Tuscola High School
SC-503	10-17-89	Telecom South
SC-504	10-23-89	Pen-Mart
SC-505	10-23-89	Atkinson Texaco
SC-506	10-23-89	Crest High School
SC-507	10-23-89	Institutional Energy Management, Inc.
SC-509	10-26-89	William V. Mottershead
SC-510	11-1-89	Kim Trager
SC-511	11-17-89	Scotland High School
SC-512	11-17-89	Klingspor Abrasives, Inc.
SC-513	11-17-89	Gladwin, Inc.
SC-514	11-17-89	Joe D. Hutchinson
SC-515	11-15-89	Carolina Payphone Systems
SC-516	11-17-89	Milton T. Gibson
SC-517	12-8-89	Burns Junior High School
SC-518	12-8-89	Paper Doll Lounge
SC-519	12-18-89	Bryan K. Roberts
SC-520	12-18-89	Kim A. Fadel

SPECIAL CERTIFICATES NAME CHANGE

Continental Communications - Order Reissuing Certificate in Correct Name SC-4 (9-29-89)

McKoy, Felton R. - Order Reissuing Certificate No. SC-244

SPECIAL CERTIFICATES AMENDED, REVOKED, CANCELLED OR CLOSED

Docket No.	Date	Company
SC-1, Sub 1	8-3-89	James E. Cantrell
SC-3, Sub 1	11-28-89	Coin Telephones, Inc.
SC-4, Sub 1	10-19-89	Continental Telephones
SC-6, Sub 1	12-18-89	Tarheel Pay Phone Co.
SC-10, Sub 1	12-21-89	Seneca Foods
SC-11, Sub 1	12-21-89	SpeakEasy Telephone
SC-18, Sub 1	12-14-89	Red Apple Markets, Eastern Fuels, Inc., d/b/a
SC-21, Sub 1	12-14-89	Upchurch, Carlton Stuart, Jr.
SC-23, Sub 1	12-18-89	Public Telephone Service
SC-36, Sub 1	12-18-89	David R. Fox
SC-37, Sub 1	12-18-89	Dewey's Enterprises, Dewey A. Southard, d/b/a

SC-39, Sub 1	11-8-89	Friendly Center, Inc.
SC-41, Sub 1	12-13-89	AMI Marketing, Inc.
SC-42, Sub 1	11-9-89	Terry Dwayne Sprinkle
SC-50, Sub 1	11-7-89	M.H.C. & Associates - Marion H. Cobb
SC-60, Sub 1	12-18-89	Home Phone Service of Catawba County, Inc.
SC-61, Sub 1	12-14-89	Royal Petroleum, Ltd.
SC-63, Sub 1	10-25-89	Roger D. Thomas
SC-65, Sub 1	12-18-89	H & W Communications
SC-69, Sub 1	12-18-89	Michael Douglas Glover
SC-72, Sub 1	11-21-89	James B. Lemons
SC-75, Sub 1	10-19-89	B & L Service
SC-76, Sub 1	12-21-89	Ved V. Pathak
SC-77, Sub 1	12-18-89	Mark J. King
SC-81, Sub 1	11-7-89	Tommy Waggoner, Jr.
SC-82, Sub 1	10-12-89	Taylor Enterprises
SC-83, Sub 1	11-22-89	Galaxy Communications, Incorporated
SC-88, Sub 1	11-7-89	Cramer Wood Products
SC-99, Sub 1	10-12-89	Tkachuk Enterprises, Inc.
SC-102, Sub 1	11-7-89	Whapp, Inc. - McDonald's
SC-103, Sub 1	7-24-89	The Telephone Connection, Inc.
SC-106, Sub 1	12-14-89	McCoys Services, Ann M. Bradford, d/b/a
SC-108, Sub 1	12-21-89	Superior Components, Inc.
SC-109, Sub 1	12-18-89	William Moser
SC-111, Sub 1	12-18-89	Burroughs Communications, Inc.
SC-113, Sub 1	12-21-89	Emporium Stores, Ltd.
SC-115, Sub 1	12-14-89	LeVan & Associates
SC-117, Sub 1	11-7-89	Racetrac Petroleum, Inc.
SC-126, Sub 1	11-15-89	Open Pantry Food Mart
SC-131, Sub 1	12-14-89	Eastern Distributing Company, Inc.
SC-134, Sub 1	12-18-89	Bessemer Village Laundromat, Inc. Nadine H. Fee, d/b/a
SC-137, Sub 1	7-24-89	Telephone Network Services, Inc. & Telaleasing Enterprises, Inc.
SC-138, Sub 1	12-21-89	Steven T. Bullard
SC-139, Sub 1	10-13-89	Springer-Eubank Oil Company
SC-148, Sub 1	12-21-89	Steve R. Waters
SC-152, Sub 1	12-21-89	South Little League, Inc.
SC-154, Sub 1	12-21-89	Parker LP Gas Company
SC-163, Sub 1	12-13-89	Dew Oil Company
SC-167, Sub 1	12-21-89	3100 Associates
SC-179, Sub 1	10-12-89	John F. Vitt
SC-186, Sub 1	12-18-89	Southern General, Inc.
SC-191, Sub 1	10-13-89	Kentucky Derby Hosiery Company
SC-198, Sub 1	12-14-89	J. A. Davis
SC-199, Sub 1	12-18-89	Our Town Phone Directory, Inc.
SC-208, Sub 1	10-12-89	J. D. Hughes, Jr.
SC-211, Sub 1	10-12-89	Hill-Crest Golf Club, Inc.
SC-225, Sub 1	12-18-89	Greentree Inn
SC-230, Sub 1	11-8-89	U.S. Pay Phone Company, Inc.
SC-238, Sub 1	10-19-89	Ted Mull
SC-254, Sub 1	12-18-89	Miscue Lounge/Bobby G. Langley
SC-263, Sub 1	11-21-89	Carowinds
SC-264, Sub 1	10-19-89	Telesmart, Inc.

