EIGHTIETH REPORT
of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1990, through December 31, 1990

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

North Carolina Utilities Commission
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The Statistical and Analytical Report of the North Carolina Utilities Commission is printed separately from the volume of Orders and Decisions and will be available from the Office of the Chief Clerk of the North Carolina Utilities Commission upon order.

Compiled and Edited By Donna Bayless

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# LETTER OF TRANSMITTAL

December 31, 1990

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, 1990, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1990, and ending December 31, 1990.

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

1990 ANNUAL REPORT OF ORDERS AND DECISIONS
of the
North Carolina Utilities Commission

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NOTE: For General Orders, see Index on page 475

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: On August 26, 1987, the Commission issued its Order Establishing Procedures Related to Taxes on Contributions in Aid of Construction. This Order arose out of changes in the federal income tax treatment of contributed plant to utility companies, as set forth in the Tax Reform Act of 1986 (TRA-86). The Order requires water and sewer companies to use the full gross-up method with respect to collections of contributions in aid of construction (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.

Subsequent to the issue of the August 26, 1987, Order, the Commission became concerned that the full gross-up requirement was not being followed and that substantial tax liabilities may ultimately be due from the companies not in compliance with the full gross-up requirement. In order to acquire additional information on this matter, the Commission issued an Order on October 24, 1989, requesting any interested party to file comments on this matter. Comments were filed by Mid South Water Systems, Inc., Carolina Water Service, Inc., of North Carolina, the Public Staff, Hydraulics, Ltd., Surry Water Company, Burnett Utilities, Carolina Blythe, Cape Fear Utilities, Inc., North State Utilities, Inc., Associated Utilities, Inc., and J. Timothy Thornton.

The Commission has carefully reviewed these comments and the entire record on this matter. Based on this review, the Commission makes the following:

FINDINGS OF FACT

1. As a result of changes arising from the Tax Reform Act of 1986 relating to contributions in aid of construction, all water and sewer utility companies should be required by the Commission to use either the full gross-up or present value gross-up method with respect to all collections of CIAC.

2. All water and sewer utility companies shall value CIAC for tax purposes at the greater of (1) original cost less a reasonable allowance for depreciation, (2) fair market value, or (3) any other valuation technique that the company may wish to employ.

3. The requirements set forth in the Commission's Order of January 26, 1988, to the extent that such requirements are inconsistent with the provisions of this Order, should be rescinded.

4. Failure to apply the full gross-up or present value gross-up method would greatly expose the water and sewer utilities to the risk that they would be unable to meet their federal tax liability from company generated funds,

thereby ultimately exposing their customers to increased rates or loss of adequate service, or both.

## CONCLUSIONS

Based on an indepth review of the comments filed in this matter and the Commission's files, the Commission has determined that all water and sewer utility companies should be required to use either the full gross-up or present value gross-up method with respect to collections of CIAC. Each utility should consistently apply the chosen method. Therefore, should the utility choose to change from one gross-up method to another, such change would not be permissible without prior Commission approval. When the water or sewer utility files an application for a Certificate of Public Convenience and Necessity related to a contributed system, said application should state the gross-up method used and the amount of tax collected. Failure to apply the full gross-up or present value method to the receipt of a contributed system shall result in denial of the Certificate of Public Convenience and Necessity.

This requirement to use the full gross-up or present value gross-up method is needed to effectively and fairly meet the tax burden on CIAC received by water and sewer companies. As spoken to in previous Commission Orders, the Commission is deeply concerned that the tax burden associated with CIAC can not be met from water and sewer utility generated funds without much financial hardship.

This financial hardship would likely result in a material increase in rates and increased filings of bankruptcy. These results are clearly not desirable and would be very disruptive to the water and sewer utility industry in this State. In order to meet this tax burden, the Commission concludes that the tax on the CIAC should be collected from the contributor. This is consistent with past Commission decisions and would result in the cost causer - that is, the contributor - supporting this additional cost.

In the past, the Commission has approved applications for Certificate of Public Convenience and Necessity even though the gross-up or present value method had not been utilized, as directed under the August 26, 1987, Order. This procedure was followed because some water and sewer companies have voiced the willingness to take the risk that the company generated funds will be sufficient to meet CIAC related tax. Upon further review of this matter, the Commission concludes that this risk is too great to be shouldered by this industry; therefore, as previously stated, failure to apply either the full gross-up or present value gross-up method will result in denial of the Certificate of Public Convenience and Necessity for a contributed system. In order to facilitate compliance with this decision, the Commission requests that in the future the Public Staff state which gross-up method was employed in its Staff Conference Agenda items related to applications for Certificate of Public Convenience and Necessity on contributed systems. The Commission also requests that the Public Staff clearly reflect in said agenda items the methodology employed in determining the value of the contributed property.

In comments filed pursuant to the Commission Order of October 24, 1989, concerns were expressed that denial of an application for Certificate of Public Convenience and Necessity could encourage the increase of developer-owned utilities and, therefore, possibly reduce the overall quality of service to

utility customers. In response, the Commission notes that any developer owned water and sewer utility will be subject to the same General Statutes and Commission rules and regulations that apply to all other regulated water and sewer companies in this State. In particular, these companies will be subject to the same bonding requirements and obligations to provide adequate service at fair and reasonable rates.

The Commission notes that any water and sewer utility applying the full gross-up method will receive additional tax benefits in the future from the CIAC related depreciation on the utility's tax return. Since these benefits are derived from capital investments which are cost free to the utility, the Commission concludes that these benefits should be flowed through to the utility's customers as a reduction to the cost of service.

The Commission further notes that each water and sewer utility should proceed with care when choosing the present value gross-up method. Though this method results in a lower tax multiplier and, therefore, lower tax collections from the contributor of CIAC, it does require the present value of future tax benefits to be paid by the utility from its funds when the related CIAC is included in taxable income. Therefore, this method does require some disbursement from the utility's own funds. Ordinarily, this option would not be reasonable for a water or sewer utility company that already has operationally induced working capital weaknesses.

Another matter of concern to the Commission is the proper CIAC value for tax purposes. This matter was initially addressed in the Commission's January 26, 1988, Order as follows:

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

"After reviewing the many references cited by the companies in their written comments, the Commission concludes that the appropriate valuation for CIAC should be fair market value. However, the Commission is concerned, particularly in view of Internal Revenue Notice 87-82, that this CIAC valuation basis may not ultimately be accepted by appropriate tax authorities and courts. This concern is greatly intensified by the realization that should the fair market valuation utilized at the time of transfer subsequently be determined to be too low by the IRS then the company would probably be prohibited from fulfilling the full gross-up methodology because the previous owner of the property would probably be unavailable and unwilling to rewrite the original transfer contract. Being unable to fulfill the full gross-up procedures, then the company or its ratepayers would be burdened with supporting any additional income tax burden. Based on evidence of record, generally water and sewer companies or their customers cannot financially sustain this burden. Therefore, the Commission must take the precautionary position of placing the risk of incorrectly assessing the taxability of these transfer transactions on the utility rather than its customers..."

The Commission is concerned that some water and sewer utility companies are assigning little or no value to CIAC, thereby increasing the risk that additional taxes will be due in the future should an audit establish a higher valuation. Though the Commission prefers the fair market value approach, as spoken to above, the Commission upon further consideration now concludes that the more appropriate valuation to be used for CIAC for tax purposes is the greater of (1) fair market value, (2) original cost less reasonable depreciation, or (3) any other valuation technique the Company may wish to employ. For these purposes, fair market value is hereby defined as the price upon which a willing buyer and a willing seller negotiating at arms-length could reasonably be expected to agree.

The Commission emphasizes that failure to employ the valuation approach described and adopted herein will result in an application for a Certificate of Public Convenience and Necessity related to a contributed system being denied.

The Commission has carefully considered the issue of whether the purchase of assets or stock of a water or sewer company at a price below book value constitutes CIAC. Using the valuation methodologies adopted herein for the purpose of determining asset value, the Commission concludes that the difference between the purchase price and the net asset value of the acquisition, when the purchase price is less, would constitute CIAC subject to the requirements of this order.

IT IS, THEREFORE, ORDERED as follows:

1. That all water and sewer companies, in accordance with the guidelines set forth in this Order, shall use either the full gross-up or present value gross-up method with respect to all collections of CIAC.

2. That all water and sewer companies shall value CIAC for tax purposes at the greater of (1) original cost less a reasonable allowance for depreciation, (2) fair market value as defined herein, or (3) any other valuation technique the Company may wish to employ.

3. That the requirements set forth in the Commission's Order of January 26, 1988, to the extent that such requirements are inconsistent with the provisions of this Order, shall be and hereby are rescinded.

4. That the requirements of ordering paragraphs 1, 2, and 3 above be, and hereby are, ordered to be effective for all applications filed 30 days after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of September 1990.

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

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>The Tax Reform Act of 1986 | ) | ORDER DENYING MOTION OF NANTAHALA POWER AND LIGHT COMPANY TO RECOUP EXCESS REFUNDS |

BY THE COMMISSION: By Order issued October 23, 1986, the Commission initiated Docket No. M-100, Sub 113 and ordered utilities, including Nantahala Power and Light Company (Nantahala), to establish a deferred account beginning January 1, 1987 in which to place revenues representing the difference between revenues derived from rates established by reliance upon a 46% federal income tax rate and those derived from rates established by reliance on a 34% federal income tax rate. The Commission then commenced an investigation into the procedures for reducing rates to flow-through to the customers any savings from the lower tax rate brought about by the Tax Reform Act of 1986 (TRA-86) and to determine proper disposition of the funds maintained in the deferred account.

By Orders issued October 20, 1987, and November 6, 1987, the Commission required most utilities, including Nantahala, to reduce rates to flow-through the tax savings and ordered a refund of the funds maintained in the deferred accounts.

Nantahala appealed the Commission's Orders to the North Carolina Court of Appeals and obtained a stay of the Commission's Orders.

The ultimate decision on appeal, rendered by the North Carolina Supreme Court, was an affirmance of the Commission's Orders. The Supreme Court ruled that the Commission's decisions were rendered in a rulemaking proceeding, as opposed to a ratemaking one, and that the Commission therefore was not bound by the customary ratemaking restraints imposed when setting rates pursuant to G.S. 62-133. The court also rejected arguments that the requirement that the funds maintained in the deferred accounts be refunded constitutes retroactive ratemaking. See State ex rel. Utilities Commission v. Nantahala Power and Light Company, 326 N.C. 190 (1990).

After remand, on April 10, 1990, Nantahala filed a request for approval of a refund plan and a tariff reduction. Nantahala proposed to reduce its rates for bills rendered on and after April 27, 1990. Under the plan, funds ceased to be accumulated in the deferred account at the end of March 1990. Nantahala calculated the total refund to be $3,303,414.99, including interest. The Public Staff reviewed and accepted this calculation.

Under its refund plan, the total refund was to be refunded by reducing bills rendered in April and May 1990. The plan called for Nantahala to estimate the total retail kWh to be billed during April and May and to determine a refund factor per kWh using such estimates. The estimates were derived by reliance upon historical average sales for Nantahala plus

anticipated growth. The April refund factor was to be applied to actual April retail sales. Under the plan, the amount actually refunded in April was subtracted from the total amount due. The balance plus interest was to be divided by the estimated May retail sales to determine the refund factor for May.

On April 12, 1990, the Attorney General filed a motion and objection to the proposed refund plan. The Attorney General moved that Nantahala be ordered to file a refund plan which calculated actual overpayments and refunded those overpayments to the customers who actually made them. As support for his motion, the Attorney General cited Nantahala's practice of refunding other monies in that manner in North Carolina Utilities Commission Dockets E-22, Subs 29 and 35, as well as legal and fairness problems with using two spring months' usage as a surrogate for 39 months of overpayment.

This matter was discussed at the Regular Commission Staff Conference held on April 16, 1990. At that conference, the Public Staff recommended approval of Nantahala's proposed refund plan. We approved the refund plan by Order of April 18, 1990, noting that the refund plan had been endorsed by the Public Staff and was consistent with plans previously approved for other companies.

Nantahala implemented the plan as outlined. The Company asserts that because April sales were 7.7% below the estimate in the refund plan, the refund factor for May was increased, consistent with the guidelines in the approved refund plan. May sales exceeded estimated sales by 6.5%, resulting in an over-refund of approximately $110,000. The Company asserts that the failure of actual sales to equal projected sales for April and May was caused by weather-related factors that could not have been anticipated.

On June 19, 1990 Nantahala filed its final status report reflecting the refund activity for the month of May 1990. This report shows the over-refund of approximately $110,000.

By motion of August 23, 1990, Nantahala requested permission to recoup the excess refunds of approximately $110,000 made to its customers during April and May 1990. The Public Staff filed a response in opposition to Nantahala's motion on August 30, 1990. The Attorney General also filed a response on August 31, 1990, opposing the motion.

In its motion of August 23, 1990, Nantahala requests permission to recover excess refunds made in this docket by imposition of a one-time surcharge to customer bills or by an offset to the cost-free capital account established in Docket Nos. E-13, Subs 29 and 35.

Neither Nantahala's refund plan nor the Commission's Order approving the plan addressed the contingency of an over- or under-refund. The Company asserts that the over-refund would have reduced Nantahala's 1989 net income by more than 2.5%. Nantahala asserts that it is inequitable to allow its customers to keep this windfall from the over-refund. The Company further asserts that since the purpose of the refund requirement was to return to customers a fixed refund amount based on amounts overpaid during the past period, there is no legal impediment that prevents the Commission from correcting the over-refund.

Nantahala requests that the Commission allow it to recoup approximately $110,000 plus interest from customers in the form of a one-month surcharge to bills. Alternatively, Nantahala requests that the Commission allow it to transfer to revenues approximately $110,000 from the funds that were segregated from the refunds in Docket Nos. E-13, Subs 29 and 35. These refunds represent unclaimed refunds to past Nantahala customers whose whereabouts are unknown to the Company and who have not otherwise claimed the refunds. These refunds totaling $776,556 as of June 30, 1990 are to be maintained in a segregated, interest-bearing account until December 31, 1992, at which time they are to become available for use to Nantahala as cost-free capital.

The Public Staff asserts that such a surcharge or offset would be inappropriate for two basic reasons. First, the Public Staff states that Nantahala should not be allowed to retroactively adjust its own refund plan, which was approved without alteration by the Commission, simply because it did not result in a refund amount exactly equal to that which had been estimated. The Public Staff further states that the methodology employed in the refund plan is inherently subject to estimation error because of the difficulty of precisely estimating future kWh sales. The Public Staff notes that Nantahala should have known that its refund plan was susceptible to estimation error at the time the plan was proposed. Despite this, the refund plan contained no provision for any sort of true-up after May 1990.

The second major reason the Public Staff sets forth for denying the Company's request is that approval of the request would result in utilities across the board requesting true-ups of refunds.

The Attorney General also requests that the Commission deny Nantahala's request. Among other things, the Attorney General asserts that the Company has not provided adequate evidence that it will suffer financial harm if not allowed to recoup the over-refund. The Attorney General further asserts that the request to offset the over-refund against the unclaimed refunds from North Carolina Utilities Commission Dockets E-13, Subs 29 and 35 would mean reducing customer-supplied cost-free capital from the Company's books. The Attorney General states that Nantahala has not addressed the practical and legal concerns related to this action.

On September 13, 1990, Nantahala filed a reply in opposition to the responses filed by the Public Staff and Attorney General. Nantahala again asserts that the $110,000 in question represents 2 1/2% of its annual net income and that a 2 1/2% reduction in net income is substantial.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission has carefully reviewed this matter. As a matter of law and regulatory policy, we conclude that Nantahala's motion must be denied. A complete review of the record shows that the refund plan approved by this Commission and implemented by Nantahala was the same plan originally proposed by the Company. The refund plan did not have a true-up provision; nor was one proposed by any party until Nantahala's motion of August 23, 1990, which was not filed until almost three months after the over-refund actually occurred. We agree with the Public Staff and Attorney General that Nantahala should not

now be allowed to retroactively adjust its own refund plan, which was approved without alteration, simply because the plan did not result in a refund amount exactly equal to that which had been estimated. Such a result was entirely predictable. The susceptibility of the refund plan to estimation error was certainly known to Nantahala at the time the Company filed its proposal. Despite this, the refund plan contained no provision for any sort of true-up after May 1990. Nantahala had ample opportunity to request a true-up at the time it filed its refund plan, if it thought one was legal and necessary. Moreover, Nantahala's presumption that it would have been required to true-up an under-refund is inaccurate. In the absence of an express true-up provision, the same treatment should apply equally to overpayments and underpayments.

IT IS, THEREFORE, ORDERED that the motion filed by Nantahala Power and Light Company in this docket on August 23, 1990, to recoup excess refunds be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of September 1990.

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

Commissioner Charles H. Hughes dissents.

COMMISSIONER CHARLES H. HUGHES DISSENTING: I respectfully dissent from the instant decision of the Majority which denies Nantahala Power and Light Company's request to recover approximately $110,000 of excess refund made to its customers during May 1990. The Majority's action is exceedingly unfair and inequitable to Nantahala, establishes a bad precedent and may be unlawful.

The over-refund in question results from an error in the estimation process used by Nantahala in its proposed refund plan, which was ultimately adopted for use by the Commission. Specifically, the over-refund occurred because the Company underestimated kWh sales to be billed in the month of May 1990, in its calculation of the refund decrement to be applied to kWh sales actually billed during the month of May 1990. Actual kWh sales billed in May 1990, were greater than the expected level of sales because the weather during the applicable usage period was hotter than normal. In essence, the over-refund occurred because Nantahala was unable to accurately predict the weather within reasonable bounds.

The Majority in its Order has adopted the position taken by the Public Staff and the Attorney General that Nantahala's request should be denied. In its Order, the Majority presents its view that there is no problem with the refund plan adopted by the Commission but rather that Nantahala's expectations were simply not realized. Therefore, the Majority concludes that there is no valid reason to allow Nantahala to recover the excess refund. Further, it is the Majority's view that the Commission could not allow recovery of the excess refund, if otherwise warranted, because such action would constitute retroactive ratemaking which is unlawful. Finally, it is the Majority's view that if the situation was reversed; i.e., if there had been an under-refund, then Nantahala would not be required to correct the refund deficiency.

Regarding the Majority's assertion that economic estimates inherently lack absolute precision or that economic expectations are seldom realized in an absolute sense, such observations are hardly unique, profound or meaningful. The real question, of course, with respect to the matter at hand, or for that matter any similar request(s), is one of materiality. Clearly, the over-refund is material to Nantahala. It is equivalent to two and one-half percent of the Company's current, annual level of net income.

To place this matter in perspective, it is helpful to consider the dollar magnitude of two and one-half percent of North Carolina, current, annual net income to other investor-owned electric utilities operating in the state, also expressed in terms of gross revenue impact. Two and one-half percent of North Carolina, current, annual net income of Duke Power Company, Carolina Power & Light Company and North Carolina Power respectively equates to $15.3 million, $10.4 million, and $577 thousand. Such sums are directly comparable to Nantahala's excess refund of $110,000.

Thus, comparatively speaking, for example, the Majority has adopted the position that, if Duke had over-refunded revenues which had been collected on a provisional basis by $15.3 million because of its inability to predict the weather within reasonable bounds, Duke would not and could not be allowed to recover the excess refund. Moreover, it is the Majority's view if the situation was reversed; i.e., if Duke had under-refunded revenues which had been collected on a provisional basis by $15.3 million because of its inability to predict the weather within reasonable bounds, that Duke would not and could not be required to refund this $15.3 million under-refund to its customers.

It is difficult for me to accept that the Majority would allow Duke, for example, to keep $15.3 million of under-refunded revenue which had been collected from its customers on a provisional basis and revenue which the North Carolina Supreme Court had said Duke was not lawfully entitled to keep. Such a result is not a remote possibility given the precedent established by the Majority in ruling on Nantahala's instant request.

When refund of revenues collected on a provisional basis or when refund of revenues collected unlawfully are over- or under-refunded by a material amount, I would vote to allow or require that such a result(s) be corrected, as I have done in this instance.

My view in this regard assumes, of course, that correction of such over- or under-refund(s) would be lawful, which brings me to my next disagreement with the Majority; i.e., the Majority's assertion that to allow Nantahala's request would constitute retroactive ratemaking which is statutorily prohibited.

Nantahala's "REPLY TO RESPONSES OF THE PUBLIC STAFF AND THE ATTORNEY GENERAL" filed on September 13, 1990, in this docket is directly on point with respect to the impropriety of the reasoning advanced by the aforementioned parties and the Majority in support of their view that correction of the over-refund would constitute retroactive ratemaking and need not be repeated here. I do note however, since the Commission can require a utility to refund only those revenues that were collected unlawfully or on a provisionary basis, that a far more plausible argument from the standpoint of retroactive ratemaking would be that to require a utility to refund significantly more

revenue than it collected on a provisionary basis or unlawfully constitutes retroactive ratemaking.

In substance, by not allowing Nantahala to recover the over-refund which resulted from an error in the refund process, the Majority is requiring Nantahala to refund revenues far in excess of the level of revenues collected by the Company on a provisionary basis or unlawfully. I find such a result to be totally unfair, inequitable and completely unjustifiable.

This inequity to Nantahala is further magnified when one considers the fact that no party to this proceeding questions the lawfulness of Nantahala having collected such revenues. The Majority's decision is even more perplexing when one considers the fact that correction of over- and under-refunds of revenues by natural gas utilities subject to the jurisdiction of this Commission, for reasons virtually identical to the issue at hand, are routinely permitted by the Commission.

It is for the foregoing reasons that I dissent from the Majority's decision.

Commissioner Charles H. Hughes

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of | ) | ORDER OF |
| The Tax Reform Act of 1986 | ) | CLARIFICATION |

BY THE COMMISSION: On September 14, 1990, the Commission issued its Further Order Establishing Procedures Related to Taxes on Contributions In Aid of Construction. This Order required the following:

"1. That all water and sewer companies, in accordance with the guidelines set forth in this Order, shall use either the full gross-up or present value gross-up method with respect to all collections of CIAC.

"2. That all water and sewer companies shall value CIAC for tax purposes at the greater of (1) original cost less a reasonable allowance for depreciation, (2) fair market value as defined herein, or (3) any other valuation technique the Company may wish to employ.

"3. That the requirements set forth in the Commission's Order of January 26, 1988, to the extent that such requirements are inconsistent with the provisions of this Order, shall be and hereby are rescinded.

"4. That the requirements of ordering paragraphs 1, 2, and 3 above be, and hereby are, ordered to be effective for all applications filed 30 days after the date of this Order."

The Public Staff stated at the Staff Conference of October 15, 1990, that there may be some confusion as to whether the Order of September 14, 1990, applied to CIAC related to plant expansions into contiguous areas by water and

sewer companies. The Commission notes that the Order of September 14, 1990 applies to all CIAC, as stated in the Order, including CIAC related to plant expansions into contiguous areas by water and sewer companies.

IT IS, THEREFORE, ORDERED that the requirements of the Order of September 14, 1990, should apply to all CIAC, including that related to plant expansions into contiguous areas by water and sewer companies.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of October 1990.

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

DOCKET NO. E-100, SUB. 55

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Rulemaking Proceeding to Consider Management<br>Efficiency in Minimizing Fuel Costs Pursuant<br>to G.S. 62-133.2(d1) | ) | ORDER AMENDING RULE |

BY THE COMMISSION: On October 30, 1989, the Commission issued its Order Requesting Comments asking the electric utilities and intervenors to file comments on "the causes and effects of [nuclear generating plant reratings] adjustment proceedings." The Commission asked certain questions, including whether any change should be made to the fuel charge adjustment statute or rule in order to accommodate reratings.

Comments were filed by Carolina Power & Light Company, Duke Power Company, and North Carolina Power on November 29 - 30, 1989. The Public Staff filed comments on December 6, 1989. The Public Staff suggested that the best means to keep the Commission informed of reratings would be "by filing a formal report indicating the reason for rerating the unit with the first Base Load Power Plant Performance Report that incorporates the rerating.: The Public Staff went on to recommend that our fuel charge adjustment rule, R8-55, be amended to add the following to subsection (d), which lists the minimum filing requirements for the fuel charge adjustment proceedings:

> (7) The nuclear capacity rating in the last rate case and the rating proposed in this proceeding. If they differ, supporting justification for the change in nuclear capacity rating(s) since the last rate case.

No further filings have been made herein.

The Commission accepts the comments filed herein for informational purposes. With respect to the Public Staff's recommendation that the Commission amend Commission Rule R8-55(d), the Commission finds good cause to amend the Rule as requested in order to provide more clearly for the filing of information and justification on the reratings of nuclear generating plants. In addition to the amendment of Commission Rule R8-55(d), utilities are requested to indicate the reason for the rerating of any nuclear generating plant along with the first monthly Base Load Power Plant Performance Report that incorporates the rerating.

IT IS, THEREFORE, ORDERED that Commission Rule R8-55(d) should be, and hereby is, amended by adding the following provision thereto:

(7) The nuclear capacity rating(s) in the last rate case and the rating(s) proposed in this proceeding. If they differ, supporting justification for the change in nuclear capacity rating(s) since the last rate case.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of January 1990.

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

DOCKET NO. E-100, SUB 55

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: G.S. 62-133.2(d1) directs the Utilities Commission to adopt a rule establishing "prudent standards and procedures with which it can appropriately measure management efficiency in minimizing fuel costs." By Orders of April 27 and June 22, 1988, the Commission adopted the present version of Commission Rule R8-55(i). This section of the Rule makes use of the nuclear capacity factor used for setting rates as the standard for management efficiency.

The Commission issued its Order Reopening Rulemaking Proceeding on July 18, 1990. The Commission noted that the wisdom of using the same nuclear capacity factor for setting rates and as a standard for management efficiency or prudency had been called into question and that the rulemaking proceeding should be reopened to consider whether Rule R8-55(i) should be rewritten in order to establish some more appropriate and effective standard of prudency. The Order called for the filing of comments by interested parties.

On August 29, 1990, the Commission issued an Order, upon Motion of the electric utilities involved, directing all parties to confer informally, prior to the filing of comments, with a view toward establishing and coordinating their positions, consolidating areas of agreement, and clarifying areas of disagreement. Such an informal conference was held on October 4, 1990. All parties to this proceeding attended.

On October 26, 1990, Joint Comments were filed on behalf of Carolina Power & Light Company, Duke Power Company, North Carolina Power, the Public Staff, and CIFGUR II. These parties asserted that they had developed a consensus with respect to amendment of Rule R8-55(i), and they filed a proposed amendment which employs as a standard of prudency the national average capacity factor for nuclear production facilities based on the most recent five-year period

available as reflected in the most recent North American Electric Reliability Counsel's Equipment Availability Report, appropriately weighted for size and type of plant.

On October 31, 1990, the Attorney General filed comments asserting that he "does not object to these proposed changes."

On November 15, 1990, CUCA filed comments to the effect that the difficulties with the current fuel charge adjustment statute cannot be rectified by amending Rule R8-55, that the present fuel charge adjustment statute should be repealed "accompanied by the passage of a fuel adjustment statute operating in a manner similar to the practice under former G.S. 62-133.2," that CUCA has no specific comment to make on the proposed amendment, and that "without acquiescing to those proposed amendments, [CUCA] does not desire to be heard further concerning the proposed rule change at the present time."

On the basis of the filings herein, the consensus of several parties, and the comments of the other parties who did not join in the consensus, the Commission finds good cause to amend Commission Rule R8-55(i) in order to establish a more appropriate and effective standard of prudency. The other sections of Rule R8-55 shall remain in effect as written.

IT IS, THEREFORE, ORDERED that Commission Rule R8-55(i) should be, and hereby is, amended and rewritten as set forth in Appendix A attached hereto.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of December 1990.

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

APPENDIX A

COMMISSION RULE R8-55(i)

(i) The burden of proof as the correctness and reasonableness of any charge and as to whether the test year fuel expenses were reasonable and prudently incurred shall be on the utility. For purposes of determining the EMF rider, a utility must achieve either (a) an actual systemwide nuclear capacity factor in the test year that is at least equal to the national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, appropriately weighted for size and type of plant 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 national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, appropriately weighted for size and type of plant, or a presumption will be created that the utility incurred the increased fuel expense resulting therefrom imprudently and that disallowance

thereof is appropriate. The utility shall have the opportunity to rebut this presumption at the hearing and to prove that its test year fuel costs were reasonable and prudently incurred. To the extent that the utility rebuts the presumption by the preponderance of the evidence, no disallowance will result.

DOCKET NO. E-100, SUB 58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Analysis and Investigation of Least Cost Integrated Resource Planning in North Carolina - 1989/1990 | ) ) ) | ORDER ADOPTING LEAST COST INTEGRATED RESOURCE PLANS |

HEARD IN: Buncombe County Courthouse, Asheville, North Carolina, on October 24, 1989; Charlotte-Mecklenburg Government Center, Charlotte, North Caroline, on October 25, 1989; New Hanover County Courthouse, Wilmington, North Carolina, on October 25, 1989; Guilford County Courthouse, Greensboro, North Carolina, on October 26, 1989; City Hall, Williamston, North Carolina, on October 26, 1989; Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 30, 1989, and January 9 - 17, 1990.

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 Carolina Power & Light Company:

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 Duke Power Company:

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

For North Carolina Power:

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

and

James S. Copenhaver, Attorney at Law, North Carolina Power, Post Office Box 26666, Richmond, Virginia 23261

For Nantahala Power and Light Company:

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

For North Carolina Electric Membership Corporation:

Wallace E. Brand and David A. Leckie, Brand & Leckie, Attorneys at Law, 1730 K Street, N. W., Washington, D. C. 20006
and
Thomas K. Austin, Staff Attorney, North Carolina Electric Membership Corporation, Post Office Box 27306, Raleigh, North Carolina 27602

For Carolina Utility Customers Association, Inc.:

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

For Carolina Industrial Group for Fair Utility Rates (CIGFUR-II):

Ralph McDonald and Carson Carmichael III, Bailey & Dixon, Attorneys at Law, 601 St. Mary's Street, Post Office Box 12865, Raleigh, North Carolina 27605-2865

For Conservation Council of North Carolina, North Carolina Fair Share, North Carolina Consumers Council, North Carolina Solar Energy Association, Western North Carolina Alliance, North Carolina Chapter of the Sierra Club, Jocassee Watershed Coalition, and Blue Ridge Environmental Defense League:

John D. Runkle, General Counsel, Conservation Council of North Carolina, 307 Granville Road, Chapel Hill, North Carolina 27514

For the Public Staff:

A. W. Turner, Jr., 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

For the Attorney General:

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

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

"(c) The Commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina, including its estimate

of the probable future growth of the use of electricity, the probable needed generating reserves, the extent, size, mix and general location of generating plants and arrangements for pooling power to the extent not regulated by the Federal Power Commission and other arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of North Carolina, and shall consider such analysis in acting upon any petition by any utility for construction. In developing such analysis, the Commission shall confer and consult with the public utilities in North Carolina, the utilities commissions or comparable agencies of neighboring states, the Federal Power Commission, the Southern Growth Policies Board, and other agencies having relevant information and may participate as it deems useful in any joint boards investigating generating plant sites or the probable need for future generating facilities. In addition to such reports as public utilities may be required by statute or rule of the Commission to file with the Commission, any such utility in North Carolina may submit to the Commission its proposals as to the future needs for electricity to serve the people of the State or the area served by such utility, and insofar as practicable, each such utility and the Attorney General may attend or be represented at any formal conference conducted by the Commission in developing a plan for the future requirements of electricity for North Carolina or this region. In the course of making the analysis and developing the plan, the Commission shall conduct one or more public hearings. Each year, the Commission shall submit to the Governor and to the appropriate committees of the General Assembly a report of its analysis and plan, the progress to date in carrying out such plan, and the program of the Commission for the ensuing year in connection with such plan."

On August 18, 1986, the Commission issued its Order Adopting Updated Forecast and Plan for Meeting Long-Range Needs for Electric Generating Facilities in North Carolina - 1985/86 in Docket No. E-100, Sub 50. The Order contained the findings and conclusions of the Commission regarding generating capacity expansion by electric utilities serving North Carolina, and it constituted the Commission's report for 1986 pursuant to G.S. § 62-110.1. Docket No. E-100, Sub 50, was the most recent proceeding of the Commission concerning generating capacity expansion in which public hearings were held. In June 1987, June 1988, and November 1989, the Commission issued annual reports updating its August 18, 1986, Order in Docket No. E-100, Sub 50. This Order in Docket No. E-100, Sub 58, will constitute the Commission's 1990 report to the Governor and to the General Assembly pursuant to G.S. 62-110.1.

The General Statutes also require that least cost planning be implemented by the utilities in North Carolina. G.S. 62-2 provides, in part, that it is the policy of the State of North Carolina:

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

demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills."

By Order issued March 25, 1987, in Docket No. E-100, Sub 54, the Commission instituted a general investigation and rulemaking proceeding to consider the adoption of a new approach to electric utility planning which is intended to identify those electric resource options which can be obtained for the total least cost to the ratepayers consistent with adequate, reliable service. Least cost integrated resource planning is a strategy which includes conservation programs, load management programs and other demand-side measures as important resource options which must be considered along with new generating plants, cogeneration and other supply-side measures in providing cost effective, high quality electric service.

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

On December 8, 1988, the Commission issued its Order Adopting Rules in Docket No. E-100, Sub 54, in which it adopted new rules defining an overall framework within which the least cost integrated resource planning process will take place. The rules did more than outline a planning procedure. They specified that neither demand-side resource planning nor supply-side resource planning is to be done separately, but that they are to be integrated into a single planning process. They also specified that alternative resource options must be studied and compared in such depth that a balanced evaluation of the options can be made. They provided a framework wherein least cost considerations, environmental concerns, operating needs, and flexible response to future unknowns can all be accommodated.

On December 9, 1988, the Commission issued an Order in Docket No. E-100, Sub 58, scheduling hearings to analyze and investigate the least cost integrated resource plans to be developed by Carolina Power & Light (CP&L), Duke Power Company (Duke), North Carolina Power (also referred to as Vepco), and Nantahala Power and Light Company (Nantahala) pursuant to the Commission rules. In addition, the Commission indicated an intent to initiate, as an important part of the proceedings, a comprehensive investigation into the scope and effectiveness of the demand-side programs and resource options which our electric utilities currently have in place in North Carolina and/or which they may plan to initiate in the near future. In particular, CP&L, Duke, North Carolina Power and Nantahala were directed to provide a detailed description and assessment of the effectiveness of their energy conservation and load management programs. Furthermore, the Commission requested the Public Staff to conduct a comprehensive investigation into the scope and effectiveness of the integrated resource plans to be filed by the electric utilities, with

particular emphasis being given to the subject of conservation and load management. To that end, the Public Staff was requested to make recommendations to the Commission regarding the following issues:

1. How effective are the energy conservation and load management programs that are in place today in North Carolina?

2. Are our electric utilities placing enough emphasis on demand-side programs in their planning processes?

3. What other demand-side programs, if any, should be pursued and implemented in North Carolina?

4. How can the Commission best implement "appropriate rewards to utilities for efficiency and conservation which decrease utility bills" pursuant to G.S. 62-2(3a)?

The Commission encouraged interested parties to participate in the hearings and scheduled six public hearings across the State for the convenience of members of the general public who wished to appear and testify. The hearings were scheduled to begin in September 1989.

Least Cost Integrated Resource Plans were filed by Duke on April 6, 1989, North Carolina Power and CP&L on April 7, 1989, and Nantahala on April 10, 1989. A Supplemental Filing by North Carolina Power was filed with the Commission on July 24, 1989. Each plan filed by the utilities was to contain energy and peak load forecasts for at least 15 years; an integrated resource plan considering a variety of existing and new generating facilities, alternative energy resources, conservation and load management programs, purchased power, transmission and distribution facilities; and a short-term action plan describing the specific actions utilities would take to implement their integrated resource plans during the next two to three years.

On July 6, 1989, the Public Staff filed a motion for continuance requesting that the public hearings scheduled for September 1989, as well as the hearing on the case in chief, be continued for about six weeks. The Public Staff stated that it had hired Dr. Eric Hirst and ERC International as experts to testify in the case; the Public Staff stated further that it had committed to provide an opportunity for the utilities to review a draft of the experts' report before it was to be prefiled, and that additional time would be required for the affected utilities to review and comment on the Public Staff's prefiled testimony. On July 25, 1989, the Commission issued an Order rescheduling hearings for October 31, 1989, for the hearing in chief and public hearings for October 24-30, 1989, and requiring that the Public Staff and other intervenors file reports, comments, testimony and exhibits no later than October 6, 1989. The Commission further ordered that all persons desiring to intervene as formal parties of record should petition the Commission not later than October 6, 1989, and file any expert testimony and exhibits not later than October 6, 1989.

The following parties requested and were allowed to intervene and participate in the proceedings: the Attorney General, the Conservation Council of North Carolina, the Carolina Industrial Group for Fair Utility Rates (CIGFUR II), the Sierra Club, the Jocassee Watershed Coalition, David Springer, the

North Carolina Electric Membership Corporation (NCEMC), Ultrasystems Development Corporation, North Carolina Fair Share, North Carolina Consumers Council, North Carolina Solar Energy Association, the Western North Carolina Alliance, and the Carolina Utility Customers Association (CUCA). Prefiled testimony of witnesses for a number of intervenors was filed on or before October 6, 1989.

On October 5, 1989, the Public Staff filed copies of the testimonies of the Public Staff consultants Eric Hirst, Benson H. Bronfman, and W. Michael Warrick and their accompanying report entitled "Least Cost Integrated Resource Planning in North Carolina: Review of Utility Plans and Processes."

On October 10, 1989, CP&L filed a motion for continuance, stating that under the original schedule for the filing of testimony by intervenors, the utilities had approximately six weeks between the hearing date and the filing of testimony by the Public Staff and other parties, but once the hearing was rescheduled, the new schedule allowed for only three weeks between the filing of intervenor testimony and commencement of the hearing. CP&L stated that because over 1,500 pages of intervenor testimony were filed by October 6, 1989, additional time would be required to analyze said testimony and to prepare fully to comment on all issues raised by the testimony. CP&L requested that the hearing date be delayed at least 60 days.

The Commission held a prehearing conference on October 13, 1989, to consider procedural matters, including the order of witnesses and cross-examination, length of cross-examination, stipulations, and prehearing motions. On October 19, 1989, the Commission issued its Order on the first prehearing conference which established procedural rules for the hearings.

During October 24-30, 1989, the Commission held public hearings in Asheville, Charlotte, Greensboro, Wilmington, Williamston, and Raleigh to hear from members of the general public.

On November 6, 1989, the Commission issued an Order rescheduling the hearings-in-chief to January 9, 1990.

On December 12, 1989, CP&L filed its motions to strike the testimony of NCEMC witnesses Sherali, Bower, and Solomon as well as Sierra Club witness Thomas. On December 12, 1989, NCEMC filed its motion for leave to supplement the direct testimony of its witness Sherali. On December 12, 1989, Duke filed its motion to strike the testimony of NCEMC witnesses Sherali, Bower, and Soloman and Sierra Club witness Thomas.

The Commission issued its second prehearing Order on December 21, 1989. The second prehearing Order of the Commission found good cause to order that all issues raised by the testimony of NCEMC witnesses Sherali and Bower related to the Duke-CP&L and the American Electric Power Company (AEP)-CP&L purchased power agreements should be deferred and neither heard nor considered by the Commission in this proceeding until the Federal Energy Regulatory Commission (FERC) has entered its decision on the Duke-CP&L agreement. The Commission further ordered that cross-examination of Duke and CP&L witnesses relating to the Duke-CP&L agreements should be deferred, stating that the Commission would consider the Duke-CP&L agreement again upon motion of any party following action by the FERC. The Commission stated that the ruling on deferral of this

testimony rendered moot the NCEMC's motion to supplement the testimony of its witness Sherali. The Commission denied CP&L's and Duke's motions to strike the testimony of NCEMC witness Solomon and ordered Sierra Club witness Thomas to prefile his direct testimony on or before January 2, 1990.

Supplemental testimony of North Carolina Power was filed on January 5, 1990.

Stipulation agreements between the Public Staff and CP&L were filed with the Commission on January 4, 1990, between the Public Staff and Duke on January 8, 1990, and between the Public Staff and North Carolina Power at the commencement of the hearing-in-chief on January 9, 1990.

The matter came on for hearing on January 9, 1990, as previously noticed and scheduled. CP&L presented the testimony of a panel consisting of its employees as follows: Bobby L. Montague, Vice President of System Planning and Operations; Greg L. Pittillo, Manager of Demand Side Management Programs; Dr. John L. Harris, Manager of Economics and Forecasting; and Donald R. Weisenborn, Manager of System Planning.

Duke presented the testimony and exhibits of the following witnesses as a panel: Donald H. Denton, Jr., Senior Vice President for Marketing and Rates;. Richard B. Priory, Senior Vice President for Generation and Information Services; William F. Reinke, Manager of Electric Utility Marketing; David L. Weisner, Manager of Energy Analysis; and Allan H. Shub, Manager of Forecasting.

North Carolina Power presented the testimony and exhibits of the following witnesses as a panel: Henry W. Zimmerman, Manager of Planning, adopting the prefiled testimony of Larry W. Ellis; Samuel M. Laposata, Manager of Forecasting and Economic Analysis; Edmond P. Wickham, Jr., Manager of Customer Services and Marketing; and James P. Carney, Principal Economist in the Forecasting and Economic Analysis Department.

Nantahala offered the testimony of N. Edward Tucker, Jr., Executive Vice President of Nantahala.

The Public Staff presented the testimony of a panel consisting of Eric Hirst, Oak Ridge National Laboratory, and W. Michael Warrick and Benson H. Bronfman of ERC Environmental and Energy Services Company. This panel sponsored a report entitled "Least-Cost Integrated Resource Planning in North Carolina, Review of Utility Plans and Planning Processes."

CIGFUR-II presented the testimony of Nicholas Phillips, Jr., of Drazen-Brubaker & Associates, Inc., who testified with respect to CP&L's interruptible and cogeneration rates and CP&L purchases from Duke Power Company and American Electric Power Company.

NCEMC presented the testimony of J. Bertram Solomon, of GDS Associates, Inc., who testified with respect to NCEMC's load management activities and CP&L's refusal to provide NCEMC its real-time system demand signal. NCEMC also prefiled the direct testimony and exhibits of Richard S. Bower, Professor of Finance and Managerial Economics of the Amos Tuck School of Business Administration at Dartmouth College, and Anis D. Sherali, of Southern Engineering Company. As a result of the Commission's December 21, 1989, Order,

the NCEMC did not attempt to introduce the testimony of witness Bower, but did tender for the record the testimony and exhibits of witness Sherali.

Several witnesses testified on behalf of a group of environmental, consumer and alternative energy organizations. The Conservation Council of North Carolina, North Carolina Fair Share, North Carolina Consumers Council, North Carolina Solar Energy Association, Western North Carolina Alliance, North Carolina Chapter of the Sierra Club, and Jocassee Watershed Coalition presented the testimony of Dr. David Nichols, Vice President and Senior Researcher of the Tellus Institute; Nancy Hirsh, Conservation Analyst with the Energy Conservation Coalition; and Meredith Emmett, Executive Director of the Institute for Southern Studies. Dr. Nichols sponsored pre-filed written testimony that he co-authored with David F. Von Hippel, a Research Associate with the Tellus Institute, who was not present to testify. The Conservation Council of North Carolina and the Solar Energy Association presented the testimony of Earl Kelly, Director of Governmental Affairs for the American Wind Energy Association; and Michael H. Nicklas, President of the architectural firm of Innovative Design, Inc., and Chair of the American Solar Energy Society. The North Carolina Chapter of the Sierra Club and the Jocassee Watershed Coalition presented the testimony of Dr. William R. Thomas. Pursuant to an agreement among counsel, Dr. Thomas' testimony and the accompanying exhibits were admitted for the limited purpose of providing information to the Commission on what other state public utility commissions are doing in the area of least cost integrated resource planning (LCIRP).