SC-271, Sub 1	12-14-89	Jacksonville Mall
SC-273, Sub 1	10-27-89	YMCA Camp Hanes
SC-274, Sub 1	12-14-89	Ronald Lance Horney
SC-304, Sub 1	12-21-89	Fiemster Vending Co., Inc.
SC-309, Sub 1	10-12-89	William M. Wilkerson, Jr.
SC-311, Sub 1	12-21-89	Smoky Mountain Systems, Inc.
SC-317, Sub 1	10-17-89	Best Mar Stores, T & Y Mart, Inc., d/b/a
SC-319, Sub 1	12-18-89	Qualla Arts & Crafts
SC-329, Sub 1	11-14-89	Jennings Smith
SC-335, Sub 1	12-13-89	Fred H. Robinson/Huddle House
SC-336, Sub 1	11-9-89	Charles Ragan
SC-339, Sub 1	12-14-89	Ibrahim (Abe) K. Ganim
SC-361, Sub 1	12-18-89	Shelby Seafood/John O'Leary
SC-374, Sub 1	12-14-89	Glenn D. Hart
SC-383, Sub 1	12-14-89	Metro Telecom, Inc.
SC-389, Sub 1	10-12-89	Ed Griffin
SC-413, Sub 1	11-8-89	Kross Keys Country Store
SC-417, Sub 1	10-11-89	Blue Flame Fuels, Inc.
SC-402, Sub 1	10-17-89	Royster Oil Company
SC-429, Sub 1	11-16-89	Dan Wooden - Hooters of Raleigh
SC-454; SC-460	9-19-89	Multi-Comm
SC-456, Sub 1	11-22-89	Christy Halsey
SC-468, Sub 1	12-21-89	Mermaid, Inc.

TARIFFS

AT&T Communications of the Southern States, Inc. - Order Suspending Proposed Tariff Filing to Reference Interstate Volume Discounts
P-140, Sub 23 (9-27-89)

Carolina Telephone and Telegraph Company - Order Allowing Tariff Revisions to Become Effective and Denying Petition of Consolidated Directories, Inc.
P-7, Sub 730 (8-17-89)

Carolina Telephone and Telegraph Company - Order Allowing Tariff to go into Effect
P-7, Sub 735 (12-22-89)

Central Telephone Company - Order Allowing Central Telephone Company Tariffs to go into Effect
P-55, Sub 888 (3-21-89)

Contel of North Carolina, Inc. - Order Suspending Tariff Filing and Authorizing EAS Poll from Cashiers to Sylva and Cullowhee Extended Area Service and Highlands to Franklin Extended Area Service
P-128, Sub 23 (9-29-89)

MCI Telecommunications, Corporation - Order Disapproving Tariff to Offer Operator Services
P-141, Sub 12 (3-8-89)

Southern Bell Telephone and Telegraph Company - Order Suspending Tariff and Providing for Notice
P-55, Sub 925 (11-21-89)

US Sprint Communications Company - Order Requiring Special Assembly Tariff Filing to Provide Intrastate Service for Federal Telecommunications System 2000 Network and Granting Waiver from Filing Rates
P-175, Sub 7 (8-31-89)

MISCELLANEOUS

Allen Enterprises, W. R. Allen III, General Partner, and W. R. Allen Enterprises, Inc. - Order Cancelling Special Certificate
SC-56, Sub 1 (8-1-89)

Cable & Wireless Communications, Inc. - Order Granting Authority to Merge and to Retain Resale Certificate
P-200, Sub 2 (9-7-89)

Centel Cellular Company of Virginia, Virginia Metronet, Inc., d/b/a - Order Granting Temporary Authority to Provide Wholesale and Retail Cellular Mobile Telephone Services and for Approval of Initial Rates, Charges and Regulations to Service in Currituck County
P-206 (5-12-89)

Central Telephone Company - Second Order to Compel Discovery
P-10, Sub 434 (11-3-89)

Century Network, Inc. - Order Closing Docket
P-204 (4-28-89)

GTE South - Order Approving Operating Agreement
P-19, Sub 224 (4-18-89)

GTE South Incorporated - Order Approving Agreement Between GTE South Incorporated and GTE Communications Systems Corporation
P-19, Sub 219 (11-27-89)

Heins Telephone Company - Order Granting Petition to Provide 911 Service, Lee County (Commissioner Tate Dissents.)
P-26, Sub 101 (3-21-89)

Heins Telephone Company - Order Authorizing Implementation of E911 Service in Lee County (Commissioner Tate Dissents.)
P-26, Sub 101 (7-12-89)

Military Communications Center, Inc. - Order of Clarification to Provide Intrastate Interexchange Resell Telecommunications Services as a Reseller
P-194; P-194, Sub 1 (2-28-89)

Southern Bell Telephone and Telegraph Company - Order Authorizing E911 Service
P-55, Sub 913 (2-23-89)

Southern Bell Telephone and Telegraph Company - Order Approving Amortization (Commissioner Hipp Dissents.)
P-55, Sub 916 (3-13-89)

Southern Bell Telephone and Telegraph Company - Order Authorizing Customer Poll of Emergency 911 Service Tariff
P-55, Sub 920 (5-24-89)

Southern Bell Telephone and Telegraph Company - Order Authorizing Implementation of E911 Service in Henderson County
P-55, Sub 920 (9-12-89)

United Telespectrum, Centel Cellular Company, and Centel Cellular Company of North Carolina - Cease and Desist Order
P-150, Sub 11; P-157, Sub 21 (11-3-89)

Western Union Corporation - Order Approving Transfer of WULDS Customers to SouthernNet Services, Inc. and Discontinuance of WULDS Intrastate Telecommunications Service in the State of North Carolina
P-156, Sub 15; P-174, Sub 2 (7-5-89)

WATER AND SEWER

APPLICATIONS WITHDRAWN

Coastal Carolina Utilities, Inc. - Order Withdrawing Application and Closing Docket
W-917, Sub 1 (1-6-89)

Falls, Ralph L. Water Works, Ralph L. Falls, d/b/a - Order Allowing Withdrawal of Application and Closing Docket
W-268, Sub 5 (8-15-89)

Hudraulics, Ltd. - Order Allowing Withdrawal of Application and Closing Docket
W-218, Sub 62 (12-5-89)

Mercy and Truth - Order Allowing Withdrawal of Application and Closing Docket
W-946 (7-27-89)

R.O.E. Water Company, Jack B. Jenkins, d/b/a - Order Allowing Withdrawal of Application and Closing Docket
W-820, Sub 5 (7-27-89)

S-A Utilities, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-951 (12-5-89)

Schearwater Utility Company, Waterway Investment Associates d/b/a - Order Allowing Withdrawal of Application and Closing Docket
W-942 (9-18-89)

Tarheel Utility Mangement, Inc. - Order Allowing Withdrawal of Applications and Closing Dockets
W-827, Sub 3; W-827, Sub 4 (3-20-89)

West Wilson Water Corporation - Order Withdrawing Application and Closing Docket
W-781, Sub 6 (2-21-89)

AUTHORIZED ABANDONMENT OR SUSPENSION

Waverly Mills, Inc. - Order Granting Suspension of Franchise for the Term of One Year for Water and Sewer Utility Franchise in East Laurinburg, Scotland County
W-734, Sub 1 (8-31-89) Errata Order (9-14-89)

CANCELLED OR REVOKED

Alamance Village Utility Corporation - Order Cancelling Franchise Providing Water and Sewer Utility Service in the Village of Alamance, Alamance County
W-671, Sub 1 (3-30-89)

Colony Park Utilities Company - Order Cancelling Franchise Providing Sewer Utility Service in Hunters Woods Subdivision, Durham County
W-208, Sub 3 (7-27-89)

Country Hills Water Company - Order Cancelling Franchise Providing Water Utility Service in Country Hills Subdivision, Union County
W-609, Sub 2 (7-27-89)

Crestview Water Company, Jemaca Enterprises, Inc., t/a - Order Cancelling Franchise Providing Water Utility Service in Crestview Subdivision, Lenoir County
W-195, Sub 6 (12-28-89)

Fairway Acres Water System, Kenneth Henry Frye, d/b/a - Order Cancelling Franchise Providing Water Utility Service in Fairway Acres Subdivision, Caldwell County
W-260, Sub 5 (1-4-89)

Falling Creek Water Company, Jemaca Enterprises, Inc., t/a - Order Cancelling Franchise Providing Water Utility Service in Castle Oaks, Falling Creek, Lakewood, and Manor Heights Subdivisions, Lenoir County
W-590, Sub 1 (12-28-89)

Gaither Water Company - Order Cancelling Franchise Providing Water Utility Service in Beverly Heights Subdivision, Iredell County
W-621, Sub 1 (5-9-89)

Hasty Pump Sales and Service - Order Cancelling Franchise Providing Water Utility Service in Green Acres Subdivision, Wake County
W-290, Sub 7 (9-12-89)

LAD, Inc. - Order Cancelling Franchise for Fairlington West Apartments and Brookfield Mobile Home Park, Cabarrus County
W-722, Sub 1 (11-16-89)

Moss Hill Water Works Company - Order Cancelling Franchise Providing Water Utility Service in Fox Lake Subdivision, Sampson County
W-459, Sub 1 (7-27-89)

Mount Vernon Park Water System, Jemaca Enterprises, Inc., t/a - Order Cancelling Franchise Providing Water Utility Service in Mount Vernon Park, Kinstonian Heights, and Country Acres Subdivisions, Lenoir County
W-72, Sub 4 (12-28-89)

North State Utilities, Inc. - Recommended Order Revoking Certificate of Precision Utilities Limited for Providing Sewer Utility Service in Adam Mountain Subdivision, Wake County, and Granting Certificate to Provide Sewer Utility Service in Adam Mountain Subdivision, Wake County, and Approving Rates
W-848, Sub 11 (11-3-89) Order Adopting Recommended Order (11-3-89)

Oakwoods Water Company, Jemaca Enterprises, Inc., t/a - Order Cancelling Franchise Providing Water Utility Service in Oakwoods Subdivision, Onslow County
W-743, Sub 1 (12-28-89)