Public witnesses who testified in this proceeding were:

Asheville - David Spicer, Tish Robbins, Shirl Thomas, Bibb Edwards, Gail Ford, Jake Smit, Ginny Lindsey, J. Dan Pittillo, Peter Phelps, and Lois Fuller

Charlotte - Jim Hinton, Marti Breen, Tracy Davenport, James A. Russell, and Jesse Riley

Wilmington - Dean Weber and Tom Bailey

Greensboro - Ginny Lindsey, Edward F. Engle, Molly Diggins, Sarah Woerner, Linda Lonon, Ralph Cooke, and Lee Pontine

Williamston - No witnesses

Raleigh - Geroge Sweet, George Reeves, Martha Drake, Randy Schenk, Jan Nichols, John Roberts, Fred Stewart, Laura Drey, Louis Gerics, Greg Gangi, Geraldine Bowen, Bill Holman, W.W. Finlator, Jane Sharp, and Geoffrey C. Crandall

Among the public witnesses were a number of members of the North Carolina Solar Energy Association advocating greater use of photovoltaics and solar energy; a number of members of the Sierra Club advocating greater conservation of energy and inclusion of external costs to society in pricing energy options; a number of members of the Blue Ridge Environmental Defense League and the Mountain People for Clean Mountain Air opposing the new generating plant at Deep Gap proposed by NCEMC; a number of individuals protesting continued use of

nuclear fuels and fossil fuels; and a number of individuals supporting greater involvement by customer groups in the planning process.

On March 27, 1990, following the close of the hearing, Blue Ridge Environmental Defense League (BREDL) filed a petition with the Commission seeking leave to intervene in a limited manner in Docket No. E-100, Sub 58. The petition was accompanied by a statement in support of the Public Staff's position in this proceeding that the least cost planning rules should apply to the North Carolina Electric Membership Corporation (NCEMC). Limited intervention is hereby allowed.

In addition to the foregoing, there were other motions, filings, and orders not specifically mentioned, which are a matter of record. Based on the information contained in the utilities' least cost filings, the testimony and exhibits introduced at the hearings, and the Commission's record of this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. CP&L, Duke, North Carolina Power, and Nantahala are duly organized as public utilities operating under the laws of the State of North Carolina and are subject to the jurisdiction of the North Carolina Utilities Commission. The utilities are engaged in the business of developing, generating, transmitting, distributing, and selling power to the public throughout the State of North Carolina. CP&L has its principal offices and place of business in Raleigh, North Carolina. Duke has its principal offices and place of business in Charlotte, North Carolina. North Carolina Power has its principal offices and place of business in Richmond, Virginia. Nantahala has its principal offices and place of business in Franklin, North Carolina.

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

Nantahala Power and Light Company is the fourth largest electric utility in North Carolina and generates some of its own energy requirements utilizing hydroelectric facilities. On August 29, 1988, the Commission authorized Duke to acquire all of the common stock interest in Nantahala from Aluminum Company of America in Docket No. E-7, Sub 427. None of the other smaller electric utilities in North Carolina generate their own energy requirements.

3. The Public Staff entered into individual stipulations with CP&L, Duke, and North Carolina Power prior to the public hearings in which each utility agreed to change its planning processes in order to address the concerns and recommendations contained in the report by the Public Staff's consultant. The stipulations are in the best interests of all the parties and should be approved as filed.

4. The Public Staff entered into an individual stipulation with Nantahala during the course of the hearings in which the utility and the Public Staff agreed to a scaled-down planning process for the Company because of its unique characteristics. The stipulation is reasonable and should be approved as proposed.

5. CP&L, Duke, North Carolina Power, and Nantahala should file progress reports every six months as discussed herein. The progress reports should contain the details to be agreed upon between the Public Staff and each utility as discussed herein.

6. The rates of growth in the demand and use of electricity for the period 1990 - 2003, taking into account conservation, load management and emerging alternative energy resources, will be:

| | CP&L (1989-2003) | Duke (1989-2003) | N.C. Power (1989-2003) |
|---|---|---|---|
| Summer Peak | 2.0%-2.0% | 2.3%-2.6% | 2.4%-2.5% |
| Winter Peak | N/A | 2.5%-2.6% | 2.5%-2.7% |
| Energy | 2.1%-2.2% | 2.5%-2.6% | 2.6%-2.9% |

7. The Least Cost Integrated Resource Plans (LCIRP) filed by CP&L, Duke, and North Carolina Power are reasonable for purposes of this proceeding. The Commission recognizes that LCIRP is an evolving, dynamic process, and that new information and new understanding of resource planning principles will be developed in the future. The LCIRPs filed herein are at an early stage in their evolution, and these plans should be recognized as a good faith attempt to achieve an appropriate generation mix at least cost consistent with reliable service.

8. The appropriate minimum reserve margin for CP&L, Duke, and North Carolina Power continues to be approximately 20% for planning purposes.

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

10. The NCEMC should be required to participate in all future least cost integrated resource planning proceedings. The Commission will institute a rulemaking proceeding to implement this finding.

11. The Commission should seek appropriate methods for timely recovery by the utilities of costs associated with LCIRP programs.

12. CP&L should not be required in this proceeding to provide to NCEMC its real-time system demand.

13. The utilities should not be required in this proceeding to revise their rates for industrial curtailable power or their avoided cost rates applicable to qualifying facilities.

14. CP&L should be authorized to withdraw its experimental dual fuel rider from service.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 1 AND 2

These findings of fact are essentially informational and jurisdictional in nature and are not in controversy.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

In its response to the Commission's directive and its December 9, 1988, Order in this docket, each utility filed its least cost integrated resource plan, testimony and exhibits in conformity with the provisions of Commission Rules R8-56 through R8-61. The Public Staff retained consultants Benson H. Bronfman and W. Michael Warrick of ERC Environmental and Energy Services Company and Eric Hirst Of Oak Ridge National Laboratory to review each utility's resource planning process and the plans filed in response to the Commission's December 9, 1988, Order. The Public Staff's consultants prepared a report entitled "Least Cost Integrated Resource Planning in North Carolina: Review of Utility Plans and Planning Processes" dated October 6, 1989. This report was organized into five sections: (1) Introduction; (2) Least Cost Integrated Resource Planning; (3) Review of Planning Methods and Procedures; (4) Review of Utility Least-Cost Integrated Resource Planning Filings; and (5) Findings and Recommendations. Section (5) of the consultants' report contains 17 separate findings and recommendations regarding what it perceived to be weaknesses in the LCIRP process utilized by each utility. The Public Staff argued that it could not judge the accuracy of the utilities' forecasts or the appropriateness of their plans. Several other intervenors were critical of parts of the utilities' filings, and the environmental intervenors were generally critical of the utilities' planning process.

The Public Staff entered into individual stipulations with CP&L, Duke, and North Carolina Power before the hearing. In summary, the companies agree to change their planning processes to address the Public Staff's concerns, although not to the degree that the Public Staff had originally suggested. Although many of the intervenors expressed concerns about particular points in the stipulations, the stipulations address many of their concerns as well. The stipulations also address the four basic issues identified in the Commission's December 9, 1988, Order Scheduling Hearings in this docket.

The findings and recommendations of the Public Staff report were used by each utility and by the Public Staff as the basis for stipulations with respect to the issues raised by said utility and the Public Staff's consultants in this proceeding. These stipulations were submitted to the Commission by the affected parties with statements that the stipulations settled all issues in controversy between the Public Staff and the utilities in this proceeding. CP&L explained that although it did not agree with all of the recommendations presented by the Public Staff's consultants, in an effort to move the least cost planning process forward and to expedite proceedings before the Commission in this docket, the Company had prepared responses to each recommendation which formed the basis for stipulations with respect to the recommendations between the Public Staff and CP&L. The stipulations by each utility were the result of numerous meetings and extensive work by all parties involved. Compromises were accepted by each party with respect to positions they might have otherwise taken, absent these stipulations, in this proceeding. Each utility presented its respective stipulations as a total package and requested that the

Commission accept all 17 recommendations and stipulations together as one document.

Public Staff witness Hirst testified that these "agreements represent enormously important steps along the road to least cost planning." He indicated that the proposed utility progress reports to the Commission will show their commitment to implementing the data and recommendations. Although numerous questions were asked by the parties to this proceeding with respect to virtually all of the stipulations, the following stipulations received more comment and were subject to more discussion than the others, and therefore will be considered individually:

Recommendation A-3 - "Incorporate end-use trends." The Public Staff's panel testified that end-use models would allow utilities to explicitly track the likely changes in annual energy use and peak loads caused by changes in the technologies, government policies and demand-side programs operated by the utilities and by state and local governments. Each utility stipulated that it was assessing several models to address explicitly the changes in energy use and equipment efficiencies and operating practices. The Commission agrees with the Public Staff's consultants and each stipulation that end-use methods have not proven to be more accurate or reliable in projecting future energy trends than other forecasting models, but that each utility should move forward in assessing models of this type to run in parallel with other forecasting methods.

Recommendation B-3 - "Adopt the total resource cost test as the primary economic criterion for LCIRP." Each stipulation by CP&L and by Duke agrees that a preference should not be adopted by the Commission for a single particular test for all programs and that a particular program should not be accepted or rejected based solely on the results of any one of the various tests discussed in the report. Each utility stipulated not to limit its screening analysis of demand-side options to a single criterion only, such as the no-losers test or the rate impact measure test, but to continue to pursue a comprehensive assessment that considers and balances the results of multiple criteria which might include criteria other than economic tests. North Carolina Power qualified its stipulation in order to recognize the lack of guidance on this issue from regulatory agencies it is subject to in other jurisdictions. The Commission agrees that a preference should not be cited or adopted for a single particular test.

Recommendation C-3 - "Include environmental effects in resource assessment." The Public Staff consultants recommended that the utilities, in cooperation with the Commission and all interested parties, should develop ways to include the environmental effects of different resources in their least cost integrated resource plans. Each utility stated that it disagrees with certain proposals to include cost estimates for "external" envirnomental effects over and above those identified by appropriate environmental agencies. The stipulation agreed to by the Public Staff and each utility stated that attempting to estimate costs associated with "external" environmental effects is difficult and would require substantial subjective judgment and guesswork. In each stipulation the utility stated that it plans to continue to include the costs of environmental compliance in its assessment of resource options and that it will continue to qualitatively consider environmental effects in resource assessment and, to the extent practical, to provide information with

respect to the environmental effects associated with the options assessed. Several parties to this proceeding took issue with this stipulation.

The Commission agrees with each stipulation that it is generally not practical to attempt to include cost estimates for "external" environmental effects over and above those identified by appropriate environmental agencies. The Commission is aware that numerous federal and state governmental agencies are responsible for identifying environmental effects, developing regulations, and ensuring compliance with those regulations.

Recommendation F-1 - "Develop public involvement in least-cost integrated resource planning." The consultants recommended that each utility should actively seek input and advice from a variety of perspectives as the utility develops its plans. Each stipulation has agreed with the general intent of this recommendation and each utility has agreed to pursue certain options such as expanded use of its Customer Focus Groups and solicitation of technical input from technical advisory groups. More specifically, CP&L stipulated in part that it would seek additional input from "solicitation of technical input from organizations such as the North Carolina Alternative Energy Corporation, local universities, and appropriate governments agencies." Duke stipulated in part that it would seek additional input from "formation of a technical advisory group" selected "from certain areas of expertise such as (a) Business and Industry, (b) Environmental, (c) Power Engineering, (d) Political Science, (e) Economist, and (f) Community Representatives." North Carolina Power stipulated in part that it would seek additional input from "continued and expanding use of the Customer Advisory Board, which includes individuals from the academic community."

The Attorney General did not contest the stipulations between the parties, including CP&L (except for CP&L stipulation F.1.), and commended the parties for their efforts in resolving the differences between them. The Attorney General objected to stipulation F.1. by CP&L on grounds that it is too vague and is lacking in specifics regarding either the diversity of participants to be involved or the role that those participants will play in the evaluation process. The Attorney General was of the opinion that CP&L intended to solicit input on a project-by-project basis from a limited group of individuals rather than seeking input from diverse segments of the public, such as community groups, environmentalists, and low income groups, on the entire LCIRP process. The Attorney General recommended that the CP&L stipulation be amended to conform with those of Duke and North Carolina Power.

The Commission agrees with each stipulation that expanded public involvement in LCIRP should be sought, and it will monitor with great interest the manner and spirit in which each utility implements its stipulation in this regard. The Commission will approve the CP&L stipulation as written, but notes that the inclusion of customer groups cited by the Attorney General appears to be reasonable.

Recommendation G-3 - "Reward utilities for positive least-cost integrated planning accomplishments." Public Staff witness Hirst testified that there are three kinds of activities that the Commission should consider: One, which is encompassed by the stipulations that have been signed, involves recovery of costs associated with operating demand-side management programs. Next, when companies operating cost-effective energy efficiency programs lose money in the

short run, that revenue needs to be recovered. Finally, when utilities do a good job of planning and of operating demand-side management programs, Dr. Hirst thinks they should be rewarded for doing so. He proposed that some kind of financial incentive be given for good performance, a kind of share-the-savings approach. The Commission agrees that it should seek appropriate methods for timely recovery by the utility of costs associated with the LCIRP programs, and will consider further the question of financial incentives for good performance.

The Conservation Council of North Carolina, et. al., proposed that the stipulations be adopted as filed by the utilities except for the following modifications:

a. The comprehensive DSM assessment in stipulation B.2. should not be tightly focused on only a few end-uses, but should consider a broad range of options.

b. The content of the short-term action plans described in stipulation E.1. needs to be more specific.

c. The utilities should provide within 30 days of the Order specific examples of programs they will evaluate this year and implement viable programs now rather than waiting until all assessments of programs are complete.

d. The stipulations should address more fully: (1) the need to look at the total costs to society, including environmental costs (stipulation C.3.); (2) the need to look at the full range of incentives for DSM programs (stipulation G.3.); and (3) the important role a collaborative group could play (stipulation F.1.).

The Commission recognizes that the broad range of concerns addressed by the extensive comments of the parties in this proceeding must all be addressed in time, but it would be premature to attempt a resolution of each and every concern in this Order. A great deal of discussion and study remains to be done before some of the issues raised herein can be properly dealt with. In order to address the issues more effectively, it would seem wise to focus on those issues in this proceeding which are resolvable through stipulation. This is not to attach any less importance to those concerns which remain unresolved, but simply to recognize that LCIRP is an evolving, dynamic process and that the resources of the Commission are finite. The Commission especially encourages the utilities to work diligently with each of the customer groups represented by the various parties herein to determine where common ground and mutual support exist for future pilot demonstration projects that will address some of the concerns expressed herein.

The Commission concludes that all of the stipulations entered into by the utilities herein are in the best interests of all the parties and should be approved as filed. The Commission has encouraged alternative strategies to the adversarial process in several instances in this proceeding. One was in the development of the regulations concerning least cost integrated resource planning which took place over many months and allowed for the participation of any interested parties. Another instance was the stipulation process in which the parties were encouraged to discuss the issues and resolve as many as

possible. The Public Staff, including their consultants, and the utilities met frequently and worked hard to determine if there was any middle ground rather than polarized positions. The parties are to be commended for their work and the resulting stipulations. The State, the Commission, and the consumers will benefit from the stipulations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The testimony submitted by the Public Staff consultants in this docket addressed Nantahala in limited fashion. Pertinent excerpts from the testimony include:

"NP&L's size and power supply situation are very different from those of other utilities, so some of the Order's requirements may not be relevant to NP&L. However, if these considerations warranted an exception to the Order, the Commission would have so stated. Since the NCUC did not, we assume that NP&L was expected to comply with the requirements, to indicate why the company was unable to comply with specific Rules when it could not, and to include in its Action Plan specific actions to be taken either to comply in future Filings or propose exemptions from specific Rules."

* * *

"The small size and special circumstances of NP&L suggest that it be treated differently with respect to these Rules. We recommend that the NCUC modify the LCIRP Order to allow NP&L to submit a Filing tailored to its situation."

The Commission's least cost planning effort seeks to ensure that the utilities examine and select options that will result in lowest cost power to the North Carolina retail ratepayer. This purpose is accomplished by minimizing growth in system demand and by meeting increases in demand in the most cost-effective manner. The principal means of advancing this goal are load conservation programs and appropriate generation or purchase power options. Unlike the other three electric utilities subject to this docket, Nantahala will not necessarily meet its future needs by constructing additional electric generating units. The single possibility for an additional hydroelectric plant is the Needmore site. Needmore will only be developed if power can be generated there that is less costly than the power Nantahala purchases from Duke. Nantahala continues to monitor this option to determine whether the site should be developed.

Nantahala's supplemental power supply needs, instead, are met by Duke under a long-term contract. Although the terms of the contract may be adjusted, FERC must determine whether such future changes are reasonable. Equally important, both Nantahala and the Public Staff have indicated that Nantahala forecasts its load, yet they agree that these forecasts are not for the purpose of planning generating additions. Moreover, as the Public Staff has concluded, the benefits of any conservation programs are limited by the unique Nantahala power supply arrangements. Because of these factors, the Commission concludes that Nantahala's full compliance with Commission Rules R8-56 through 61 would not advance the fundamental purpose of the least cost planning effort.

Nantahala and the Public Staff met during the hearing to develop a scaled-down process for Nantahala because of that company's unique characteristics. Upon notice of these discussions, no party objected to allowing Nantahala to follow less stringent requirements. Nantahala and the Public Staff have now stipulated to such a process as follows:

The applicability of Rules R8-56 through R8-59 should be modified for Nantahala. Nantahala shall file the information required by Rules R8-60 and R8-61, as applicable.

Nantahala's filing under Rule R8-56 through R8-59, unless otherwise modified by Commission Order, shall include the following:

A. Load Forecasts, which shall include:

1. A description of the methods and assumptions used to prepare the forecasts, including a description of the models and variables used in the models;

2. A tabulation of the forecasts for a 15-year period, including peak loads for the summer and winter seasons of each year, annual energy forecasts, and the projected effect on the forecasted annual energy peak loads for each year of any conservation and load management programs in effect during the forecast period.

B. An Integrated Resource Plan, which shall include:

1. A list of existing generating facilities, including location and installed capability;

2. A list of any projected additions or retirements in generating facilities during the 15-year planning period, including location, capability and year of installation or removal;

3. A list of all energy resource options evaluated in developing the 15-year plan identifying those options to be implemented during the planning period;

4. A list of all conservation and load management techniques evaluated in developing the 15-year plan identifying those techniques to be implemented during the planning period;

5. A list of purchased power sources evaluated in developing the 15-year plan identifying those sources to be utilized during the planning period and providing projected annual peak kW and kWh purchases from each source.

C. A Short-term Action Plan, which shall contain a summary of the resource options or programs contained in the current least cost integrated resource plan and for which specific actions must be taken within the next two or three years. For each resource option or program, the summary shall include:

1. The objective of the resource option or program;

2. Criteria for measuring progress toward the objective;

3. The implementation schedule for the program over the next two to three years; and

4. Actual progress toward the objective to date.

The Commission concludes that the stipulation entered into by the Public Staff and Nantahala regarding filings under NCUC Rules R8-56 through R8-61 should be approved. The Commission also concludes that the applicability of Rules R8-56 through 61 should be modified so as to require Nantahala to file only such integrated resource planning information as ordered by the Commission. Under this modification, Nantahala should file a least cost integrated resource plan and supporting testimony at the times designated by the Commission. The filings should include load forecasts and integrated resource plans similar to those required by Rules R8-57 and R8-58, but with specific modifications tailored to Nantahala's unique system and power supply arrangements. The filings should also include a Short-term Action Plan identical to that required by Rule R8-59. Finally, Nantahala should file, pursuant to Rules R8-60 and R8-61, updates to least cost integrated resource plans and information relative to the construction of electric generation and related transmission facilities in North Carolina, but only as the requirements of these Rules are applicable to the unique conditions of the Company. A rulemaking proceeding to be opened by the Commission in the near future would be the appropriate forum in which to modify Rules R8-56 through R8-61 as discussed herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Stipulation G.1. entered into by the three largest utilities provides for (1) filing with the Commission proposed plans for responding to the Commission's final Order within six months after receiving the final Order; (2) filing with the Commission a progress report on implementation of Commission adopted recommendations six months later, if so desired by the Commission; (3) filing an updated short-term action plan in response to Rule R8-60 in April 1990; and (4) filing the next Least Cost Integrated Resource Plan (LCIRP) after April 1992 as directed by the Commission. While the Public Staff agreed with the stipulations, it also recommended that the first progress report (which is due six months after the proposed plans for responding to the final Order) be followed by additional progress reports at six-month intervals until the next LCIRP is due and that such progress reports be filed by Nantahala as well as the three largest utilities. The Commission concludes that progress reports at continuing six-month intervals by all four electric utilities is a reasonable requirement.

The Public Staff also contended that the various progress reports should contain much of the detail that several of the witnesses had complained was lacking from the stipulations. The Public Staff recommended that the following details be included in the reports:

For each point in the stipulations:

(a) The utility should report the progress that has occurred since the last report (or, for the initial report, since the hearing);

(b) The utility should state what it plans to accomplish in the time between this report and the next progress report; what it plans to accomplish between this report and the next least cost filing; and, if known, what it plans to accomplish in the long-term (i.e., beyond the next least cost filing);

(c) In reporting the information stated in paragraphs (a) and (b), the utility should provide as much information as it has available regarding implementation dates, evaluation dates, completion dates, manpower commitment, and budgets. If any of the information is available but the utility considers it proprietary or otherwise confidential, the utility should so state;

(d) The utility should assess the progress it is making in meeting its goals and state whether or not it believes its next least cost filing will include the stipulated changes. If a utility projects that it may not meet its goals, it should state the reason.