Regalwood Water Company, Jemaca Enterprises, Inc., t/a - Order Cancelling Franchise Providing Water Utility Service in Regalwood Subdivision, Onslow County
W-187, Sub 7 (12-28-89)

Sandhill Acres Investment Company - Order Cancelling Franchise Providing Water Utility Service in Belle Acres Subdivision, Montgomery County
W-479, Sub 2 (7-27-89)

Veterans Drive Community Water System, Inc. - Order Cancelling Franchise Providing Water Utility Service in Veterans Drive Community, Alamance County
W-118, Sub 2 (3-15-89)

CERTIFICATES

Burnett Construction Company, Inc. - Order Granting Authority to Provide Water Utility Service in Rocky River Plantation, Cabarrus County, and Approving Rates
W-892, Sub 2 (10-3-89)

Clearwater Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Ransdell Forest Subdivision, Nash County, and Approving Rates
W-846, Sub 6 (8-2-89)

Clearwater Utilities, Inc. - Order Granting Authority to Provide Water Utility Service in Eaglewood Farms, Jordan Woods, and Oaks Plantation Subdivisions, Wake County, and Approving Rates
W-846, Sub 7 (10-3-89)

Fox Run Water Company, Inc. - Recommended Order Granting Authority to Provide Water Utility Service in Morristown, Mill Creek, and Jack's Landing Subdivisions, Warren County; Provide Water Utility Service in Woodland and Creekside Subdivisions, Warren County, and Timberland Subdivision, Northampton County, and Approving Rates
W-959; W-959, Sub 1 (12-29-89)

Horse Creek Farms Utilities Corporation - Order Granting Authority to Provide Sewer Utility Service in Country Club Hills (formerly Trentwood Subdivision), Craven County, and Approving Rates; Sewer Utility Service in Stately Pines Subdivision, Craven County, and Approving Rates; and Transfer 100% of Its Stock to Debby Crayton, New Bern, N.C.
W-888, Sub 1; W-888, Sub 2; W-888, Sub 3 (11-3-89)

Hydraulics, Ltd. - Order Granting Authority to Provide Water Utility Service in Pine Meadows Subdivision, Rowan County, and Approving Rates
W-218, Sub 54 (4-11-89)

Liberty Water Company, Solanco, Inc., d/b/a - Recommended Order Granting Water and Sewer Utility Service in Liberty Manor Mobile Home Park (Crystal Park Section II) Subdivision, Cumberland County, and Approving Rates
W-954 (6-23-89)

M-I Utility Corporation - Recommended Order Granting Authority to Provide Sewer Utility Service in Claremont Plaza Shopping Center, Brunswick County, and Approving Rates
W-952 (2-20-89)

Mid South Water Systems, Inc. - Order Granting Authority to Provide Water and Sewer Utility Service in Farmwood North II, Brantley Oaks, and Willows Creek Subdivisions, Mecklenburg County, and Approving Rates
W-720, Sub 67 (2-9-89)

Mid South Water Systems, Inc. - Order Granting Authority to Furnish Water and Sewer Utility Service in Alexander Island Subdivision, Iredell County, and Approving Rates
W-720, Sub 95 (7-11-89)

COMPLAINTS

Acqua, Inc. - Order on Complaint of Dana Isenhour
W-270, Sub 4 (12-15-89)

Bermuda Run Country Club, Inc. - Order Dismissing Complaint and Closing Docket in Complaint of Salem Building & Realty, Limited
W-707, Sub 3 (4-27-89)

Carolina Water Service - Order Closing Docket in Complaint of David L. Curtis
W-354, Sub 71 (4-27-89)

Community Utilities, Inc. - Recommended Order in Complaint of Arthur D. Bauer
W-845, Sub 2 (5-15-89)

Heater Utilities, Inc. - Order Closing Docket in Complaint of Fred A. Byrd
W-274, Sub 49 (1-24-89)

Hydraulics, Ltd. - Order Keeping Docket Open for Six Months in Complaint of William B. Deal and Other Residents of Lancer Acres
W-218, Sub 57 (7-25-89)

Kings Grant Water Company - Order Closing Docket in Complaint of Colette Sanabria
W-250, Sub 6 (4-27-89)

Kings Grant Water Company - Order Closing Docket in Complaint of William C. Blackburn
W-250, Sub 7 (4-27-89)

Kirk Glen, Inc. - Order Closing Docket in Complaint of Joseph Karpen and Rachel S. Smith
W-838, Sub 1 (2-20-89)

Mid South Water Systems, Inc. - Order Closing Docket in Complaint of Wexford Subdivision Homeowner's Association of Charlotte
W-720, Sub 76 (1-11-89)

Mid South Water Systems, Inc. - Recommended Order Requiring Improvements in Complaint of Carl Santinelli
W-720, Sub 73; W-720, Sub 90 (5-19-89)

North Topsail Water & Sewer, Inc. - Order Denying Motion for Stay Order and Additional Oral Argument in Complaint of James D. Davis and Sons, J. D. Davis and wife, Kathleen Davis, d/b/a (Commissioner Hipp dissents.)
W-754, Sub 8 (2-3-89)

North Topsail Water and Sewer, Inc. - Order Withdrawing Complaint and Closing Docket in Complaint of Onslow County
W-754, Sub 10 (6-23-89)

Northeast Craven Utility Company - Order Closing Docket in Complaint of Samuel L. Whitehurst
W-696, Sub 3 (1-17-89)

Pilosi, Ethel Murray and Fernand V. Pilosi - Order Declaring Proceedings Moot, Dissolving Restraining Order, and Closing Docket in Complaint of Too Tuff Togs, Inc., Thomas J. Glennon and Michel Bittan
W-956 (10-4-89)

United Systems Company, Inc. - Order Cancelling Hearing and Dismissing Complaint in Complaint of Northeast Plaza, Ltd.
W-886, Sub 1 (6-13-89)

DECLARING UTILITY STATUS

Company	Docket Number	Date
Channel Side Corporation	W-939, Sub 1	5-3-89
Corolla North Utilities, Inc.	W-953	2-27-89
Harrco Utility Corporation	W-796, Sub 5	6-13-89
Long Bay Utilities, Inc.	W-961	10-6-89
North State Utilities, Inc.	W-848, Sub 10	6-15-89

DISCONTINUANCE OF SERVICE

McRee, William E. - Order Allowing Discontinuation of Water Utility Service and Requiring Public Notice
W-562, Sub 1 (12-8-89)

Morlan Park Water Company - Order Authorizing Discontinuation of Water Utility Service in Morlan Park Subdivision, Rowan County, and Cancelling Franchise
W-42, Sub 3 (12-28-89)

MERGERS

Beacon's Reach Master Association, Inc. - Order Approving Merger with WPKS Utilities, Inc.
W-966 (12-19-89)

RATES

Acqua, Inc. - Order Allowing Rates to go into Effect on February 1, 1989, for Water Utility Service in Meadowbrook Subdivision, Catawba County
W-270, Sub 3 (2-1-89)

Associated Utilities, Inc. - Recommended Order Granting Partial Rate Increase for Water and Sewer Utility Service in all of Its Service Areas in North Carolina
W-303, Sub 7 (4-18-89)

Bald Head Island Utilities, Inc. - Recommended Order Granting Rate Increase for Water and Sewer Utility Service in Bald Head Island, Brunswick County
W-798, Sub 2 (3-28-89)

C & L Utilities, Inc. - Recommended Order Granting Partial Rate Increase for Water Utility Service in all of Its Service Areas in North Carolina
W-535, Sub 7 (4-18-89)

Carolina Pines Utility Company, Inc. - Order Granting Rate Increase for Sewer Utility Service in Carolina Pines Subdivision, Craven County
W-870, Sub 2 (11-30-89)

Compass Utilities - Order Approving Rates for Emergency Operator and Requiring Public Notice
W-885, Sub 2 (10-6-89)

Cowan Valley Estates Water System - Order Approving Increase in Water Rate for Water Utility Service in Cowan Valley Water System, Jackson County
W-829, Sub 3 (3-30-89)

Cross-State Development Company - Recommended Order Granting Partial Rate Increase, Requiring Meter Installation, and Requiring Certain Improvements for Water Utility Service in All Its Service Areas in Ashe County
W-408, Sub 3 (8-28-989)

Fairview Water System, W. A. Weston d/b/a - Recommended Order Granting Partial Rate Increase for Water Utility Service in Fairview Wooded Acres Subdivision, Wake County
W-902, Sub 2 (7-21-89) Order Adopting Recommended Order (7-21-89)

Franklinville Waste Treatment Company - Order Granting Rate Increase for Sewer Utility Service in All of Its Service Areas, Randolph County, and Requiring Public Notice
W-905, Sub 1 (11-29-89)

Glen, Kirk Water System, Kirk Glen, Inc., d/b/a - Recommended Order Granting Partial Rate Increase for Water Utility Services in Kirk Glen Subdivision, Buncombe County (12-21-89)

Greshams Lake Utility Company, Inc. - Recommended Order Reducing Rates for Fire Protection and Increasing Sewer Utility Service in Its Service Area, Wake County
W-633, Sub 3 (2-16-89) Errata Order (2-17-89)

Hawkins, Paul T. and Company, Inc. - Order Suspending Rates, Approving Interim Rates, and Requiring Public Notice for Water Utility Service in Caroleen and Henrietta, Rutherford County
W-550, Sub 3 (2-15-89)

Hawkins, Paul T. and Company, Inc. - Order Granting Rate Increase for Water Utility Service in the Towns of Caroleen and Henrietta, Rutherford County
W-550, Sub 3 (6-5-89)

Hensley Enterprises, Inc. - Recommended Order Granting Partial Rate Increase for Water Utility Service in its Service Areas in Gaston County
W-89, Sub 30 (4-26-89)

Holiday Island Property Owners Association, Inc. - Recommended Order Granting Partial Rate Increase for Water Utility Service in Holiday Island Subdivision, Perquimans County, and Deferring Ruling on Utility Status
W-386, Sub 6 (4-14-89) Order Declaring Holiday Island Property Owners Association, Inc., To Be Exempt From Regulation (6-12-89)

Huey, Wade - Order Granting Rate Increase for Water Utility Service in Rolling Acres Subdivision, Buncombe County, and Cancelling Hearing
W-614, Sub 3 (7-12-89)

Hydraulics, Ltd. - Order Suspending Rates for Water Utility Service in Jamestown Subdivision, Catawba County, from Jamestown Water Corporation, and for Authority to Increase Present Rates
W-218, Sub 55 (8-2-89) Errata Order (8-7-89)