The Commission is of the opinion that the details recommended by the Public Staff for the reports look reasonable. However, the Commission concludes that the four utilities should work with the Public Staff to define and agree upon the details to be included in the six-month progress reports established herein. The Commission recognizes the special status of Nantahala versus the three larger utilities, and the fact that the details proposed by the Public Staff for the report were largely undiscussed in the proceeding. Such conclusion is also in keeping with the spirit of stipulation E.1. in which the utilities will work with the Public Staff in defining the information to be included in the short-term action plans.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6, 7, 8, AND 9

Extensive testimony and exhibits were presented in this proceeding regarding the LCIRP filed by each utility. Following is a summary and discussion of the testimony and of the information available to the Commission.

Carolina Power & Light

CP&L witness Harris testified that the total energy usage in CP&L's service area is projected to increase at an annual rate of 2.2 percent over the 15-year period from 1989 to 2003. Witness Harris testified that this growth rate reflects continuing conservation and load management activity. Witness Harris testified that the energy forecast was a projection of the electricity which CP&L customers were expected to use in the future and that the projection was developed by using mathematical and statistical models of the electrical usage patterns of CP&L customers. Witness Harris further described the results of high and low energy usage scenarios which resulted in an average growth rate for total system energy consumption of 2.6 percent per year for the high scenario and 2.0 percent for the low scenario.

CP&L witness Weisenborn testified that CP&L's forecast of peak load was derived by estimating the load factors for each sales classification and then applying the load factors to the forecast of kWh energy sales to determine the peak load forecast. Mr. Weisenborn testified that the Company's kW peak load, after load management, would grow approximately at an average annual rate of two percent which equates to about 190 megawatts per year for the 1989-2003 period. Witness Weisenborn further testified that high and low scenario peak load forecasts which were based on the energy forecast were also prepared, and that the low growth rate scenario forecast was 1.9 percent per year and that the high scenario forecast was 2.3 percent per year. Witness Weisenborn further testified that the Company's peak load forecast was based on an analysis of summer coincident peak loads, that historically the summer period had been the most critical on CP&L's system since generating capacity is lowered during the summer because of that season's high ambient temperatures and their adverse effects on operating efficiency.

CP&L witness Pittillo's direct testimony stated that CP&L actively promoted conservation programs in the early 1970s targeted at energy usage, insulation and improved thermal efficiency. These programs evolved in the mid- to late-1970s to include load management programs such as time-of-use rates. In the early 1980s and continuing, CP&L adopted a formal goal of reducing its peak load by 1750 MW. This goal is a part of CP&L's annual business planning cycle and is systematically included as one of approximately 10 key CP&L corporate annual goals.

CP&L witness Montague testified that a major consideration of CP&L's resource plan development was the integration of demand-side resources. He testified that by pursuing a diversity of conservation and load management options, CP&L would ensure not only a balanced mix of demand-side and supply-side resources but also that customer preferences for such demand-side options would be met with available programs. He stated that it was CP&L's strategy to obtain a balanced mix of cost-effective demand-side programs that are achievable and include them in the Company's resource plan. Once these resources are included as reductions in CP&L's forecast, the Company then evaluates and adds supply-side resources as necessary to serve system loads in accordance with the following strategy: minimizing capital investment by purchasing power and building low-cost peaking capacity; maintaining flexibility by scheduling short lead-time resource additions; minimizing risk by planning a diversity of resource additions; increasing utilization of existing coal-fired facilities; and satisfying the Company's reliability criteria. He further testified that on the supply-side, CP&L was planning a combination of firm purchases from cogenerators and other utilities and new generating capacity to meet the forecast load during the next 15 years. He further stated that the Company's current resource plan includes the purchase of power from two other utilities in the early 1990s: 250 megawatts of power starting in 1990 from American Electric Power and continuing for 20 years, and a second agreement with Duke Power Company for the purchase of 400 megawatts of power starting in 1992 and continuing for six years. In addition to these purchases, for the period from the mid-1990s to the turn of the century, approximately 250 megawatts of additional supply-side resources a year would be required. Witness Montague testified that current analysis indicated that peaking generation, such as combustion turbines, would provide a large proportion of the needed capacity. Witness Montague further testified that the Company's resource plan would allow the Company to satisfy its reliability

criteria through the scheduling of sufficient resources to provide a minimum capacity margin of 16.7 percent. Witness Montague stated that the capacity margin of 16.7 percent corresponded to a reserve margin of 20 percent which is consistent with margins found to be appropriate in previous proceedings before the Commission.

CP&L witness Weisenborn testified that CP&L's proposed plan was the least cost plan, that it was balanced through a diverse mix of generation and demand reduction measures, and that it was flexible and designed to provide a reliable supply of electricity for CP&L's customers at the lowest reasonable cost.

The NCEMC took issue with CP&L's resource plan. NCEMC's witnesses Bower and Sherali prefiled testimony concerning an agreement for the sale by Duke to CP&L of 400 megawatts of power starting in 1992 and continuing for six years. Witness Sherali filed testimony concerning the sale by American Electric Power (AEP) to CP&L of 250 megawatts of power for 20 years beginning in 1990. CP&L and Duke filed motions to strike the testimony of NCEMC witnesses Sherali and Bower that had bearing on the Duke-CP&L and AEP-CP&L purchase power agreements. NCEMC argued that the testimony of witnesses Bower and Sherali was relevant since the Duke-CP&L purchase and the AEP-CP&L purchase were inconsistent with least cost planning in that CP&L had not taken into consideration that NCEMC planned to transfer excess capacity it would have as co-owner in Duke's Catawba nuclear station from the Duke system to serve NCEMC's baseload requirements in the CP&L area.

In its December 21, 1989, Second Prehearing Order in this docket, the Commission refused to strike the testimony of NCEMC witnesses Sherali and Bower bearing on the Duke-CP&L and AEP-CP&L purchase power agreements, but recognized that the Duke-CP&L agreement was scheduled for hearing before the FERC at the same time as the hearing before the Commission in this docket and noted that this presented jurisdictional issues as well as practical scheduling conflicts. The Commission therefore ordered that all issues raised by the testimony of witnesses Sherali and Bower related to the Duke-CP&L and the AEP-CP&L agreements should be deferred, and neither heard nor considered by the Commission until the FERC had entered its decision on the Duke-CP&L agreement. The Commission further noted that it will consider this matter again upon motion of any party following action by FERC.

Duke Power Company

Duke witness Shub testified that Duke uses a variety of statistical and econometric methods and techniques to describe and forecast the relationship between electric demand and energy requirements and various economic, demographic and environmental factors to help ensure precision and accuracy. Long-term forecasts for the service area economy, peak load demands, and energy are developed with quarterly econometric modeling methods. Witness Shub testified that the forecasted compound annual growth rates for summer and winter peak loads are 2.6% and 2.5%, respectively. Consistent with the forecasts for peak demand, energy requirements are expected to increase approximately 2.5% per year. The summer peak is expected to remain dominant through the forecast horizon. The histories of demand and energy sales used in these forecasts reflect the effects of conservation and load management programs as they are embedded in the historical record.

Duke witness Denton testified that Duke's normal process for forecasting is to develop the forecast in May of each year to be presented to senior management in late May or early June. In the summer of 1989, there appeared to be extraordinary growth on the Duke system which had not been reflected in the previous forecast. Duke accelerated the forecasting process during late 1989, and a new forecast was presented to and adopted by Duke's management in January 1990. The new forecast shows an average increase of approximately 700 megawatts a year through the 15-year forecast period over the previous forecast.

Duke's strategy to accommodate this near-term adjustment in the forecast is to aggressively pursue power purchases to maintain an adequate reserve margin for the early 1990s, and to undertake an accelerated LCIRP study incorporating long-term purchases and new demand-side options. The results of this accelerated study will be available in the fall of 1990.

Witness Denton addressed the policies and procedures Duke has established for its Least Cost Integrated Resource Planning process. He testified that in 1975 Duke began a comprehensive and aggressive load management plan specifically designed to reduce the growth rate of the system peak with cost-effective demand-side programs. These programs were designed to accomplish one or more of three objectives: (1) restrain the growth rate of new peak load, (2) shift load from on peak to off peak, and (3) directly control or interrupt loads or appliances during times of system emergency conditions. This plan was revised and goals increased in 1979, based on the knowledge gained in the first five years. In 1985, another series of adjustments to the load management program was begun. This process contributed to changes in the planning process for load management or demand-side programs.

In 1988, Duke retained the consulting firm of Booz Allen & Hamilton, Inc., to assist in refining Duke's integrated resource planning process and to also assist in the newly defined planning process. Booz Allen recommended the formalization of internal working teams to facilitate the decision-making process and the exchange of information among departments within Duke. They also assisted with refinements to the demand-side planning tools and with enhancements to the integration process, and particularly with the final analysis of demand-side options in the integration process. Booz Allen has reviewed the decisions that were made during this planning cycle and made recommendations as part of this planning cycle.

Duke will continue conventional and interruptible programs to achieve the goals set forth earlier but, as a result of the latest plan, Duke will be increasing its promotional efforts for residential water heater and air conditioner load control, standby generators and interruptible service. Goals have been established for these programs, and those estimates have been incorporated into Duke's planning process to offset the need for future generation capacity. A LCIRP has been developed which includes a combination of demand and supply options. This plan has been examined for risks associated with the future and considers those uncertainties.

Duke witness Weisner discussed the demand-side planning portion of Duke's Least Cost Integrated Resource Planning process and the results of the demand-side evaluation. He testified that he supervised the development and evaluation of the demand-side resource options that were considered in this

LCIRP cycle. Numerous demand-side options are initially developed by members of the demand-side team. This initial list was evaluated using preliminary screening criteria including technical readiness, overall potential to generate a meaningful system peak demand reduction, and overall potential for customer acceptance. Options determined to be not viable were removed from the evaluation process. The demand-side options that passed the detailed screenings were passed to the integration process for further evaluation.

Witness Weisner stated that as a result of the integration process, four demand-side options have been selected for near-term promotion. These are residential water heater and air conditioner load control, standby generator, and commercial/industrial interruptible service. The overall demand-side plan contains over 30 individual elements including those evaluated as part of this least cost integrated resource planning cycle. The goals for this plan are 5690 MW of summer peak reduction and 7376 MW of winter peak reduction by the year 2002.

Duke witness Priory discussed the supply-side planning process and the resulting supply-side technologies which were passed on to the integration step of the process. The supply-side planning process is initiated with an up-to-date review of available technologies. This includes review of EPRI and other industry data, research by other utilities, and research conducted by Duke.

In its preliminary screening, Duke eliminated technologies which were not feasible in the Duke service area, those which had a much higher cost than comparable alternatives, and technologies which were unacceptable for other reasons. The remaining technologies were subjected to detailed screening utilizing a simplified economic analysis. The technologies which passed the detailed screening were then passed to the integration process for evaluation using expansion planning modeling techniques.

A total of 25 technologies were initially considered. Four technologies were rejected in the preliminary screening and a detailed screening of the remaining 21 technologies was conducted utilizing a screening curve methodology. This methodology allows a direct comparison of specific generating technologies using a constant dollar economic analysis that recognizes the different economic lives of the various technologies.

Three renewable technologies which were evaluated in the detailed screening were not carried forward to the integration process. Solar technology had a high capital cost relative to comparable technologies. Municipal refuse technology also had a high capital cost. Wind technology, although competitive at reasonably high capacity factors, had no suitable sites in the Duke service area. Ten new technologies were unable to compete economically with conventional technologies, and an eleventh, advanced batteries, was economically competitive only for a narrow range of capacity factors even using undemonstrated cost assumptions. The seven technologies which passed the detailed screening process were sent to the integration process.

In summary, Mr. Priory stated that there are seven technologies that can be characterized as options which can safely, reliably, and economically supply electricity to the Duke grid. These are proven methods of supply that can be

placed into service with a reasonable degree of certainty. The siting, licensing and installation of these technologies is, however, becoming more complex every day. Duke has been very active in the search for improvements to these technologies and developement of new technologies to expand its list of supply options.

Duke witness Reinke described the integration process of least cost planning. The Integration Team, which is led by System Planning, combines the information developed by the Demand-side Team and the Supply-side Team with information on purchased power to produce an integrated resource plan for Duke. The objective is to create a blend of the available options that will meet the customers' needs at the lowest possible cost to all customers dependably and reliably.

An integrated resource analysis would not be complete without determining whether purchased power would be available in sufficient quantities and at prices which would make it attractive to postpone certain supply-side resources. Consequently, Duke solicited quotations for firm power from neighboring utilities. The information received from this solicitation was utilized by the Integration Team in the integration process.

The integration process makes extensive use of computer models which simulate power system operation. Proper analysis is not possible without the use of these models because of the complex interaction of the existing system resources and new resources. Each resource, whether it is demand-side or supply-side, has unique characteristics which will affect overall system operation and cost. These characteristics can vary hourly in nature and seasonally as well.

Mr. Reinke testified that as a result of the integration process, it became clear that Duke's near-term capacity needs require resources which can provide peaking capacity. The supply-side options that best meet this requirement are combustion turbines. The integration process concluded that a combination of demand-side options consisting of standby generators, water heater load control, commercial and industrial interruptible service, and residential air conditioner direct load control, coupled with combustion turbines best meets the needs of the Duke system through the 1990s. A combination of base load and peaking resources is required after the turn of the century.

Duke's witnesses were cross-examined by counsel for NCEMC concerning how Duke would supply the energy needed to meet the growth on the Duke system. Mr. Reinke indicated that the energy needs would be met by Duke's existing coal-fired units and those units that are being brought back on line in the modernization program. Mr. Denton indicated that under the Catawba agreements excess energy can be sold by the owners to Duke, but that NCEMC's proposal to make energy available to Duke or others does not change the amount of generation or load in North Carolina. It only redistributes the costs from the Cooperatives' ratepayers to Duke's North Carolina retail ratepayers.

North Carolina Power

North Carolina Power witness Zimmerman, adopting the prefiled testimony of Larry W. Ellis, presented an overview of the Company's planning process and

described several alternative supply-side resources the Company is currently evaluating, including electric generating units based on coal gasification/combined cycle, fuel cells, photovoltaics, wind turbines, small-scale hydropower, and fluidized bed combustion. He also discussed transmission line limitations that have caused curtailments of purchased power during peak load times, and the Company's experience to date with its bid solicitation program for new capacity purchases.

North Carolina Power witness Laposata described the models and assumptions used to calculate the Company's forecast of energy and peak demand, and presented the Company's current forecast for the period ending 2003. He pointed out that the forecasts are based on the assumption of moderate interest rates and inflation rates throughout the planning period.

North Carolina Power witness Wickham discussed the Company's demand-side strategy for each customer class and various DSM programs utilized by the Company. He testified that the specific DSM programs focus on winter peak demand since the system is expected to be predominantly winter peaking in the long-term. The Company has determined that its DSM measures will result in a 918 MW reduction in winter load in 1998.

Nantahala

Nantahala presented the testimony of N. E. Tucker, Jr., Nantahala's Executive Vice President. In his testimony, Mr. Tucker described Nantahala's system, its current sources of generation and means of meeting its future growth in load. The generating units on Nantahala's system are all hydroelectric. With the exception of the Needmore site, all of the sites within Nantahala's service area suitable for a hydroelectric unit currently are utilized. Nantahala has no plans to construct any other types of generating units. Nantahala's generation is insufficient to meet its existing needs and consequently insufficient to meet the needs of future growth in load. These existing and future deficiency needs are met through long-term power supply contracts. Duke Power Company will begin supplying Nantahala with power in 1991 under a 20-year contract as soon as the transmission systems of the two utilities can be interconnected.

Mr. Tucker also listed reasons why the features of Nantahala's system and power supply arrangements result in limited benefits from demand-side resource options. Furthermore, cogeneration options on Nantahala's system are less economically viable because the incremental cost of construction must be compared with the embedded cost of Nantahala's supplemental power supplier.

The Public Staff panel testified that, "As a result of Duke's recent acquisition of NP&L, NP&L's avoided costs now mirror those of Duke's production costs because the value of NP&L's generation or load displacement is equivalent to Duke's avoided production costs. These costs effectively provide a ceiling on the benefits of DSM to NP&L. NP&L's power supply contract with Duke is for 20 years. NP&L does not plan to construct additional generation to displace this contract because the terms of the contract are below the likely costs of NP&L's marginal resources. As a result, NP&L's planning horizon is governed by near term needs such as maintaining existing power plants, transmission and distribution planning and rate analyses.

Public Staff

The panel consisting of Messrs. Warwick and Bronfman and Dr. Hirst testified on behalf of the Public Staff. Dr. Hirst indicated that he had been retained by the Public Staff to review the LCIRP process underway with the investor-owned utilities and the plans filed by the utilities in response to the Commission's December 1988 Order. The panel stated the approach used in conducting their investigation and review was to request and review documents, conduct interviews with key utility personnel involved with least cost integrated resource planning, analyze the information received, and develop findings and conclusions. A major conclusion of their review was that the North Carolina utilities have made considerable progress in resource planning and significant contributions to least cost integrated resource planning methods, and that North Carolina utilities had in place much of the data, analytical tools, staff and internal organization required for competent ongoing least cost integrated resource planning. The panel also testified that several areas, especially those associated with the comprehensive treatment of energy efficient and load management programs, required improvement.

On October 6, 1989, the Public Staff filed with the Commission its report entitled "Long Range Forecasts of Peak Demand for Electricity in North Carolina" and the report of its consultants entitled "Least Cost Integrated Resource Planning in North Carolina: Review of Utility Plans and Planning Process." The consultants' report contained many findings and recommendations.

Dr. Hirst gave a summary of the consultants' report for the panel. He indicated that least cost integrated resource planning considers a much broader array of energy resources than traditional utility planning approaches do, including conservation and load management programs. Such planning can yield significant benefits for electricity consumers, utilities, regulatory commissions, and society in general. The benefits include acquisition of resources that meet customer energy service needs in ways that are low in cost, environmentally benign, and publicly acceptable.

During the past few years, the North Carolina Utilities Commission and utilities have worked together on procedures for least cost planning. This effort culminated in the Commission's December 1988 Order in this docket requiring the utilities to file LCIRP plans in April 1989.

Dr. Hirst recognized that the utilities are already active in demand-side management. Duke's demand-side management programs cut summer peak by nearly 20 percent in 1987. CP&L cut its summer peak by more than 10 percent in 1988. The utilities' April 1989 filings demonstrate the capabilities of Duke, CP&L, and North Carolina Power to conduct sophisticated analyses. Although the Commission and the utilities should be proud of all they have accomplished, much more remains to be done.

The consultants estimate that the data and analysis activities recommended will increase utility costs by roughly $3 to $5 million per year, an increase in revenue requirements of about 0.1 percent. More important, this very modest cost will be amply repaid. The data and analysis recommended will provide a much firmer basis for utility estimates of the need for new power plants. The benefits will also include utility implementation of programs that will achieve large reductions in annual electricity use, as well as peak demands. These

programs will save money for customers, reduce the need to build new power plants and transmission lines in North Carolina, reduce emissions of greenhouse gases and other pollutants, improve economic productivity, and improve the financial performance of the North Carolina utilities.

In summary, while the Public Staff did not disagree with the use of econometric models for forecasting demand and energy nor with the peak loads, energy sales, and associated growth rates produced thereby, the Public Staff was critical of the companies' practice of subtracting the effects of demand-side programs before the integration stage. In stipulation C.1., the companies generally agreed to modify their integration processes to meet this criticism. The Public Staff also stated that the companies' analyses were too limited for the Public Staff to be able to determine whether the companies' plans to meet their electricity needs were "least cost." The companies likewise responded to this criticism by agreeing to change their planning processes in several ways.

Testimony by Other Intervenors

Mr. Geoffrey C. Crandall testified on behalf of the North Carolina Consumer Council. He indicated that the current system of utility regulation provides for major incentives for utility investment in demand-side options and other lower cost alternatives which have already been identified in the utilities Least Cost Integrated Resource Plan.

The Conservation Council of North Carolina, et. al., presented a panel on its behalf. The panel consisted of David Nichols, Nancy Hirsh and Meredith Emmett. Dr. Nichols testified primarily concerning a report prepared for the Jocassee Watershed Coalition on alternatives to Coley Creek. Ms. Hirsh presented three issues to the Commission: she urged greater public involvement in the planning process; she supported the utilities choosing a mechanism for determining the effectiveness of demand-side programs other than the rate-impact test; and she was critical of the utilities for developing demand-side programs with only peak impacts. Ms. Emmett proposed two specific pilot projects: more efficient lighting in existing commercial and industrial facilities and a tree planting program to provide shading to reduce air conditioning load. She acknowledged the existing efficient lighting programs of the utilities, but proposed giving financial incentives to customers who retrofit existing conventional lighting fixtures with energy efficient lighting fixtures.

The Conservation Council of North Carolina and the Solar Energy Association presented a second panel consisting of Mike Nicklas and Earl Kelly. Mr. Kelly is Director of Government Affairs for the American Wind Energy Association. He presented testimony in support of the feasibility of wind energy, and he recommended a pilot project to determine the feasibility of widespread commercialization of wind energy in North Carolina.

Mr. Nicklas is an architect and past chairman of the North Carolina Solar Association and currently Chairman of the American Solar Energy Society. He testified that the cost of societal externalities, such as environmental costs, can be quantified and should be included in the least cost planning process. He proposed several methods of calculating the societal cost of coal and nuclear power. He acknowledged on cross-examination that some environmental

costs are already reflected in supply-side options to the extent that the cost of complying with environmental regulations is reflected in the cost of generating plants. He also supported solar energy as a viable resource option.