Joyceton Water Works, Inc. - Order Granting Rate Increase for Water Utility Service in All of Its Service Areas, Caldwell County, and Requiring Public Notice
W-4, Sub 4 (5-9-89)

M. D. Square, Inc. - Order Suspending Rates for Water Utility Service in Heritage Spring Acres Subdivision, Wake County, and Requiring Public Notice
W-338, Sub 2 (6-21-89) Errata Order (7-11-89)

M. D. Square, Inc. - Order Granting Partial Rate Increase for Water Utility Service in Heritage Springs Acres Subdivision, Wake County, and Requiring Public Notice
W-338, Sub 2 (12-19-89)

Patterson Water Company - Order Suspending Rates for Water Utility Service in Maria Park Subdivision, Gaston County, and Requiring Public Notice
W-276, Sub 3 (7-18-89)

Patterson Water Company - Order Granting Partial Rate Increase for Providing Water Utility Service in Maria Park Subdivision, Gaston County, and Requiring Public Notice
W-276, Sub 3 (12-14-89)

Pied Piper Resort, Inc. - Order Approving Rates for Emergency Operator to Furnish Water Service in Piper Village, Sierra Village, and Piper Hamlet Subdivisions, Cherokee County
W-893, Sub 1 (4-27-89)

Piedmont Carolina Construction, Inc. - Order Allowing Rates to go into Effect on February 1, 1989 for Water Utility Service in Eastbrook Acres Subdivision, Catawba County
W-768, Sub 2 (2-1-89)

R.O.E. Water Utility Company, Jack B. Jenkins, d/b/a - Recommended Order Granting Rate Increase for Water Utility Service in Rolling Oaks Estates, Buncombe County
W-820; W-820, Sub 1; W-820, Sub 2; W-820, Sub 3 (6-9-89)

Riverbend Water Systems, Inc. - Recommended Order Granting Increase in Rates and Charges for Water Utility Service in Riverbend Subdivision, Macon County
W-390, Sub 8 (4-24-89) Order Adopting Recommended Order (4-26-89)

Scotsdale Water and Sewer, Inc. - Recommended Order Granting Partial Rate Increase for Water Utility Service in All of Its Service Areas in North Carolina
W-883, Sub 8 (6-30-89) Order Approving Recommended Order (6-30-89)

Sentry Utilities, Inc. - Recommended Order Granting Motion for Increase Rates for Sewer Utility Service in Sprindale Acres Subdivision, Onslow County
W-811, Sub 3 (1-4-89)

SRME Water System, Harry W. Meredith, d/b/a - Order Approving Rate Increase for Water Utility Service in Spring Road Mobile Estates, Beaufort County
W-733, Sub 2 (11-3-89)

Tobacco Branch Village, Inc. - Recommended Order Granting Partial Rate Increase for Water Utility Service in Tobacco Branch Village, Graham County
W-504, Sub 2 (12-8-89)

Turner Farms Water - Recommended Order Approving Partial Rate Increase for Water Utility Service in All of Its Service Areas in North Carolina
W-687, Sub 4 (11-2-89) Order Approving Recommended Order (11-2-89)

Utility Systems, Ltd. - Order Granting Interim Rates for Sewer Utility Service in Barclay Downs Subdivision, Wake County
W-463, Sub 4 (11-22-89)

West Wilson Water Corporation - Order Suspending Rates for Water Utility Service in Elizabeth Heights Subdivision, Wilson County, and Requiring Public Notice
W-781, Sub 8 (1-4-89)

West Wilson Water Corporation - Order Granting Partial Rate Increase for Water Utility Service in Elizabeth Heights Subdivision, Wilson County
W-781, Sub 8 (6-5-89)

SALES AND TRANSFERS

Alpha Utilities, Inc. - Order Approving Transfer to Provide Water Utility Service in Robinfield Estates and Hanover Downs Subdivisions, Wake County from Mayberry Pump and Well Company, Inc., d/b/a A-1 Utilities, and Approving Rates
W-862, Sub 4 (9-20-89)

Alpha Utilities, Inc. - Order Approving Transfer to Provide Water Utility Service in Fairview Wooded Acreas Subdivision, Wake County, from W. A. Weston, d/b/a Fairview Water System, and Approving Rates
W-862, Sub 5 (12-28-89)

Alpha Utilities, Inc. - Order Approving Transfer of Franchise for Providing Water Utility Service in El Camino Acres Subdivision, Wake County, from Jerry Gower Construction Company, and Approving Rates
W-862, Sub 6 (12-14-89)

Bermuda Run Country Club, Inc. - Order Approving Transfer of Sewer Utility System Serving Bermuda Run Country Club, Davie County, to Bermuda Center 63-20, Inc., (Owner Exempt from Regulation) and Cancelling Franchise
W-707, Sub 4 (12-18-89)

Brookwood Water Corporation - Order Approving Transfer of Ownership of the Water Utility System Serving Longleaf Subdivision, Cumberland County, to Harnett County (Owner Exempt from Regulation) and Cancelling Franchise
W-177, Sub 29 (11-22-89)

Carolina Water Service, Inc. - Order Approving Transfer, 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 for Approval of Rates
W-354, Sub 68 (5-8-89)

Carolina Water Service, Inc. - Order Approving Transfer to Provide Water Utility Service in Woodhaven Subdivision, Henderson County, from Woodhaven Homes, d/b/a Woodhaven Water System, and for Approval of Rates
W-354, Sub 70 (5-9-89)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Water Utility Service in Powder Horn Mountain, Watauga County, from Wachovia Bank & Trust Company, N.A., and for Approval of Rates
W-354, Sub 79 (10-25-89)