The Sierra Club and the Jocassee Watershed Coalition presented the testimony of William R. Thomas. Mr. Thomas called for less energy production from fossil or nuclear fuels in order to place less burden on the environment. Pursuant to an agreement among counsel, witness Thomas' testimony and exhibits were admitted for the limited purpose of providing information on what other state public utility commissions were doing in the area of LCIRP.

Discussion

The following discussion is based on the testimony and exhibits herein as well as the most current reports to the Commission by the utilities and the information contained in the records and files of the Commission.

RELIABILITY

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

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

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

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

VACAR consists of Carolina Power & Light, Duke and Vepco in addition to four other utilities serving portions of Virginia, North Carolina and South Carolina. Nantahala is a part of the TVA subregion.

The 1989 Reliability Assessment report by NERC projects that SERC will have adequate capacity margins and projects no reliability problems during the 1989-1998 period if the currently planned generating capacity additions and major transmission line additions are completed as scheduled. The assessment

also points out that non-utility generators (NUGs), such as cogenerators and small power producers, currently represent approximately 3.1% of the total generating capacity in the SERC region, and that they will represent more than 17% of the planned capacity additions during the next 10 years. Load management programs are expected to be available in sufficient quantity by 1998 to reduce summer peak demand by more than 20%.

The 1989 Reliability Assessment indicates that the bulk electric transmission network 10 years from now will not be significantly different from the present day. The transmission systems are basically in place for most of the new capacity that is planned in the SERC region. The assessment also indicates that there is sufficient transmission line capacity at present to permit adequate emergency transfers of electric power between the VACAR systems, between VACAR and the other subregions within SERC, and also between SERC and other regional councils during the 1989-1998 period.

PEAK LOAD GROWTH

The actual systemwide peak loads for CP&L, Duke, and Vepco during the past 19 years include the following:

| | CP&L | Duke | Vepco |
|---|---|---|---|
| 1970 summer peak | 3484 MW | 6284 MW | 4852 MW |
| 1970/71 winter peak | 3400 | 6399 | 4422 |
| 1975 summer peak | 5060 | 8420 | 7133 |
| 1975/76 winter peak | 4968 | 8598 | 6301 |
| 1980 summer peak | 6139 | 10364 | 8484 |
| 1980/81 winter peak | 6402 | 10530 | 8451 |
| 1985 summer peak | 6873 | 11204 | 9819 |
| 1985/86 winter peak | 7763 | 12586 | 9836 |
| 1989 summer peak | 8325 | 13611 | 11945 |
| 1989/90 winter peak | 8206 | 13126 | 12697 |

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

| | CP&L | Duke | Vepco |
|---|---|---|---|
| Summer Peak: | | | |
| 1970 - 1975 | 7.7% | 6.0% | 8.0% |
| 1975 - 1980 | 3.9% | 4.2% | 3.5% |
| 1980 - 1985 | 2.3% | 1.6% | 3.0% |
| 1985 - 1989 | 4.9% | 5.0% | 5.0% |
| Winter Peak: | | | |
| 1970/71 - 1975/76 | 7.9% | 6.1% | 7.3% |
| 1975/76 - 1980/81 | 5.2% | 4.1% | 6.0% |
| 1980/81 - 1985/86 | 3.9% | 3.6% | 3.1% |
| 1985/86 - 1989/90 | 1.4% | 1.1% | 6.6% |

The above rates of growth in peak loads seem to indicate that the longer term rates of growth in both summer and winter peak loads are continuing to decline, although the short term rates of growth have increased over the past four years, particularly for the summer peaks. The rate of growth in winter

peaks for Vepco reflects the more northerly location of its Virginia service area, and is more representative of its Virginia service area than of its North Carolina service area.

LOAD FORECASTS

The May 1989 Electricity Supply and Demand report by NERC contains the most current forecasts of 10-year electric demand growth by the various electric reliability councils. The annual rates of growth in electric loads over the 1989-1998 period forecast by the various electric reliability councils are as follows:

| | VACAR | SERC | NERC |
|---|---|---|---|
| Summer Peak | 2.3% | 2.6% | 2.0% |
| Winter Peak | 2.4% | 2.6% | 2.1% |
| Annual Usage | 2.3% | 2.6% | 2.0% |

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

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

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

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

While the proceedings in this State are unlikely to achieve agreement by all parties regarding the methodology and assumptions used to develop a given forecast, they do provide a forum for the exchange of ideas and an opportunity for all parties to contribute to the development of a forecast.

The table below illustrates the systemwide annual rates of growth in energy and peak loads which are currently anticipated by CP&L, Duke and Vepco.

| | CP&L (1989-2003) | Duke (1988-2002) | Vepco (1989-2003) |
|---|---|---|---|
| Summer Peak | 2.0% | 2.6% | 2.5% |
| Winter Peak | NA | 2.5% | 2.7% |
| Energy | 2.2% | 2.5% | 2.9% |

By way of contrast, the following table illustrates the rates of growth in energy and peak loads calculated by the Public Staff.

| | CP&L (1990-2004) | Duke (1990-2002) | Vepco (1990-2003) |
|---|---|---|---|
| Summer Peak | 2.0% | 2.3% | 2.4% |
| Winter Peak | NA | 2.6% | 2.7% |
| Energy | 2.1% | 2.6% | 2.6% |

The range of forecasts resulting from the variety of data used and the different assumptions made requires that flexibility be included in planning generating capacity expansion, and that planning be based on the expectation that actual electric loads in the future could fall anywhere within a range or band of forecasted values. The Commission concludes from the above forecasts and from the highest and lowest case forecasts that the average annual rates of growth in energy and peak loads during 1989-2003 will probably fall in the following ranges:

| | CP&L (1989-2003) | Duke (1989-2003) | N.C. Power (1989-2003) |
|---|---|---|---|
| Summer Peak | 2.0%-2.1% | 2.3%-2.6% | 2.4%-2.5% |
| Winter Peak | NA | 2.5%-2.6% | 2.5%-2.7% |
| Energy | 2.1%-2.2% | 2.5%-2.6% | 2.6%-2.9% |

The forecasted ranges of growth adopted by the Commission in previous formal proceedings are listed below for comparison:

| | Docket E-100,Sub 50 (8-18-86) | Docket E-100,Sub 46 (12-1-83) | Docket E-100,Sub 40 (4-20-82) | Docket E-100,Sub 35 (5-20-80) |
|---|---|---|---|---|
| CP&L | 2.3% - 2.9% | 1.9% - 3.4% | 3.4% - 4.1% | 4.4% - 5.2% |
| Duke | 2.2 - 2.8 | 1.4 - 3.5 | 4.2 - 4.5 | 4.6 - 5.4 |
| Vepco | 1.5 - 2.3 | 1.9 - 3.0 | 2.1 - 3.8 | 4.0 - 5.0 |

The current load forecasts adopted by the Commission are based in large part on the premise that conservation, load management and emerging alternative

energy resources represent permanent changes in the approach of society toward the use of energy. However, uncertainties concerning the timing and predictability of the various demand reduction techniques under consideration make it necessary to allow for a great deal of flexibility in the planning for generation capacity expansion to match the forecasts.

## GENERATION MIX

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

Currently, the generation mix of each utility reflects the following installed generating capacities (based on summer ratings listed in the 1990 SERC report, "Coordinated Bulk Power Supply Program"):

| | CP&L | | Duke | | Vepco | |
|---|---|---|---|---|---|---|
| | MW | % | MW | % | MW | % |
| Fossil steam | 5285 | 53 | 6735 | 42 | 6073 | 50 |
| Nuclear steam | 3105 | 31 | 7054 | 44 | 3392 | 28 |
| Hydroelectric | 218 | 2 | 1647 | 10 | 1592 | 13 |
| Combustion turbines | 1046 | 10 | 599 | 4 | 727 | 6 |
| Non-utility capacity | 364 | 4 | 45 | 0 | 374 | 3 |

The actual generation mix for each utility reflects the capacities shown above, plus outside purchases and sales, and the operating efficiencies achieved by utilizing each source of power as close to optimum as possible within the limitations created by plant outages, etc. For example, the actual generation mixes for 1989 (based on monthly fuel reports to the Commission ) were as follows:

| | CP&L | | Duke | | Vepco | |
|---|---|---|---|---|---|---|
| | GWH | % | GWH | % | GWH | % |
| Fossil | 24,482 | 61 | 26,202 | 36 | 32,239 | 52 |
| Nuclear | 14,333 | 36 | 47,773 | 66 | 13,081 | 21 |
| Hydroelectric (Net) | 978 | 2 | 1,520 | 2 | 2,825 | 5 |
| Non-utility Purchases | 222 | 1 | 549 | 1 | 2,994 | 5 |
| Other Purchases & Sales | 140 | 0 | (3,474) | (5) | 10,794 | 17 |

The purchases and sales above exclude buyback transactions associated with jointly owned plants. The percent of MWH generation from nuclear units typically exceeds the percent of MW generating capacity represented by such units, reflecting the use of nuclear units for base-load generation. On the other hand, combustion turbines (CTs) contribute an insignificant amount of the fossil MWH generation although they do represent a significant percentage of

the MW generating capacity available to the companies, reflecting the use of CTs primarily for peak-load generation and standby capacity.

## RESERVE MARGINS

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

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

The Commission has found in previous years that minimum reserve margins of approximately 20% should be utilized for planning purposes in North Carolina. The Commission continues to be of the opinion that a minimum reserve margin of approximately 20% (equivalent to a capacity margin of 16.7%) is consistent with the responsibilities of the North Carolina utilities within the framework of SERC and NERC, and it will provide an adequate and reasonable level of reserve generating capacity for service in the State.

## CAPACITY ADDITIONS

Based on the 1990 SERC report, "Coordinated Bulk Power Supply Programs" and on the LCIRP filed herein, Carolina Power and Light currently has 9654 MW of installed generating capacity (excluding non-utility capacity). The Company proposes to purchase more than 800 MW of new capacity from cogenerators, small power producers and others during 1990-2003, including a 400 MW purchase from Duke Power and a 250 MW purchase from AEP. CP&L also proposes to add more than 2700 MW of new installed capacity, including 1500 MW of combustion turbines, during that period.

Duke Power currently has 16,035 MW of installed generating capacity (excluding non-utility capacity). During 1990-93, the Company proposes to return to service more than 900 MW of installed generating units which are currently removed from service for rehabilitation. Duke proposes to add more than 1000 MW of new installed capacity at its Bad Creek hydroelectric plant in 1992-93, and it proposes to add more than 2400 MW of new combustion turbines during 1994-99.

Virginia Electric & Power currently has 11,784 MW of installed generating capacity (excluding non-utility capacity). Vepco proposes to add more than 400

MW of new installed capacity at its Chesterfield plant in 1990-92, plus more than 700 MW of other fossil fueled capacity by 1994. The Company proposes to purchase more than 3000 MW of new capacity from cogenerators, small power producers and others during 1990-2003 by means of an aggressive bidding program.

The least cost integrated resource plans filed by each company project that the combination of capacity additions, new purchases, and DSM load reductions during 1990-2003 will result in reserve margins of 20.3% to 24.2% for CP&L, 17.8% to 25.0% for Duke, and 18.6% to 25.5% for Vepco. The Commission concludes that for purposes of this proceeding, the least cost integrated resource plans filed by CP&L, Duke, and North Carolina Power should provide adequate and reasonable reserve capacity during the 1990-2003 period, given the adopted load forecasts and demand-side programs.

## NANTAHALA

Nantahala projects that it will continue to be a winter peaking system, and that its winter peak will grow at an annual rate of 3.7% per year. For example, Nantahala currently projects the following power requirements:

| Winter Peak | Forecasted Loads | Hydro-Generation | Outside Purchases |
|---|---|---|---|
| 1989-90 | 210 MW | 89 MW | 121 MW |
| 1994-95 | 252 MW | 89 MW | 163 MW |
| 1999-00 | 303 MW | 89 MW | 214 MW |
| 2003-04 | 350 MW | 89 MW | 261 MW |

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

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

On August 29, 1988, the Commission authorized Duke Power Company to acquire all of the common stock interest in Nantahala from Aluminum Company of America in Docket No. E-7, Sub 427. Duke proposes to construct a new interconnection between its own system and Nantahala and to provide supplemental and backup power to Nantahala in the future. Duke will supply Nantahala with power under a 20-year agreement beginning in 1991 or as soon as the tranmission systems of the two utilities can be interconnected.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The Public Staff requested in this proceeding that the NCEMC file a least cost plan in the next least cost proceeding. The Public Staff contends that G.S. 62-2(3a) envisions least cost planning as a statewide concept; that G.S. 62-110.1 prohibits a utility or any other person from beginning construction of a generating facility without first obtaining a certificate of public convenience and necessity from the Utilities Commission; and that NCEMC serves such a large number of electric customers that its participation in future least cost proceedings will assist the Commission in developing a least cost plan for all of North Carolina.

Blue Ridge Environmental Defense League (BREDL) filed a petition for leave to intervene in these proceedings for the limited purpose of filing a statement in support of the Public Staff's proposal that the least cost planning rules apply to NCEMC. The statement by BREDL cites a significant program by NCEMC to add new generating capacity to its systems, and voices concern that demand-side alternatives to the planned new generation units have not been adequately considered.

NCEMC has recently filed three applications with the Commission for certificates of public convenieince and necessity to construct three peak load generating facilities. Docket Nos. EC-67; EC-67, Sub 1; and EC-67, Sub 2. Two of these certificates have been issued. In Docket No. EC-67, Sub 1, the Public Staff filed a motion with the Commission for a ruling that the least cost rules apply to EMCs. The Public Staff contended that G.S. 62-2(3a) and G.S. 62-110.1(c), which underpin the Commission's least cost rules, seek "the least cost mix of generation and demand-reduction which is achievable" and intend "to achieve maximum efficiencies for the benefit of the people of North Carolina"; that G.S. 62-110.1(b) expressly provides that electric membership cooperatives (EMCs) operating within this State are "public utilities" for purposes of G.S. 62-110.1, which makes them subject to the certificate requirement for the construction of any facility for the generation of electricity; that G.S. 62-110(c) by its express terms requires the Commission to consider its analysis of the need for expansion of electric generating capacity in acting upon any petition by any utility; that in the past the Commission has not considered the EMCs' load in its analysis of the long-range needs for expansion of generating facilities because the EMCs had not engaged in the construction of generating facilities, but rather bought their requirements at wholesale; and that this change in operation by the EMCs necessarily brings them squarely into the G.S. 62-110.1(c) analysis and the least cost planning process. The Commission deferred ruling on the motion in Docket No. EC-67, Sub 1, to the present docket.

The Commission agrees with the Public Staff and is of the opinion that the significant generating capacity planned by the NCEMC makes it necessary that the Commission's Least Cost Integrated Resource Planning rules be applicable to NCEMC to at least some degree. The Commission is further of the opinion that the appropriate forum to implement this decision and to decide exactly what requirements shall be imposed upon NCEMC in this context is a rulemaking proceeding which will be opened by the Commission in the near future.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The Public Staff consultants recommended that the Commission should consider and adopt methods that reward utilities for effective implementation of their least cost integrated resource plans. CP&L agreed that the Commission should encourage utilities to request recovery of costs associated with the implementation of LCIRP and suggested several options, including (1) deferral and amortization of costs including a return until fully amortized; (2) deferral and amortization of cost, not including a return between rate cases but with the deferred account includable in rate base when rate cases are filed; (3) providing an estimate of expenses in rates; (4) providing estimated costs in rates, which will be trued-up in subsequent rate cases with interest (return); and (5) recovering costs on a current basis through a tariff rider.

When responding to questions asked by the Commission regarding this issue, all intervenor witnesses and public witnesses indicated their desire that utilities be rewarded for implementation of their least cost integrated resource plans. The desire for such action arises from the perceived need to make the utility indifferent between selection of a demand-side option and a supply-side option or, in effect, to create a level playing field. The initial investment costs of most options, other than construction of a large generating unit, usually are not sufficient to initiate a rate case. As a result, the costs of carrying the investment until a rate case are lost to the utility and must therefore be borne by the stockholders. Furthermore, expenses associated with implementation of these options may never be recovered unless they occur in the 12-month test period in a rate case application.

The Commission believes this to be an issue on which there is a general consensus by all parties that procedures must be developed to encourage positive least cost integrated resource planning accomplishments. In the interest of moving forward with implementation of least cost integrated resource planning in North Carolina, the Commission finds that it is appropriate for the utilities to initiate deferral accounting procedures for the purpose of accumulating and deferring costs associated with implementation of Commission approved least cost integrated resource plans, including a return at each utility's last approved overall rate of return. The Commission concludes that each utility should be required to file its proposed plan for recovery of these costs with its next short-term action plan in this docket. The companies' filings should address the kinds of costs that they are proposing to accumulate and defer for future inclusion in rate case proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

NCEMC witness J. Burton Solomon testified that CP&L's refusal to provide CP&L's real-time system demand signal to NCEMC was detrimental to the effectiveness of NCEMC's load management activities. Solomon testified that CP&L had refused to make it available to NCEMC for use in administering its load management program. Solomon testified that CP&L's LCIRP should not be approved without requiring CP&L's full cooperation in providing NCEMC the information necessary to put its load management program on an equal footing with that of CP&L. On cross-examination, CP&L established that it had been negotiating with NCEMC with respect to providing its real-time system demand signal. It was further established that NCEMC would probably activate such

signal during non-peak months as well as peak months and in fact would probably activate its load control program every month of the year. Further, it was established that to the extent that NCEMC was able to use CP&L's real-time system demand signal and to activate its load control program, NCEMC could reduce its loads on CP&L and alter the allocation of costs between the retail and wholesale jurisdictions. CP&L established that its retail customers receive a credit of $2.00 per kW for CP&L's water heater control program and that the demand rate paid by NCEMC to CP&L under FERC-approved rates is approximately $16.17 per kW. This would indicate that for every kW that NECMC was able to reduce in terms of its contributions to CP&L's system peak, NCEMC would receive a benefit of $16.17 per month versus the $2.00 per month benefit received by CP&L's retail customers. The Commission believes the $2.00 per month credit allowed retail customers is consistent with the reduction in cost of service. However, the $16.17 per month credit would allow wholesale customers a credit greater than the value of the kW savings and would add to the cost of service for other customers.

Based on the foregoing, the Commission is of the opinion that it should not order CP&L to provide its real-time system demand signal to the NCEMC. There is a strong possibility of revenue requirements inconsistent with cost reductions being shifted from wholesale customers to retail customers were such a signal to be provided by CP&L without any corresponding change in NCEMC's rate design, thereby increasing the cost of electricity to CP&L's retail customers. CP&L and NCEMC have been negotiating with respect to CP&L's providing its real-time system demand signal, and the question of whether the signal should be provided is an issue that can be raised by the NCEMC at the FERC.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

CIGFUR-II witness Nicholas Phillips, Jr., raised several issues with regard to resource options in this proceeding. These issues included: (a) interruptible rates; (b) cogeneration rates; and (c) the question of whether purchase capacity cost should be included in an automatic-type fuel adjustment mechanism. Witness Phillips recommended, among other things, that the Commission require CP&L to incorporate in its resource plan an industrial curtailable rate with a higher discount than CP&L currently has on file; that CP&L be required to submit a cost benefit analysis of additional cogeneration capacity comparing the cost of an appropriate coal-fired unit versus the cost of CP&L's planned capacity purchases and planned capacity addition; and that the Commission deny any pass-through of purchase capacity cost in a fuel adjustment clause or any similar automatic adjustment clause.

CP&L established on cross-examination that its current industrial curtailable rate had been proposed by the Company and addressed by the Commission in the 1988 general rate case, Docket No. E-2, Sub 537. CP&L further established that its cogeneration rates were approved by the Commission in the Commission's most recent avoided cost proceeding pursuant to the provisions of PURPA. The Commission would also note that the concern of CIGFUR-II with respect to the passing-through of capacity purchase costs in an automatic fuel proceeding is not warranted since North Carolina General Statute 62-133.2 does not permit the pass-through of nonfuel-related costs to ratepayers. To the extent that a utility is incurring nonfuel-related costs

with respect to any purchase it makes from another utility, the utility is required to seek recovery of those expenditures during a general rate case.

Given the fact that each utility's curtailable rate was established by the Commission as a result of full evidentiary hearings in general rate cases and the fact that each utility's cogeneration rates were established by the Commission pursuant to Commission Order in the Commission's most recent biennial proceeding pursuant to PURPA, the Commission does not believe that this is the proper forum to address these matters. This hearing is not designed to be in the nature of a rate case or fuel proceeding, and the Commission declines in this proceeding to establish any specific rate or level of rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Docket No. E-2, Sub 457, was established in 1982 to consider dual fuel rates proposed by CP&L and by Vepco. Dual fuel rates are electric rates applicable to residential customers having electric heat pumps with alternative fuel backup systems to supply supplemental heat. Electric heat pumps normally utilize electric resistance strip heaters for supplemental heat when outside temperatures drop to a predetermined level. By utilizing an alternative supplemental heat source for the heat pumps and thus eliminating electric resistance strip heating, electric utilities hope to reduce peak winter demand on their systems. The cost savings associated with such reduced peak demand would then be passed on to the dual fuel customer in the form of lower rates per kWh.

On March 2, 1984, following extensive hearings and oral argument, the Commission issued its Final Order Establishing Dual Fuel Test Program and Ruling on Exceptions and Motions in Docket No. E-2, Sub 457. Among other things, the March 2, 1984, Final Order (and the Order Amending Final Order issued March 22, 1984) required: (1) that the dual fuel tariffs proposed by CP&L and Vepco be approved subject to certain limitations; (2) that a test be initiated to study the impact of dual fuel rates and appropriate rate levels; and (3) that the results of the studies be reported to the Commission not later than May 1986.

In May 1986, reports were filed by CP&L and Vepco regarding the results of their test programs. CP&L reported that it was unable to recruit enough customers to its dual fuel rate for an adequate sample size, so the Company was authorized by the Commission to extend its test program through the 1987-88 heating season and to include the Asheville service area in the program.

On April 7, 1989, in Docket No. E-100, Sub 58, CP&L filed testimony and exhibits regarding various demand-side resource programs under consideration, including dual fuel heating systems. The testimony and exhibits cited the Company's findings on dual fuel systems, and recommended withdrawal of the Company's dual fuel tariff.

On July 18, 1989, Public Service Company of North Carolina filed a motion in Docket No. E-2, Sub 457, to close the docket without further filings by the parties and to allow CP&L to withdraw its dual fuel tariff. CP&L responded that it had no objection to closing the docket, but contended that the status of its dual fuel tariff should be the subject of inquiry in the current least

cost hearings in Docket No. E-100, Sub 58, and that no action should be taken regarding said tariff in Docket No. E-2, Sub 457.

On November 30, 1989, the Commission issued its Final Order in Docket No. E-2, Sub 457, specifying in part "that no further action shall be taken regarding the dual fuel tariff of CP&L in" Docket No. E-2, Sub 457.

In its LCIRP filing in Docket No. E-100, Sub 58, CP&L cited findings that the target market for the existing dual fuel control rider is small; that only a third of those who have installed dual fuel systems indicate any interest in the rider; and only 14 customers are actually taking service under the rider. CP&L recommends the withdrawal of Dual Fuel Rider 60C. No one opposed the recommendation in Docket No. E-2, Sub 457, or in Docket No. E-100, Sub 58.

The Commission is of the opinion that the Company should be authorized to withdraw its existing dual fuel rider.

IT IS, THEREFORE, ORDERED as follows:

1. That the findings and conclusions of this Order are hereby adopted as the Commission's current analysis and plan for the expansion of facilities to meet the future requirements for electricity in North Carolina pursuant to G.S. 62-110.1(c).

2. That the stipulations entered into by CP&L, Duke, North Carolina Power, and Nantahala in this proceeding are hereby approved as proposed by the parties. Copies of the stipulations by CP&L, Duke, and North Carolina Power are attached to this Order as Appendices A, B, and C, respectively. The stipulation by Nantahala is contained in this Order in the discussion of Finding of Fact No. 4.

3. That Nantahala shall proceed with its least cost integrated resource planning in accordance with the stipulations approved herein pending the rulemaking proceeding referred to herein.

4. That CP&L, Duke, North Carolina Power, and Nantahala shall file progress reports with the Commission at six-month intervals as discussed herein, and that each report shall contain appropriate details showing the progress on implementation of each utility's response to this Order and to the stipulations approved herein.

5. That each utility shall file proposed plans for timely recovery of costs associated with implementation of the least cost integrated resource plans approved by the Commission, and that such proposed plans shall be filed with the next short-term action plans filed herein.

6. That NCEMC shall be required to participate in future least cost integrated resource planning proceedings in the manner to be determined in the rulemaking proceeding referred to herein.

7. That CP&L is hereby authorized to withdraw its experimental dual fuel rider from service.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of May 1990.

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

For Appendix A and Public Staff Consultants' Recommendations See Official Copy of Order in Chief Clerk's Office.

DOCKET NO. E-100, SUB 58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Analysis and Investigation of Least<br>Cost Integrated Resource Planning<br>in North Carolina - 1989/1990 | ) | ORDER OF<br>CLARIFICATION |

BY THE COMMISSION: On May 17, 1990, the Commission issued an Order Adopting Least Cost Integrated Resource Plans in the above-captioned matter. On June 1, 1990, the Public Staff filed a Motion for Clarification in the proceeding in which it raised several issues regarding the Order of May 17, 1990. On June 13, 1990, the Attorney General filed a Motion For Clarification And For Oral Argument If Necessary in which it supported the motion by the Public Staff. Responses to the motions for clarification were filed by Carolina Power & Light (CP&L), Duke Power (Duke) and by N.C. Power on June 18-20, 1990, in which they generally contended that no clarification is needed. On June 25, 1990, the Public Staff filed Reply Comments to the responses by CP&L, Duke and N.C. Power in which it further explained its desire for clarifications. A brief discussion of the issues raised by the Public Staff follows.

1. The Public Staff contended that the table of growth rates on page 30 of the Order of May 17, 1990, which is described as "calculated by the Public Staff," gives the impression that the table represents the Public Staff's forecast when in fact it does not. The Public Staff suggested that the relevant language on page 30 be revised in order to describe the table of growth rates more fully. The companies responded that the tables on page 30 should not be changed. The Public Staff replied that it only wants to add clarifying language, not change the tables.

The Commission is of the opinion that the applicable table on page 30 of the May 17, 1990, Order should more accurately be described as "provided in the Public Staff's proposed order." It appears that the numbers contained therein were taken from the companies' filings for the period beginning 1990. The Public Staff numbers include the DSM savings claimed by the companies because the companies' filings include the effects of those numbers in such a manner that the Public Staff could not identify them and back them out of the forecasts.

2. The Public Staff contended that the Order of May 17, 1990, is unclear as to what Least Cost Integrated Resource Plans (LCIRPs) are being adopted for the companies. The Public Staff suggested that language be added to the Order to make clear that the analysis and plans contained in the Order were solely for purposes of meeting the requirements of G.S. § 62-110.1(c) and do not indicate adoption of any company's specific plan.

The Public Staff also contended that the Order of May 17, 1990, lacks sufficient details if such Order was intended to adopt specific company plans. However, it indicated that it preferred that the Commission not adopt the specific details described in its motion if it is made clear that the LCIRPs were adopted for purposes of this proceeding only.

The Public Staff also contended that the Order should make clear that the Commission adopted growth rates on page 30 of the Order do not constitute acceptance of the savings from DSM program as claimed by the companies. However, it indicated that it does not propose any clarifying language on this point if it is made clear that the LCIRPs were adopted for purposes of this proceeding only.

The companies responded that the Order does not need clarifying and that Finding of Fact No. 7 is very clear that the companies' LCIRPs are reasonable for purposes of these proceedings.

The Commission notes that Finding of Fact No. 7 finds the companies' LCIRPs to be reasonable "for purposes of this proceeding" and that Ordering Paragraph No. 1 adopts the findings and conclusions of the Order as the Commission's current plan pursuant to G.S. § 62-110.1(c). The Commission is of the opinion that its adoption of LCIRPs in the Order of May 17, 1990, was for the purposes of said proceeding pursuant to G.S. § 62-110.1(c) and was not intended as a substitute for certification proceedings pursuant to G.S. § 62-110 or 62-110.1(a).

3. The Public Staff contended that Finding of Fact No. 11 and Ordering Paragraph No. 5 of the Order of May 17, 1990, are unclear as to what is meant by recovery of costs associated with LCIRP programs. It contended that any cost recovery mechanisms were intended to focus on demand-side programs only, not supply-side programs.

The companies responded that the order does not need clarifying on this point. They contended that evidence in the record supports the need for incentives for both demand-side and supply-side options (such as wind, solar, cogeneration, etc.). They also pointed out that Stipulation G.3. recommends incentives for effective implementation of "LCIRP plans".

The Commission notes that the issue of demand-side versus supply-side cost recovery mechanisms was not specifically addressed in any of the proposed orders filed by the parties. Finding of Fact No. 11 refers to cost recovery for "LCIRP programs," and Ordering Paragraph No. 5 and Stipulation G.3. both refer to cost recovery for "LCIRP plans." The Commission's original intent was to decide upon any cost recovery plans after such plans are filed in response to the Order, and the Commission will take no position on this issue until such time as specific plans for cost recovery are filed.

The Public Staff also contended that the Order of May 17, 1990, is unclear as to whether the Commission intends to allow a cost recovery mechanism only after approval of a company's plan, or to allow cost recovery immediately based upon a plan to be approved later.

The Commission's intent was to decide upon any cost recovery plans after such plans are filed, and it does not intend for any such cost recovery plans to take effect prior to approval.

IT IS, THEREFORE, ORDERED as follows:

1. That the table of growth rates on page 30 of the Commission Order dated May 17, 1990, described as "calculated by the Public Staff" should more accurately be described as hereinabove provided;

2. That adoption of the Least Cost Integrated Resource Plans in the Order of May 17, 1990, was for the purposes of said proceeding pursuant to G.S. § 62-110.1(c) and was not intended as a substitute for certification proceedings pursuant to G.S. § 62-110 or G.S. § 62-110.1(a); and

3. That any issues regarding cost recovery plans filed by the companies in response to Ordering Paragraph No. 5 of the Order dated May 17, 1990, will be decided after such cost recovery plans are filed.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of July 1990.

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

DOCKET NO. E-100, SUB 60

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Rulemaking Proceeding to Revise Commission Rules R8-56 through R8-61 as to Nantahala Power and Light Company | ) | ORDER ADOPTING REVISED RULE |

BY THE COMMISSION: On July 17, 1990, the Commission issued its Order Proposing Revised Rule in this docket proposing to revise Commission Rule R8-56(b) with respect to the application of least cost integrated resource planning rules to Nantahala Power and Light Company. The Order provided for the filing of comments and further provided that the Commission would proceed as it deems appropriate following the receipt of comments. No comments have been filed.

The Commission finds good cause to revise Commission Rule R8-56(b), as proposed, to read as follows:

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

Company, d/b/a North Carolina Power. Nantahala Power and Light Company shall file such integrated resource planning information and data as ordered by the Commission.

Until ordered otherwise, Nantahala shall file such integrated resource planning information and data as set forth in the Commission's Order of May 17, 1990, in Docket No. E-100, Sub 58.

IT IS, THEREFORE, ORDERED that Commission Rule R8-56(b) should be, and hereby is, revised as hereinabove provided.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of September 1990.

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

DOCKET NO. G-100, SUB 56

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>New Federal Safety Standards as Codified in Title 49 of the Code of Federal Regulations (CFR), Part 198 | ) ORDER ADOPTING<br>) FEDERAL SAFETY<br>) STANDARDS REGARDING<br>) STATE ADOPTION OF<br>) ONE CALL DAMAGE<br>) PREVENTION PROGRAM<br>) AND AMENDING RULE<br>) 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 198 entitled "Grants for State Pipeline Safety Programs; State Adoption of One Call Damage Prevention Program". Part 198 requires each state to adopt or seek to adopt a one call damage prevention program as a condition to receiving a full grant-in-aid for the states' pipeline safety compliance program. The final rule implements Section 303(a) of the Pipeline Safety Reauthorization Act of 1988 (Reauthorization Act) (Pub. L.100-561; October 31, 1988), which directs the Secretary of Transportation to require each state to adopt a one call damage prevention program for the establishment, operation and enforcement of one call notification systems. The intended effect of these regulations is to reduce the incidence of excavation damage to gas and hazardous liquid pipeline and other underground facilities.

49 CFR Part 198 became effective September 20, 1990.

In North Carolina, there already exists a statewide one call system called the Underground Locating Company (ULOCO), which has been operating since 1977. All natural gas operators under the jurisdiction of the North Carolina Utilities Commission are participating members of ULOCO. In addition, the 1985 North Carolina General Assembly passed a law under G.S. 87-100 entitled "Underground Damage Prevention Act" which became effective January 1, 1986.

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 198 requiring State Adoption of One Cell Damage Prevention Programs. To that end, Commission Rule R6-39 is hereby amended by adding a new subsection (e) as follows:

(e) The Federal Safety Standards pertaining to Grants for State Pipeline Safety Programs; State Adoption of One Call Damage Prevention Program as adopted in 49 CFR, Part 198, and as was in effect on September 20, 1990, and all subsequent amendments thereto, are adopted and shall be applicable to all natural gas 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. George Tenley, Jr., 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 6th day of December 1990.

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

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Investigation to Consider Whether Competitive<br>Intrastate Offerings of Long-Distance Telephone<br>Service Should be Allowed in North Carolina and<br>What Rules and Regulations Should be Applicable<br>to Such Competition if Authorized | )<br>)<br>)<br>)<br>) | ORDER REVISING CAPPED RATE PLAN AND DENYING REQUEST FOR PHASE II PROCEEDING |

BY THE COMMISSION: On January 16, 1990, AT&T Communications of the Southern States, Inc. (AT&T), filed a petition in this docket whereby the Commission was requested to review and modify its mechanisms for regulating intrastate interLATA interexchange carriers (IXCs) in North Carolina. AT&T asserts that competitive developments in the interLATA segment of the long-distance telecommunications marketplace have rendered the prevailing regulatory system obsolete and that revisions to the Commission's rules and procedures are necessary:

(1) To equalize the treatment of all interLATA competitors; and

(2) To provide relief, on an industry-wide basis, from traditional regulatory mechanisms and techniques that have become unsuitable for today's competitive interLATA marketplace.

AT&T proposes that the Commission consider its petition in two phases. In Phase I, AT&T recommends that the Commission return to a policy of treating all interLATA market participants equally and restore regulatory policies at parity for all carriers. In support of its position, AT&T cites the following passage from page 5 of the Order previously entered in this docket by the Commission on August 25, 1987:

> "The Commission further concludes that elimination of the capped rate pricing scheme is not justified at this time for AT&T. A policy of treating market participants equally has steadfastly been maintained in the past, and the Commission is reluctantly altering its policy in this regard at this time. Since AT&T is the only long-distance carrier providing originating interLATA long-distance service to all portions of the State and the only provider of certain types of telecommunications services in the State, the Commission believes full pricing flexibility for AT&T is not in the public interest at this time. This matter will be monitored on an on-going basis by the Commission with a goal of establishing regulatory policies at parity for all carriers as soon as reasonably possible."

In Phase I, AT&T specifically recommends revising the ceiling rate plan to treat all interLATA IXCs, including AT&T, equally. AT&T further asserts that the presence of statewide competition, and particularly the reach of that competition to all categories of interLATA services, suggests a further step which the Commission should take to facilitate innovation and to benefit customers in the public interest. Specifically, with respect to new service offerings, AT&T asserts that the Commission should allow tariffs to go into effect on 14 days' notice (instead of the present 30-day period) and treat such

tariffs as presumptively valid. "Presumptively valid" treatment means that the tariffs of all IXCs should be allowed to go into effect without suspension. Any objection or issues with respect to the tariffs should be handled under the complaint procedures, but such procedures should not delay the effectiveness of the tariffs.

For Phase II, AT&T proposes a thorough reexamination of the regulatory mechanisms applicable to interexchange carriers in the interLATA marketplace. AT&T asserts that under any reasoned contemporary assessment, traditional public utility measures are unwarranted and inappropriate for the IXC industry. Accordingly, AT&T proposes that the Commission in Phase II adopt an explicit policy of forebearance from traditional rate base/rate of return regulation and endorse a tariff methodology designed to allow IXC rates to go into effect promptly and under a presumption of lawfulness. In Phase II, the broader questions concerning more flexible regulatory measures and policies for the industry can be explored and hearings conducted as necessary to provide a basis for that comprehensive review.

In support of its request for a Phase II proceeding, AT&T asserts that no interLATA carrier enjoys a monopoly franchise of any kind, de jure or de facto; that the IXCs in North Carolina are well-established and substantial entities; and that IXCs today bear scant resemblance to traditional public utilities as fiscal entities. AT&T asserts that it is now in the public interest for the Commission to place greater reliance on competitive forces, and to espouse a more flexible system of regulation for interexchange carriers in North Carolina. To this end, AT&T recommends that the Commission:

1. Forebear from applying rate base/rate return regulation to interLATA carriers and suspend related vestigial requirements for the filing and approval of depreciation rates along with any special requirements with respect to accounting or financial reporting (e.g., the Uniform System of Accounts or Form M).

2. Allow IXC tariffs to go into effect promptly and under a presumption of lawfulness. Specifically, all IXC tariffs should be permitted to become effective on no more than 14 days' notice. The Commission should allow such tariffs to go into effect automatically at the end of the notice period. Any protest, objection or recommendation by any interested party (e.g., a customer, another carrier or the Public Staff) should be treated as a complaint and handled in accordance with G.S. 62-73, but only after the tariff in question has gone into effect. Consistent with the state of competition in the interLATA marketplace, AT&T asserts that IXC tariffs should be presumed to be lawful, subject to rebuttal by a complaining party.

In addition, tariff requirements for IXCs should be simplified; specifically:

Cost support requirements for IXC tariffs should be eliminated, as is the case with new services today.

The Commission should allow alternative and more flexible formats for tariffs. For example, IXCs should be permitted to file generally-applicable terms and conditions for all services, and they

should be permitted to submit price lists showing the rates for their services, subject again to change on 14 days' notice.

On February 15, 1990, the Commission entered an Order in this docket soliciting initial and reply comments from all interested parties regarding AT&T's petition.

## INITIAL COMMENTS

### LEXINGTON TELEPHONE COMPANY

On February 9, 1990, Lexington Telephone Company filed comments in support of AT&T's position. Lexington asserts that it completed its conversion to equal access for all of its customers on August 27, 1988; that the Company's subscribers have available a choice of four certificated interLATA carriers and one reseller from whom to secure competitive long-distance services; and that competition among IXCs has had positive results for subscribers, such as declining rates for interLATA long-distance service and increasing choices among carriers. According to Lexington, equalizing rules and procedures for all IXCs will insure equitable competition with positive benefits for consumers of interLATA long-distance services.

### STAR TELEPHONE MEMBERSHIP CORPORATION

On February 15, 1990, the Star Telephone Membership Corporation (Star TMC) filed comments supporting AT&T's petition. Star TMC asserts that the current environment places AT&T in a precarious situation; that the other major IXCs have had time to become firmly implanted in their new arenas; and that the other IXCs should now be prepared to market their wares based on services and rates provided on a more equitable basis. Star TMC states that, "If the market is to be competitive then it should be just that."

### ELLERBE TELEPHONE COMPANY

On February 23, 1990, Ellerbe Telephone Company filed the following comments in support of AT&T's petition:

> "InterLATA competition is now a way of life in North Carolina and the results have been positive for our customers. All that remains is to make the interLATA marketplace truly competitive for all who wish to participate with uniform rules and procedures governing those participants."

### CENTRAL TELEPHONE COMPANY OF NORTH CAROLINA

On March 27, 1990, Central Telephone Company of North Carolina (Central) filed the following comments in support of AT&T's petition:

> "Central has been an aggressive implementer of equal access in North Carolina and at year-end 1988 was 96.2% equal access and as of July 1989 was 100% equal access. Thus, the opportunity now exists for all of Central's customers to access IXCs other than AT&T. In these serving areas there is a minimum of four (4) IXCs to choose from and either five (5) or six (6) in most areas. Additionally,

Central's serving areas have numerous resellers providing service and giving customers additional alternatives. Statewide Central areas are now served by in excess of fifteen (15) other carriers. These carriers provide the customers with alternatives beyond the equal access providers. Indeed, the opportunity for IXCs, other than AT&T, to enter and exit markets and offer or withdraw services selectively is in itself evidence that a functional competitive marketplace does exist.

"Central believes that the Commission should take this opportunity, and others which may come before it, to take a positive and proactive direction regarding alternatives to traditional rate base regulation. In the competitive environment of interexchange carriers the marketplace provides the most effective regulation available. If there are conditions which the Commission deems necessary to control, there are other alternatives available. With regard to the current regulatory environment for local exchange carriers, the circumstances and timing are right for consideration of an alternative incentive regulation plan. Just as customers of the interexchange carriers benefit from industry changes which have occurred, customers of local service can benefit from incentives for local exchange carriers to introduce new services, and reduce costs while controlling service prices."

## CITIZENS TELEPHONE COMPANY

On March 28, 1990, Citizens Telephone Company filed comments in support of AT&T's petition, especially Phase I. Citizens believes that all carriers should be governed equally if true competition is to exist.

## CONCORD TELEPHONE COMPANY

On March 29, 1990, Concord Telephone Company filed comments stating that the rapidly changing nature of the telecommunications industry may affect the state of competition among IXCs and that, as a result, Concord does not oppose an investigation into the issues raised by AT&T in its petition.

## CAROLINA UTILITY CUSTOMERS ASSOCIATION, INC.

On March 29, 1990, the Carolina Utility Customers Association, Inc. (CUCA), filed a response in opposition to AT&T's petition. CUCA takes the position that "it is too soon to weaken and/or end regulatory control of AT&T and the interLATA services it provides." According to CUCA:

". . . Granted, in a truly competitive marketplace, regulation can be reduced or eliminated. Portions of North Carolina may presently have a truly competitive environment for interLATA services. However, most areas of North Carolina do not currently have sufficient alternative carriers in place and providing service to justify reducing regulatory control over AT&T. Competing carriers need more time to expand and develop their service offerings throughout North Carolina before regulation of AT&T should be relaxed."

CUCA submits that AT&T is the only certified long-distance carrier providing originating interLATA long-distance service to all portions of North Carolina. Some areas of North Carolina are less profitable to serve than others. AT&T is now required to serve these less profitable areas under its certificate. If regulation is relaxed, pursuant to AT&T's proposal, what impact will this have on some high-cost areas in terms of their rate levels and the desire of alternative carriers to serve? CUCA supports a requirement that all certified long-distance carriers be required, in a reasonable time frame, to serve each and every LATA in the State. CUCA also opposes AT&T's proposal to reduce the financial reporting now required by the Commission. CUCA asserts that reducing the financial reporting requirements on AT&T, at this time, would make it more difficult for the Commission to keep track of the Company's activities and could be harmful to the development of a truly competitive telecommunications industry. While CUCA opposes the changes now requested by AT&T, it does not oppose the goals and objectives advocated by AT&T in the long run. The proposed changes are simply premature at this point in time.

## GTE SOUTH

On March 30, 1990, GTE South filed comments in support of AT&T's petition stating that a "level playing field" should be established for all participants in a competitive market. GTE supports the contention that AT&T should not be subject to separate regulatory treatment under the ceiling rate plan on the theory that the existence of competition mitigates against a different regulatory treatment for AT&T vis-a-vis the other interLATA IXCs. GTE South also concurs with AT&T's suggestion that the Commission adopt a flexible regulatory policy. Given the nature of competition and technology in the telecommunications area, GTE believes that the public interest will be well served by such an approach.