Cumberland Water Company, Inc. - Order Approving Transfer of Ownership of the Water Utility System Serving Hunter's Ridge Subdivision, Cumberland County, to Harnett County (Owner Exempt from Regulation), Requiring Public Notice, and Cancelling Franchise
W-169, Sub 21 (6-15-89)

Dockery Water System, Inc. - Order Approving Transfer Ownership of the Water Utility System Serving Woodvale Acres Subdivision, Gaston County, to Woodvale Acres Water System, Inc. (Owner Exempt for Regulation)
W-721, Sub 4 (3-30-89)

Falls Utility Company - Recommended Order Approving Transfer of Franchise for Water and Sewer Utility Service in Falls of the Neuse Village Subdivision, Wake County, from Martha H. Mackie and for Approving of Rates
W-950 (1-31-89)

Falls Utility Company - Order Approving Transfer of Franchise to Provide Water and Sewer Utility Service in the Village of Falls, Wake County, from Martha H. Mackie, and to Amend the Conditions of the Certificate of Convenience and Necessity Issued to the Falls Utility Company
W-950 (10-25-89)

Grandview Water Company, Inc. - Order Allowing Transfer of Franchise for Water Utility Service in Meadowbrook Estates and West View Subdivision, Stokes County, to Kings District Water System, Inc. (Owner exempt from regulation)
W-183, Sub 3 (8-2-89)

Heater Utilities, Inc. - Order Approving Transfer of Water Utility Systems Serving Maplewood, Ravenwood, and Tiffany Gardens Subdivisions, Wayne County, to the City of Goldsboro (Owner Exempt from Regulation)
W-274, Sub 52 (6-21-89)

Hydraulics, Ltd. - Recommended Order Allowing Transfer of Water Utility Service in Meadowcreek Subdivision, Enoch Avenue/Turner Road Service Area, and Wright/Beaver Road Service Area, Rowan County, from Lee and Delores Wright and Approving Rates
W-218, Sub 53 (6-30-89)

Hydraulics, Ltd. - Order Granting Transfer of Franchise to Provide Water Utility Service in Jamestown Subdivision, Catawba County, from Jamestown Water Corporation and Approving Rates
W-218, Sub 55 (12-5-89)

Hydraulics, Ltd. - Recommended Order Allowing Transfer of Franchise for Providing Water Utility Service to South Fork, Ponderosa/Forest Point, Greenwood, and Betts Brook Subdivisions, Catawba County, from Tarlton Real Estate Corporation, and Approving Rates
W-218, Sub 58 and Sub 59 (12-14-89)

Hyland Hills Water Company, Robert A. Pipkin, d/b/a - Order Approving Transfer of Water Utility Service for Hyland Hills Subdivision, Moore County, from Hyland Hills Development Group, and Approving Rates
W-920, Sub 1 (8-16-89)

Intech, Inc. - Recommended Order Approving Transfer of Franchise to Provide Sewer Utility Service in Yates Run Subdivision, Wake County, from CAC Utilities, Inc., and Approving Rates
W-957 (12-14-89)

Kannapolis Water Company - Order Approving Transfer of Water and Sewer Utility Franchise Serving Kannapolis, Cabarrus and Rowan Counties, to Water Company Acquisition Corporation (Owner Exempt from Regulation) and Requiring Notice
W-934, Sub 1 (11-22-89)

Mobile Heights Water System, Gerald Barfield, d/b/a - Recommended Order Granting Transfer of Franchise to Provide Water Utility Service in Mobile Heights Subdivision, Lenoir County, from Vernon Jones, and Approving Rates
W-960 (12-8-89)

Perrytown Water System, Glenda Campbell, d/b/a - Order Approving Transfer of Water Utility Service in Perrytown Subdivision, Bertie County, from Jonathan Cambell, d/b/a J. C. Campbell Electric, and Approving Rates
W-958 (10-18-89)

Ratchford, Brady W., Jr. - Order Approving Transfer to the Franchise fro Providing Water Utility Service in Rocky Knoll Acres Subdivision, Gaston County, to the Town of Dallas (Owner Exempt from Regulation)
W-444, Sub 2 (12-8-89)

Sanders Water Company, F. D. Sanders, d/b/a - Order Approving Transfer of Franchise to Provide Water Utility Service in Crandon Park Subdivision, Mecklenburg County, to Charlotte Mecklenburg Utility Department (Owner Exempt from Regulation)
W-532, Sub 1 (12-28-89)

Scotsdale Water & Sewer, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in Dutchess Forest and Lakeland Village Subdivisions, Columbus County, from S. P. Stanley, d/b/a Dutchess Forest Water Supply and Lakeland Village Water Supply, Approving Rates, and Cancelling Franchise
W-883, Sub 9 (5-24-89)

Scotsdale Water and Sewer, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in Emerald Village Subdivision, Wake County, from R. E. Graham, d/b/a Emerald Village Water System, Approval of Rates and Cancelling Franchise
W-883, Sub 10 (7-27-89)

Seven Lakes Utilities, Inc. - Order Granting Transfer of Franchise for Providing Water Service in Seven Lakes Development, Moore County, from Community Utilities, Inc.
W-955 (6-30-89)