GTE South does not support AT&T's request for a 14-day tariff review for implementation of new service offerings. GTE South believes that this may be an inadequate period to provide meaningful comment on new tariff proposals offered by AT&T.

## CONTEL OF NORTH CAROLINA, INC.

On April 2, 1990, Contel of North Carolina, Inc. (Contel), filed comments supporting AT&T's petition to equalize the regulatory treatment of all interLATA competitors. Contel asserts that if the Commission wishes to promote interLATA competition, it should subject all participants in the market to the same rules and regulations as described in AT&T's Phase I request to review the ceiling rate plan.

Contel agrees with the concept of a competitive interLATA toll market, and supports the efforts AT&T is making to allow all competitors in that market to be treated equally. "Equal treatment" includes not only equivalent ability to interconnect with toll users (equal access), but also identical regulatory oversight for companies which offer the same service.

## RANDOLPH TELEPHONE COMPANY

On April 2, 1990, the Randolph Telephone Company filed comments in support of AT&T's petition. Randolph plans to convert to equal access within six months and feels that its subscribers should have a choice of the carrier to provide their long distance interLATA calls. According to Randolph, this is what fair competition is all about.

## US SPRINT COMMUNICATIONS COMPANY

On April 2, 1990, US Sprint Communications Company Limited Partnership (US Sprint) filed comments in response to AT&T's petition stating that all of the issues raised by AT&T are of sufficient importance that they warrant extensive analysis, consideration and review through the hearing process. US Sprint recommends that the Commission schedule hearings, during which all interested parties can express their positions in greater detail on the issues. US Sprint asserts that the issues before the Commission in this proceeding are of substantial importance so as to merit active participation by all interested parties through the hearing process. In the interest of due process and developing a full record, the Commission and other parties should have the opportunity to question and cross-examine AT&T's witnesses and observe AT&T's responses, while also hearing other parties' positions in person on these important issues.

US Sprint further asserts that AT&T as the petitioner should bear the burden of proof in this proceeding under G.S. 62-75 and that AT&T's attempt to shift that burden to its competitors should be denied. US Sprint also takes the position that AT&T should be required to continue to carry the burden of proving that its services and rates are just and reasonable, rather than shifting that burden to AT&T's customers and competitors through AT&T's proposed presumption of reasonableness. US Sprint asserts that AT&T's petition effectively eliminates regulatory oversight of AT&T's pricing practices. According to US Sprint, careful consideration of AT&T's tariff changes is necessary for a full record and to ensure that the changes are not anticompetitive and are in the public interest. Given the potential for contested issues with respect to AT&T's tariffs, it is inappropriate to reduce regulatory monitoring of AT&T's prices or allow AT&T's price changes to automatically go into effect without a full opportunity for advance regulatory scrutiny. Moreover, AT&T's proposed automatic tariff approval process would stifle tariff challenges by the Commission and competitors due to costly litigation and potential customer disruption.

## ATTORNEY GENERAL

On April 2, 1990, the Attorney General filed comments stating that the following issues remain unanswered by AT&T's petition:

(1) While the number of competitors may be known, the extent and vigor of that competition is unknown. Monopolies exist even where there is more than one provider.

(2) North Carolina is a state with a relatively unurbanized population. How will AT&T's proposal affect rural areas where AT&T is the only viable originating interLATA facilities-based carrier?

(3) How will the Commission and the Public Staff be able to assess the viability of competition and the effects of AT&T's proposal if AT&T cuts back its financial reporting requirements?

The Attorney General recommends that the Commission schedule a public hearing prior to making any changes in the manner in which interLATA IXCs are regulated.

## MCI TELECOMMUNICATIONS, INC.

On April 2, 1990, MCI Telecommunications, Inc. (MCI), filed comments stating that it does not oppose AT&T's request that tariff notice requirements be uniformly applied to all IXCs. MCI does disagree with AT&T's request that AT&T be allowed to establish rates on 14 days' notice. MCI contends that a 30-day notice requirement for all interexchange carriers would be more appropriate. This 30-day notice requirement should apply to all four categories of tariff changes:

(1) Tariff rate decreases
(2) Tariff rate increases
(3) Administrative changes to tariffs
(4) New service offerings

According to MCI, AT&T is still the dominant IXC in North Carolina and the price-leader. When AT&T reduces a rate for one of its tariffed service offerings, the entire industry follows suit with similar rate reductions. When MCI files a rate reduction, the rest of the industry does not necessarily respond in kind.

In light of AT&T's dominant position in the market and its position as the price-leader, MCI asserts that it is in the best interest of the entire industry to retain a 30-day notice requirement for all AT&T tariff changes. This 30-day period enables other IXCs to evaluate fully AT&T's tariff changes, calculate what their responses to the tariff changes will be, and make appropriate tariff filings prior to AT&T's effective date. A shorter notice period of 14 days would benefit only AT&T. On the other hand, a 30-day notice requirement applied equally to all IXCs would benefit the entire industry.

MCI does not oppose AT&T's request for elimination of the requirement of cost support for proposed AT&T rate changes above ceiling rates. MCI states that whether the requirement of cost support for AT&T is beneficial and should be continued is an issue to be determined by the Commission.

Likewise, MCI does not oppose AT&T's request for presumptively valid tariffs, as long as a 30-day notice requirement is applied to all tariff filings. According to MCI, the 30-day notice requirement affords the industry time to evaluate AT&T's tariff changes and to determine whether the filing of a complaint is appropriate.

MCI does not agree with AT&T that a thorough reexamination of the regulatory mechanisms applicable to IXCs is necessary at this time. If the Commission determines that a reexamination is appropriate, however, MCI recommends that a full hearing schedule be developed to allow all parties to contribute to the record. MCI has no comment on AT&T's specific Phase II proposal, nor does MCI sponsor an alternative proposal at this time. MCI states that if the Commission determines that a reexamination of traditional regulatory mechanisms is appropriate, there may be alternative forms of regulation more suitable to the present structure of the industry.

Since AT&T is still the dominant carrier in the interexchange market, MCI asserts that any change in the regulatory mechanisms applicable to AT&T should ensure that sufficient safeguards exist to prevent AT&T from abusing its dominant position. Such safeguards should include prevention of cross-subsidies by AT&T from one product to another, prevention of AT&T's tying tariffed services to each other or to non-tariffed services or products, and prevention of AT&T's using predatory pricing in any given market.

## SOUTHERNNET, INC., d/b/a TELECOM*USA

On April 3, 1990, SouthernNet, Inc., d/b/a Telecom*USA, filed comments in opposition to AT&T's petition. Telecom*USA asserts that while much of the discussion regarding AT&T's position of market dominance has centered around the relationship between AT&T and its rivals, the party most directly affected by the results of this proceeding will be the North Carolina consumer. If AT&T is prematurely deregulated, it is consumers who will be forced to bear the burden of monopolistic pricing and retarded market innovation and growth. According to Telecom*USA, North Carolina has begun to see benefits from the mild degree of competition and rivalry which has developed thus far. The future benefits of a strongly competitive long-distance market cannot be underestimated. In order to reach this very desirable goal, the Commission must exercise patience and foresight through the continued prudent regulation of AT&T and its infant rivals. Telecom*USA states that the important and delicate decision to deregulate AT&T cannot be made based upon the evidence before the Commission at this time. While the best national data available clearly indicates that any further deregulation of AT&T would be premature, a decision to deregulate based upon North Carolina's market conditions must only be made after careful consideration of objectively obtained data and extensive expert testimony.

As a consequence, Telecom*USA asserts that the Commission should deny AT&T's petition to deregulate in its entirety. In the alternative, the Commission should institute a formal proceeding in this matter and base its decision upon a fully-developed record containing an objective investigation of the long-distance market conditions in the State of North Carolina. Telcom*USA believes that the record developed in such an investigation will geographically demonstrate that any further deregulation of AT&T's North Carolina operations is contrary to the public interest.

## NORTH STATE TELEPHONE COMPANY

On April 3, 1990, North State Telephone Company filed comments in support of AT&T's petition. North State indicates that it has completed its conversion to equal access in all of its exchanges and that seven certified interLATA

carriers are currently competing for the provision of services to the Company's subscribers. North State recommends that the Commission favorably consider adopting the changes requested by AT&T in its petition.

## PUBLIC STAFF

On April 17, 1990, the Public Staff filed a response in opposition to AT&T's petition. The Public Staff asserts that although changes have occurred in the interLATA marketplace since then, the facts show that AT&T still maintains market power and is the price-setter in that market. Therefore, the Public Staff believes that the Commission's present rules for regulating interLATA IXCs do not need revising at this time and that AT&T's petition should be denied.

Although AT&T complains that the current rules treat it substantially differently from other IXCs, the Public Staff states that the market share data shows that AT&T is substantially different from other IXCs in North Carolina. For example, while there are a total of 13 competitive IXCs including AT&T (Military Communications Center and Econowatts, both shown on Exhibit A of AT&T's petition, are no longer certified), AT&T's share of the total revenues reported by the IXCs is in excess of 70%. According to the Public Staff, AT&T has also two and one-half times the market share of all its competitors combined and over nine times the market share of its nearest competitor.

Despite AT&T's claims that interLATA competition has flourished in the past five years, the Public Staff takes the position that effective competition in North Carolina has not yet been achieved. AT&T remains the price-setter in the interLATA market and most of the reductions in interLATA toll rates have been the result of actions other than competition. The Public Staff asserts that of the 24.53% total revenue reductions during the period from January 1, 1984, through January 15, 1990, almost two-thirds have been the result of actions other than competition. According to the Public Staff, AT&T is the price-settter in the interLATA market both when rates are reduced and when rates are increased. Because of AT&T's role as price-setter, limiting AT&T's rate increases to its capped rates also effectively limits the rates of the other IXCs. Thus, continuing to apply the Commission's current capped rate rules to AT&T permits the Commission to retain control over what all IXCs charge.

The Public Staff believes that the Commission's current rules for regulating interLATA IXCs should continue to be followed since effective competition has not been achieved in the interLATA market as evidenced by AT&T's having a greater than 70% share of the market and being the price-setter. AT&T's unique position in the long-distance arena justifies the continuation of rate base regulation as well as the current accounting, depreciation and reporting requirements. The Public Staff believes that following the current rules is necessary and reasonable to ensure that long-distance service is regulated in accordance with the public interest.

## ATLANTIC TELEPHONE MEMBERSHIP CORPORATION

On April 19, 1990, the Atlantic Telephone Membership Corporation filed the following comments in support of AT&T's petition:

"Atlantic Telephone Membership Corporation is a co-op serving 19,849 access lines in southeastern North Carolina. All our central offices have been converted to digital but we do not yet have equal access.

"We have reviewed AT&T's petition for flexible regulation in North Carolina and would like to express our support for implementing the provisions of the petition as filed.

"We support the phased approach and believe Phase One should be implemented as soon as possible."

## REPLY COMMENTS

## CAROLINA TELEPHONE LONG DISTANCE, INC.

On April 26, 1990, Carolina Telephone Long Distance, Inc. (CTLD), filed reply comments stating that after review of the initial comments filed in this docket, CTLD has become increasingly concerned that, if AT&T is granted all of the relief sought in its petition, AT&T could choose to deaverage its rates on a geographic basis. Of course, AT&T could then charge different rates in various areas of the state. Should AT&T be allowed to geographically deaverage its rates, AT&T could effectively price its services to target specific competitors who do not originate traffic statewide. CTLD is such a competitor. It is CTLD's position that it would not be wise at this time for the Commission to permit the geographic deaveraging of rates, and CTLD opposes granting of AT&T's petition to the extent such action could be construed to permit geographic deaveraging toll rates. CTLD hopes and expects that the Commission will order hearings at which CTLD's concerns can be more thoroughly addressed.

## US SPRINT

On April 30, 1990. US Sprint filed reply comments renewing its previous request for a hearing to address the unresolved and disputed issues in this matter. US Sprint also requested the Commission to refrain from modifying existing regulatory oversight without benefit of a full record.

## AT&T

AT&T filed its reply comments on May 1, 1990. AT&T asserts that it has demonstrated that telephone subscribers in North Carolina now have abundant choices of carriers and services to meet their telecommunications needs. The pivotal fact is that approximately 85% of all customer lines in the state today are served by equal access--a figure slated to rise to 88% by the end of the year. An additional 10% of subscriber lines presently are served by at least one additional long-distance carrier other than AT&T through Feature Group A or B access. Thus, the overwhelming majority of North Carolina customers can freely choose an interLATA carrier. Moreover, AT&T asserts that its competitors offer a complete range of services, including WATS-like, 800-like,

and private line as well as custom and specialized services in addition to message telecommunications service (MTS).

AT&T asserts that the "market dominance" contentions of the Public Staff and SouthernNet are faulty since open entry into the interLATA telephone market is now a reality in North Carolina. AT&T takes the position that market share data is particularly misleading because it is the product of past regulation and the bygone days of de jure barriers to entry. According to AT&T, a high market share can evidence just the opposite of what the Public Staff and SouthernNet claim for it, when it is realized that AT&T serves customers throughout the state, in high cost and rural areas as well as the financially more attractive regions where its rivals have chosen to concentrate. Large numbers of low volume customers or revenues from areas of unusually high costs are hardly evidence of market strength much less "dominance."

AT&T states that if one is to look at market share data at all, the relevant data is that which indicates what is happending today in the marketplace in terms of growth and trends in share. As the FCC recently reported:[1]

> "For the period since mid-1984, industry traffic volume has grown at an annual rate of 13%. AT&T's traffic has grown at a rate slower than the industry average and the remaining traffic, handled by all other carriers, has continued to grow at a rapid rate--averaging more than 30% per year.
>
> "The result of an AT&T growth rate slower than the industry average has been a declining market share for AT&T. . . AT&T's share of the overall market for interstate switched minutes has declined from over 80% in late 1984 to 64% in the fourth quarter of 1989."

AT&T asserts that although this is interstate data, it is at least more meaningful and more indicative of the dynamics of the marketplace than the revenue data presented by the Public Staff and the older information cited by SouthernNet. It shows, above all, that customer choice in the long-distance market is viable and effective.

AT&T asserts that the positions taken by SouthernNet and the Public Staff reflect misguided philosophies of regulation in a competitive environment. The Commission's proper role instead should be to facilitate entry by new competitors, as ordained by the General Assembly in enacting G.S. 62-110(b) and as it has done, thus affording customers ample and viable choices. It should then let customers decide which rivals will succeed and which will fail. The theory that some competitors should be dragged down, either to ensure that others succeed (as advanced by SouthernNet) or to "control" others (as suggested by the Public Staff), is unsound and should be rejected by the Commission.

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1 Long Distance Market Shares: Fourth Quarter, 1989, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, March 20, 1990, (emphasis supplied by AT&T).

AT&T asserts that in approving its proposals for Phase I, the Commission would join a growing number of state regulatory bodies which have concluded that it is time for equal and flexible regulation of IXCs. Of the 42 multiple-LATA states, all but a handful have adopted some form of full or partial pricing flexibility, and while initially most states applied "two-tier" regulation to AT&T and the IXCs, nearly half of the states now apply the same rules to AT&T as to its competitors. AT&T states that these reforms are directly benefiting customers and that a Federal Trade Commission report has concluded that AT&T's rates are "significantly lower in states that allow pricing flexibility. . ." Experience has confirmed that increased reliance on alternative and more flexible regulatory approaches leads to reduced prices as competition controls the marketplace. This Commission has begun the process of adjusting IXC regulation to conform to the demands of competition with the ceiling rate plan. It is now time to take the next step by applying flexible regulation equally to all IXCs, including AT&T.

AT&T also offers additional commitments designed to meet concerns expressed in the comments offered by other parties:

(1) AT&T will continue to serve all of North Carolina and will not, without prior Commission approval, suspend or withdraw service from any geographic area; and

(2) AT&T will maintain distance-averaged long-distance rates for as long as access charges remain reasonably comparable across the state, and in any event will not depart from distance averaging without prior Commission approval.

AT&T states that it is also prepared to offer a further commitment in order to expedite the completion of Phase I of these proceedings: AT&T will, for a period of one year, adhere to the current rate ceilings for Dial Station (DDD) service in North Carolina. Thus, for basic direct-dialed long-distance service, the existing ceiling rates would remain in effect during this period as a corollary to the other relief sought by AT&T in Phase I. AT&T further states that it does not in the slightest concede the necessity to perpetuate ceiling rates for DDD service; this commitment is offered simply to assist the Commission in concluding Phase I. Any questions with respect to a continuing need for AT&T ceiling rates for DDD service could be addressed promptly in Phase II.

AT&T also reasserts its position that the Commission should permit tariffs for new services to go into effect on 14 days' notice and subject to a presumption of lawfulness. "Presumptively valid" treatment means that the tariff should be permitted to go into effect automatically, and any objection or challenge should be handled as a complaint proceeding after the fact; i.e., after the tariff is in effect. According to AT&T, the logic of this proposal is straightforward: Existing services introduced under the prevailing regulatory system will remain in effect and available as before, and no customer is in any manner compelled to take a new service. Thus, the marketplace will decide if the service is meritorious or not, at no risk to customers--who can only be better off. AT&T asserts that there is no legitimate reason for delaying new services, nor for requiring the carriers bringing them to market to bear the regulatory burden of proof (in addition to that borne in the marketplace).

AT&T states that for complaint proceedings other than investigations instituted by the Commission, G.S. 62-75 expressly allocates the burden of proof to the complainant. Moreover, as a matter of statutory empowerment, AT&T asserts that US Sprint ignores G.S. 62-110(b), which provides that "[n]otwithstanding any other provision of law, the terms, conditions, [and] rates . . . for long distance services offered on a competitive basis" are to be regulated by the Commission "in the public interest." The public interest--here the interest of customers in not having new services delayed by regulatory gamesmanship and having them tested in the marketplace in preference to the hearing room--warrants the treatment proposed by AT&T. Any party with a complaint concerning a new service could proceed under G.S. 62-75; the complaint procedure would provide a regulatory backstop to guard against any truly objectionable tariff filing.

AT&T concludes its reply comments by requesting the Commission to establish an expeditious hearing schedule on Phase II of its petition.

## MCI TELECOMMUNICATIONS CORPORATION

On May 2, 1990, MCI filed reply comments restating its position on the Phase I issues, but opposing AT&T's Phase II request for a full reexamination of regulatory mechanisms applicable to IXCs as being inappropriate and unnecessary at this time. MCI states that any departure from full regulation must be cautious and fully considered. MCI agrees that there is insufficient evidence justifying further deregulation of AT&T, but does not oppose the limited steps of the elimination of ceiling rate constraints, the elimination of cost support for rate changes above ceiling rates, the equalization of tariff notice requirements for all IXCs, and the allowance of presumptively valid tariffs. If the Commission does allow AT&T to have the same notice period for proposed tariffs as other IXCs have, it should be at least 30 days to allow other interested parties time to understand and evaluate the proposed tariffs.

According to MCI, the concerns voiced by the Public Staff, the Attorney General, CUCA, US Sprint and Telecom*USA about the lack of evidence justifying further deregulation of AT&T apply with full force to AT&T's Phase II request for eliminating regulation and adopting a "hands-off" policy. Some of these commentors asked the Commission to hold hearings to develop evidence on the degree of competition and interLATA market conditions in North Carolina. For example, the Attorney General, CUCA and US Sprint urged that there should be extensive analysis, consideration and review through the hearing process directed toward all aspects of the petition before the Commission takes any action on either Phase I or Phase II.

MCI notes that most of the independent telephone companies filed comments favoring interLATA competition and supporting AT&T's petition. Their comments imply that all actions suggested by AT&T's petition will enhance interLATA competition. However, MCI states that in order for interLATA entry to evolve into full competition, the former monopoly carrier must be restricted from any opportunity to wield its inherent market power to the detriment of North Carolina customers and potential competitors. According to MCI, until competition fully develops in North Carolina, Commission action on AT&T's Phase II request for further deregulation is unjustified and premature.

MCI therefore believes that the Commission should deny AT&T's Phase II proposal. The limited data developed through the comments that were submitted show that AT&T is still so dominant, and the competition so far from sufficient vigor, that extensive hearings would be premature and a waste of the Commission's time. However, if the Commission grants the request for hearings, the hearings must be conducted on the record with opportunity for MCI and other interested parties to participate in developing the record and to comment on alternative forms of regulation.

On May 8, 1990, AT&T filed a motion in this docket requesting the Commission to schedule an oral argument to consider its petition.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

By Order entered in this docket on February 22, 1985, the Commission first authorized intrastate interLATA long-distance competition in North Carolina by facilities-based carriers and resellers. The Commission further concluded that the public interest required that all interLATA carriers should be regulated on at least a streamlined basis during the initial phases of intrastate long-distance competition. This was the genesis of the Commission's initial capped or ceiling rate plan which governs tariff filings and rate changes for AT&T and the other IXCs. The capped rate plan has subsequently been revised on two occasions, most recently in September 1987.

The capped rate plan currently specifies the following procedures for rate changes proposed by AT&T. Proposed increases in rates above AT&T's current capped rates will be evaluated on a case-by-case basis to determine whether such matters may be handled as either a complaint proceeding or as a general rate proceeding. AT&T must file proposed tariffs along with a written explanation of its filing, cost support and a proposed customer notice for review by the Commission and the Public Staff. A determination of the procedures for handling any such filing will be made within 14 working days from the date of any such filing. To increase rates up to its current capped rates, AT&T must file a tariff and proposed subscriber notice with the Public Staff at least 14 days prior to the proposed effective date of the change. In addition, the proposed customer notice must be sent to all affected subscribers at least 14 days prior to the effective date of the change. If any proposed notice to customers is found to be inadequate, the implementation date of the rate change will be suspended until such time as customers are adequately notified. This requirement is also applicable for any rate restructure which would result in a combination of rate increases and decreases to AT&T's subscribers not exceeding the Company's capped rates. All decreases in rates may become effective after filing appropriate tariffs with the Public Staff at least 14 days prior to the proposed effective date.