Umstead Water Company - Order Approving Transfer of Ownership of the Public Water Utility System Serving Umstead Industrial Park, Wake County, to the City of Raleigh (Owner Exempt from Regulation)
W-282, Sub 4 (2-28-89)

Wastewater Services, Inc. - Recommended Order Approving Application for Transfer of Franchise for Providing Water utility Service in Butler Mountain Estates Subdivision, Buncombe County, from E. S. Brown, and Approving Rates
W-869, Sub 2 (12-14-89)

West Wilson Water Corporation - Recommended Order Approving Transfer of Franchise to Provide Water Utility Service in Sherwood Forest Subdivision, Edgecombe County, from Harold L. Jackson, and Approval of Rates
W-781, Sub 9 (7-26-89) Errata Order (9-26-89)

SECURITIES

Brookwood Water Corporation and Heater Utilities, Inc. - Recommended Order Approving Stock Transfer of All Common Stock of Brookwood Water Corporation to Heater Utilities, Inc.
W-177, Sub 27 (6-30-89) Order Approving Recommended Order (6-30-89)

Emerald Plantation Utility Company - Recommended Order Approving Stock Transfer and To Amend Tariff
W-843, Sub 1 (2-16-89)

Heater Utilities, Inc. - Order Authorizing Release of Bond for Authority to Transfer the 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 (3-2-89)

M.A.M. Water & Sewer Company - Order Approving Stock Transfer of 20,000 Shares of Common Stock from Michael A.C. Maisonet to L. Thomas Harden III
W-772, Sub 2 (2-22-89)

TARIFFS

Carolina Water Service, Inc., of North Carolina - Order Deleting Tariff Provision to Increase Rates for Water and Sewer Utility Service in Its Service Areas in North Carolina
W-354, Sub 69 (9-28-89)

Carolina Water Service, Inc., of North Carolina - Order Allowing Tariff Revision for Authority to Amend Its Tariff to Include a Base Charge for a 6" meter
W-354, Sub 73 (4-18-89)

Hart Water Systems, Inc. - Order Approving Tariff Change
W-739, Sub 1 (7-27-89)

Heater Utilities, Inc. - Order Approving Tariff Revisions for Authority to Modify Certain of the Approved Charges on the Tariffs for All the Water Systems Transferred from Glendale Water, Inc., and Hasty Water Utilities, Inc.
W-274, Sub 51 (12-15-89)

Horse Shoe Sewer Company - Order Allowing Tariff Revision
W-916, Sub 2 (5-9-89)

Johnston-Wake Utilities, Inc. - Order Approving Tariff Change
W-906, Sub 2 (4-18-89)

Montclair Water Company, Inc. - Order Approving Tariff Amendment for Sewer Charges
W-173, Sub 18 (6-30-89) Order Modifying Order of June 30, 1989 (7-7-89)

Northeast Craven Utility Company - Order Amending Tariff
W-696, Sub 5 (7-24-89)

Ruff Water Company, Inc. - Order Allowing Tariff Revision for Authority to Amend Its Tariff to Include a Bulk Rate Water Charge
W-435, Sub 9 (4-21-89)

Transylvania Utility Company - Order Granting Public Staff Motion and Amending Tariff with Respect to Availability Rates
W-378, Sub 6 (5-17-89)

Water, Inc. - Order Approving Tariff Amendment for Reconnection, Returned Check, and Finance Charges
W-216, Sub 3 (1-4-89)

TEMPORARY OPERATING AUTHORITY

Compass Utilities - Order Declaring Emergency in Water and Sewer Systems in River Landings and Riverbend at Lakeside Subdivisions, Wake County
W-885, Sub 2 (9-7-89)

Edwards Water System - Order Appointing Emergency Operator for Edwards Water System, Nash County
W-134, Sub 2 (3-14-89)

Edwards Water System - Order Relieving Original Emergency Operator and Appointing Successor Emergency Operator for Edwards Water System, Spring Hope, Nash County
W-134, Sub 2 (5-2-89)

Hefner Builders, Inc. - Order Cancelling Temporary Operating Authority for Providing Water Utility Service in Northwood Estates Subdivision, Alexander County
W-480, Sub 2 (5-24-89)

Hydraulics, Ltd. - Order Approving Transfer of Temporary Operating Authority to Provide Water Utility Service in Meadowcreek Subdivision, Enoch/Avenue/Turner Road Service Area, and Wright/Beaver Road Service Area, Rowan County, from Lee and Delores Wright and Approving Rates
W-218, Sub 53 (5-24-89)

Mobile Hills Estates Water System - Order Appointing Emergency Operator for Mobile Hills Estates Water System, Wake County
W-224, Sub 5 (4-6-89)

Pied Piper Resort, Inc. - Order Declaring Appointment of Emergency Operator to Furnish Water Service in Piper Village, Sierra Village, and Piper Hamlet Subdivisions, Cherokee County
W-893, Sub 1 (4-5-89)

MISCELLANEOUS

Cape Fear Utilities, Inc. - Order Authorizing Pledging of Utility Assets
W-279, Sub 21 and W-225, Sub 19 (1-4-89)

Heater Utilities, Inc. - Order Granting Approval of the Net Present Value Gross Up Method
W-274, Sub 43 (6-30-89)

Holy Springs Golf and Country Club, Ltd., Golf and Holly Springs Club - Recommended Order Affirming Bench Ruling and Requiring the Dispersement of Escrow Account
W-944 (1-11-89)