The capped rate plan currently specifies the following procedures for rate changes proposed by the IXCs other than AT&T. To increase rates, the facilities-based carriers and resellers other than AT&T must file tariffs and a proposed subscriber notice or notices with the Public Staff at least 14 days prior to the proposed effective date of the change. In addition, the proposed notice to customers must be sent to the affected subscribers at least 14 days prior to the effective date of the change. If the proposed notice is found to

be inadequate, the implementation date of the rate change will be suspended until such time as customers are adequately notified. This requirement is also applicable for any rate restructure which would result in a combination of increases or decreases to the carrier's subscribers. All decreases in rates may become effective after filing appropriate tariffs with the Public Staff at least 14 days prior to the proposed effective date.

The capped rate plan further provides that all IXCs including AT&T may add new services by filing appropriate tariffs with the Public Staff at least 30 days prior to the effective date of the change.

The Commission has carefully considered AT&T's petition in this docket as well as the comments offered by all of the parties and concludes that good cause exists to adopt certain of the Phase I modifications to the capped rate plan proposed by AT&T. Specifically, the Commission will henceforth allow AT&T, except for its message telephone service (MTS) and voice grade private line rates, to increase or decrease its remaining rates in the same manner and subject to the same terms and conditions as the other IXCs. This change will afford AT&T with significantly more pricing flexibility than it has today and is a step toward further equalization of the regulatory treatment afforded all interLATA long-distance competitors. At the same time, however, the Commission is convinced that AT&T's interLATA MTS and voice-grade private line rates should remain subject to the capped rate plan since AT&T continues to be the only long-distance carrier providing those services to all portions of the state and is still the price-setter as a result of its market power. The interests of residential and small business customers continue to warrant the greater protection afforded by the capped rate plan. The time for full regulatory parity in the interLATA marketplace has still not arrived. The Commission will retain the 14-day notice period now specified in the capped rate plan rather than adopting the 30-day period recommended by MCI. To our knowledge, the 14-day notice requirement has worked well to date and does not need to be changed.

As a matter of clarification, special service arrangements offered by AT&T will continue to be processed and considered under the procedures specified in Section B5.1.C of the Company's North Carolina tariffs and will not be affected by the capped rate plan or this Order. This is also true for special arrangements offered by the other IXCs.

The Commission will also grant that portion of AT&T's petition to amend the capped rate plan to allow tariffs for new service offerings to automatically go into effect after a minimum notice period and to treat such tariffs as presumptively valid. The Commission finds good cause to approve this procedure for all IXCs as a mechanism to stimulate competition, facilitate innovation, and benefit consumers in the public interest by making new services available on an expedited basis. AT&T has proposed that new service offerings be allowed to become effective on only 14 days' notice. The capped rate plan currently provides that the IXCs may add new services by filing appropriate tariffs with the Public Staff at least 30 days prior to the effective date of the change. MCI filed comments in this docket indicating that it does not oppose AT&T's request for presumptively valid tariffs, as long as the 30-day notice requirement is retained. According to MCI, the 30-day notice requirement affords the industry time to evaluate AT&T's tariff changes and to determine whether a complaint should be filed. The Commission agrees with MCI

on this point and will retain the 30-day notice requirement for tariff filings made by IXCs to add new services. Retention of the 30-day notice requirement for new services will also afford the Public Staff with reasonable opportunity to evaluate such tariff filings and to propose, request, and/or negotiate tariff changes with the affected IXC which may be appropriate and in the public interest. The Commission is hopeful that the IXCs will remain flexible and willing to consider any technical tariff changes suggested by the Public Staff in particular, in order to minimize to the maximum extent practicable formal complaint cases.

As a condition to our decision to amend the capped rate plan as set forth above, the Commission will, as a matter of policy, require AT&T to abide by its commitments to (1) continue to serve all of North Carolina and (2) maintain distance-averaged long-distance rates. These policies are important to protect the interests of consumers as competition develops in North Carolina.

The Commission further concludes that good cause exists to deny the Phase II portion of AT&T's petition in its entirety. This action is consistent with the position taken in this docket by the Public Staff, CUCA, and at least two of the IXCs. The Public Staff asserts that AT&T's petition should be denied at this time because AT&T still maintains market power and is the price-setter in the interLATA market in North Carolina. According to the Public Staff, market share data shows that AT&T continues to be substantially different from other IXCs; i.e., AT&T's share of the total intrastate revenues reported by the IXCs is in excess of 70% and AT&T still has 2.5 times the market share of all its competitors combined and over nine times the market share of its nearest competition. Despite AT&T's claims that interLATA competition has flourished in the past five years, the Public Staff asserts that effective competition has not yet been achieved since AT&T continues to be the price-setter in North Carolina and most of the reductions in interLATA toll rates to date have resulted from actions other than competition. According to the Public Staff, AT&T's unique position in the long-distance arena justifies the continuation of rate base regulation as well as the current accounting, depreciation, and reporting requirements. Telecom*USA asserts that if AT&T is prematurely deregulated, consumers will be forced to bear the burden of monopolistic pricing and retarded market innovation and growth. According to Telecom*USA, North Carolina has begun to see benefits from the "mild" degree of competition and rivalry which has developed thus far and the future benefits of a strongly competitive long-distance market cannot be underestimated. In order to reach this very desirable goal, Telecom*USA asserts that the Commission must exercise patience and foresight through the continued prudent regulation of AT&T and its "infant" rivals.

MCI asserts that AT&T is still so dominant, and the level of competition so far from sufficient vigor in North Carolina that hearings on AT&T's Phase II proposal would be premature and a waste of time. MCI urges the Commission to proceed cautiously and asserts that until competition fully develops in North Carolina, AT&T's Phase II request for further deregulation is unjustified and premature. MCI states that in order for interLATA entry to evolve into full competition, AT&T must be restricted from any opportunity to wield its inherent market power to the detriment of consumers and potential competitors. CUCA asserts that most areas of North Carolina do not currently have sufficient alternative carriers in place and providing service to justify reducing regulatory control over AT&T and that competing carriers need more time to

expand and develop their service offerings before regulation of AT&T should be relaxed. CUCA also takes the position that any reduction of the financial reporting requirements expected from AT&T at this time would make it more difficult for the Commission to keep track of the Company's activities and could be harmful to the development of a truly competitive telecommunications industry. The Attorney General, US Sprint, and CTLD also filed comments indicating significant concerns about the possible impact of further deregulation of AT&T.

Beginning with the initial authorization of intrastate long-distance competition in North Carolina in February 1985, the Commission has followed a policy of measured but progressive regulatory changes designed to foster a fully competitive regulatory environment for IXCs. This policy of measured deregulation has served the State well to date. By this Order, the Commission has determined that it is in the public interest to further revise the capped rate plan to authorize a significant portion of the Phase I changes requested by AT&T. This is the third time the Commission has adopted revisions to the capped rate plan since its inception. Other revisions will undoubtedly follow in due course when they are determined to be in the public interest in order to promote our long-range goal of establishing regulatory policies at parity for all IXCs. Simply stated, however, it would be premature to pursue or grant AT&T's request for Phase II relief at this time. The competitive environment is emerging in North Carolina in a manner which is satisfactory and fair to consumers and competitors alike and further progress toward that end should and will continue on a measured and progressive, but not precipitative, basis.

Accordingly, the Commission finds good cause to revise the capped rate plan in conformity with the provisions of this Order. A copy of the revised capped rate plan is attached hereto as Appendix A. AT&T's petition for a Phase II proceeding is denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the capped rate plan be, and the same is hereby, revised as set forth in Appendix A to this Order.

2. That the petition filed by AT&T in this docket on January 16, 1990, and its motion for oral argument be, to the extent not granted herein, denied.

3. That AT&T shall continue to provide statewide originating and terminating interLATA long-distance service in North Carolina and shall not, without prior Commission approval, suspend or withdraw service from any geographic area of the State.

4. That AT&T shall maintain distance-averaged interLATA long-distance rates in North Carolina and shall not depart from distance-averaged rates without prior Commission approval.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of August 1990.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner J. A. Wright dissents.

APPENDIX A

Initial Establishment of Rates, Charges, and Regulations

All new carriers seeking authority to provide long-distance service shall file tariffs with the application for a certificate reflecting the proposed immediate service area, regulations, rates, and charges.

Changes in Rates - Facilities-Based Carriers and Resellers

To increase rates the facilities-based carriers and resellers other than AT&T Communications of the Southern States, Inc. (AT&T), must file tariffs and a proposed subscriber notice or notices with the Public Staff at least 14 days prior to the effective date of the change. In addition, the proposed notice to customers must be sent to the affected subscribers at least 14 days prior to the effective date of the change. If the proposed notice is found to be inadequate, the implementation date of the rate change will be suspended until such time as customers are adequately notified. This requirement is also applicable for any rate restructure which would result in a combination of increases or decreases to the carrier's subscribers. All decreases in rates may become effective after filing appropriate tariffs with the Public Staff at least 14 days prior to the proposed effective date.

Changes in Rates - AT&T

Proposed increases in rates above AT&T's current capped rates for message telephone service (MTS) and voice-grade private lines will be handled as either a complaint proceeding or as a general rate proceeding. AT&T should file proposed tariffs along with a written explanation of its filing, cost support, and a proposed customer notice for review by the Commission and the Public Staff. A determination of the procedures for handling any such filing will be made within 14 working days from the date of such filing.

To increase rates for all services other than MTS and voice-grade private lines and to increase rates up to its current capped rates for MTS and voice-grade private lines, AT&T must file a tariff and proposed subscriber notice with the Public Staff at least 14 days prior to the proposed effective date of the change. In addition, the proposed customer notice must be sent to all affected subscribers at least 14 days prior to the effective date of the change. If any proposed notice to customers is found to be inadequate, the implementation date of the rate change will be suspended until such time as customers are adequately notified. This requirement is also applicable for any rate restructure which would result in a combination of rate increases and decreases to AT&T's subscribers not exceeding the Company's capped rates for MTS and voice-grade private lines.

Decreases in rates for all services offered by AT&T may become effective after filing appropriate tariffs with the Public Staff at least 14 days prior to the proposed effective date.

Discontinuance of Service - All Carriers and Resellers

To discontinue service, the carrier must file appropriate tariffs and a proposed subscriber notice with the Public Staff at least 60 days prior to the

proposed effective date of the change. In addition, the proposed subscriber notice must be sent to the affected subscribers at least 60 days prior to the proposed effective date.

Additions of New Services - All Carriers and Resellers

To add a new service to the carrier's offerings, the carrier must file appropriate tariffs with the Public Staff at least 30 days prior to the effective date of the change. No cost support for new services need be filed. Tariffs for new services will automatically become effective after the minimum notice period unless the carrier consents to a suspension and will be treated as presumptively valid; i.e., any objection or challenge to the tariff will be handled as a complaint proceeding pursuant to G.S. 62-75.

Additions to Service Area

Carriers will be allowed to add new originating service areas on one day's notice to the Commission and the Public Staff by an appropriate tariff filing.

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Investigation to Consider Whether Competitive<br>Intrastate Offerings of Long Distance Telephone<br>Service Should be Allowed in North Carolina and<br>What Rules and Regulations Should be Applicable<br>To Such Competition if Authorized | ) | ORDER DENYING PETITION FOR RECONSIDERATION |

BY THE COMMISSION: On January 16, 1990, AT&T Communications of the Southern States, Inc. (AT&T), filed a petition requesting the Commission to review its regulatory mechanisms applicable to interLATA interexchange carriers (IXCs) in North Carolina in two phases: First, AT&T proposed measures to equalize the treatment accorded competitive IXCs under the Ceiling Rate Plan; and, second, AT&T proposed that the Commission should re-examine the appropriateness of continuing to apply traditional rate base/rate of return regulation to IXCs. AT&T proposed that the Commission adopt an explicit policy of forbearance from traditional rate base/rate of return regulation.

On August 6, 1990, the Commission issued an Order revising the Capped Rate Plan and denying the request for a Phase II proceeding. In denying the Phase II portion, the Commission cited views of several of the parties maintaining that AT&T still possesses significant market power and that consumers would be disadvantaged by premature deregulation.

On September 5, 1990, AT&T filed a petition for reconsideration. In its petition, AT&T argued that the decision to dismiss the Phase II part of its petition was not factually or logically supported. AT&T asserted that the Commission had not made its own findings and reasonings explicit since it cited the views of other parties. AT&T also argued that the Commission had departed,

without explanation, from its previous policy governing parity for IXC regulation in finding that a proceeding on Phase II relief would be premature.

WHEREUPON, the Commission makes the following

CONCLUSIONS

After careful consideration of the filings in this docket, the Commission believes that AT&T's petition for reconsideration should be denied.

First, the Commission believes that its decision is well supported both factually and logically and, in fact, contains an exhaustive discussion of the issues. The Commission specifically stated that it had concluded that good cause existed to deny the Phase II portion of AT&T's petition and cited the concerns and reasoning of various parties in support of this view. AT&T's assertion that the Commission has not disclosed its own findings and reasoning in this matter is curious. The Commission's Order is its own, and it has chosen in effect to incorporate the views of other parties by reference in support of its conclusion rather than to engage in a tedious recapitulation in an already lengthy Order.

Second, the Commission does not believe that it has departed from previous policy regarding the movement toward parity among IXCs. Equal treatment was accorded to AT&T in all areas except MTS and voice-grade private line services by the Commission Order, and this is the third time the Commission has adopted a revision to the Capped Rate Plan. Other revisions will follow in due course when they are determined to be in the public interest. Regardless of the terms used (i.e., "long-range" versus "as soon as reasonably possible"), this Commission is continuing to examine the competitive versus regulated environment in North Carolina and, as stated in the Order, will do so "in a manner which is satisfactory and fair to consumers and competitors alike and further progress toward that end should and will continue on a measured and progressive, but not precipitative, basis."

IT IS, THEREFORE, ORDERED that AT&T's petition for reconsideration dated September 5, 1990, in this docket be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of December 1990.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
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| Issuance of Special Certificates for the Provision of Telephone Service by Means of Customer-Owned Pay Telephones | ) ) ) | ORDER PROMULGATING RULES ON FACSIMILE SERVICE |

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. Based on this and other information received by the Commission, the Commission on June 14, 1989, issued an Order Initiating Rulemaking on COCOT-FAX Services and Promulgating Interim Rule. The interim rule provided that COCOTs to which a facsimile machine is attached must prominently display a number for the end-user to call for repair and the price-per-page to be charged for facsimiles. The June 14, 1989, Order also requested specific comments on 14 questions regarding public facsimile service.

The following entities filed comments concerning this docket: AT&T Communications of the Southern States, Inc. (AT&T), the Attorney General, Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), Central Carolina Communications, Inc. (CCC), CTR Communications, Inc. (CTR), GTE South (GTE), Lexington Telephone Company (Lexington), the Public Staff, and Southern Bell Telephone and Telegraph Company (Southern Bell).

Based upon the filings in this docket and upon the record as a whole, the Commission reaches the following conclusions:

1. The Commission possesses jurisdiction to regulate the provision of facsimile service to the public for compensation. The basis for the Commission's jurisdiction is both general and specific. The general authority derives from the definition of "public utility" as set out in G.S. 62-3(23)a.6. which reads in pertinent part:

> "Public Utility" means a person. . . now or hereafter owning or operating in this State equipment 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.

The nature of facsimile service is that written or printed documents are reduced to electronic form and transmitted over the telephone network for reconstruction in written or printed form on the other end. If this service is offered to the public for compensation, clearly the person offering the service is acting as a public utility.

The more specific authority for Commission jurisdiction can be found in G.S. 62-110(c) which reads in pertinent part:

> (c) The Commission shall be authorized, consistent with the public interest, to adopt procedures for the issuance of special certificates to any person for the limited purpose of offering telephone service to the public by means of coin, coinless, or key-operated pay telephone instruments. . . The Commission shall promulgate rules to implement the service authorized by this section, recognizing the competitive nature of the offerings, and, notwithstanding any other provision of law, the Commission shall determine the extent to which services shall be regulated. . . (Emphasis added).

It is the Commission conclusion that a person offering facsimile service to the public for compensation is offering a type of telephone service which falls under the provisions of G.S. 62-110(c). This conclusion is reinforced when G.S. 62-110(c) is read together with G.S. 62-3(23)a.6. defining public utility. The Commission thus possesses the authority to determine the nature and extent of such regulation.

In the facsimile service context, the question of the extent of regulations and to whom should these regulations apply are of preeminent importance. It is well within the Commission's authority, both generally and specifically, to make rational distinctions taking into account such factors as the following: The configuration of the instruments by which facsimile service is offered (e.g., whether it is facsimile service only or with associated voice capability); the contexts and venues in which facsimile service is offered (e.g., whether in a copy shop as an adjunct to a non-telecommunication business or in an airport or building lobby); the practicality of regulation; and the competitive nature of this particular market.

The Commission recognizes that there has been a "fax explosion" in this country in recent years. What was once an oddity and a luxury has become a business and, for some, even a personal necessity. The decisive factor in the increased distribution of these devices has been their plummeting cost. Most businesses, and not a few individuals, can afford their own machines. There has inevitably also grown up the market niche for facsimile service offered to the public for compensation. The services provided in this market niche are convenient for the traveller or for the person who has only an occasional need to utilize a facsimile service.

As a factual matter, there are two major classifications of facsimile service. There is the voice-facsimile service, in which voice capability is offered along with facsimile service; and there is voiceless-facsimile service, in which the instrument provides only facsimile service. As explored in more detail below, this factual distinction forms an important basis for the Commission's decision to differentiate between levels of regulation.

In conclusion, the Commission possesses ample authority to regulate the provision of facsimile services to the public for compensation. However, the Commission also possesses the authority to make rational distinctions in deciding the precise extent of such regulation. The appropriate extent of such regulation is set out below.

2. The following regulatory framework should apply to the provision of facsimile service to the public for compensation:

a. Providers of voice-facsimile service should be required to obtain a COCOT certificate from the Commission, but providers of voiceless-facsimile service should only be required to obtain a PTAS line from the local exchange company.

As noted above, there are two major classifications of facsimile service: voice-facsimile service, in which voice capability is offered along with the facsimile service, and voiceless-facsimile service, in which the instrument provides only the facsimile service. According to the information received from the parties, there are a limited number of "free-standing" facsimile service devices in North Carolina. For instance, Southern Bell stated that it was aware of only four such machines in its territory, two of which offered voice and two of which were voiceless. Of course, there are numerous establishments which offer facsimile service to the public for compensation, notably, copy centers. It is reasonable to believe that most of the devices in these establishments would not have real or intended voice capability and would therefore be classified as a voiceless-facsimile service.

Given the distinction in the configuration of instrument, the nature of the marketplace, and the practical limitations on the Commission's ability to effectually enforce comprehensive regulation, the Commission concludes that, while all providers of facsimile service to the public for compensation should be required to obtain a PTAS line from the local exchange company (LEC), only providers of voice-facsimile service should be required to obtain a COCOT special certificate.

In so concluding, the Commission is following the recommendation of the Public Staff in its August 28, 1989, comments which stated in pertinent part:

> The Public Staff submits that public facsimile service may be allowed at any location, but, in accordance with G.S. 62-110(c) and tariff provisions approved by the Commission, only via PTAS lines. Provision of public facsimile service would be subject to Commission rules and LEC tariffs for such lines. The Public Staff does not believe that individual certification of these public facsimile providers who do not also provide voice COCOT service is necessary at this time to protect the public interest. (At p. 1)

The rationale for this recommendation is not hard to discern. Voice-facsimile service bears a closer affinity--indeed in its voice portion, an actual identity--with the type of service to which current regulations apply generally in the provision of COCOT service. By contrast, voiceless-facsimile service is distinctive from traditional voice service and, as noted below, the Commission has decided that the facsimile service portion should not be subject to rate regulation. Thus, the rationale to more fully regulate voiceless facsimile is substantially attenuated. Furthermore, to require a COCOT certificate from voiceless-facsimile providers would in practical terms bring under more extensive regulation a multitude of new entities, such as copy shops, which would be difficult to identify, much less to effectually regulate. As the Public Staff notes, the individual certification of voiceless-facsimile

providers does not appear to be necessary at this time to protect the public interest.

At the same time, it is reasonable to require voiceless-facsimile providers to obtain a PTAS line. In response to a specific question on this subject, nearly all parties agreed. Requiring a PTAS line would ensure that the LEC would be adequately compensated and that the charge for the use of the telephone network for facsimile service to the voice-facsimile provider and the voiceless-facsimile provider would be equal. This would also serve to prevent an unfair rate advantage to the voiceless-facsimile provider and, at least on the margin, not discourage the greater availability of voice-telephone service to the public. Since it is in the obvious interest of a LEC to ensure that it receives the income it is due from a PTAS line, as opposed to a B1 line, the Commission anticipates that the LECs themselves will exercise diligence in ensuring that voiceless-facsimile providers comply with the PTAS requirement. If the voiceless-facsimile provider does not so comply, he would be subject to disconnection by the LEC.

b. The rates and charges to end-users for facsimile service should not be regulated. The parties were unanimously agreed that the Commission should not set a maximum rate for facsimile service. The Public Staff encapsulated the reasons for this very well in its August 28, 1989, comments:

> A maximum rate should not be specified by the Commission for facsimile service. Numerous alternative discretionary services are available in the marketplace. In addition, we believe that the public is not accustomed to facsimile service being provided as a regulated utility service and will be cautious about the use of public facsimile services. (At p. 4)

The Commission agrees with this reasoning. The Commission therefore declines to set a maximum rate for facsimile service, nor is it necessary for facsimile service providers to file tariffs with the Commission. Providers of voice-facsimile service should note, however, that while the facsimile portion of their service is not regulated as to rate, the voice portion is subject to all the requirements which apply to COCOTs generally.

c. Notice of rates and charges to end-users should be prominently posted at the facsimile machine. This is, so to speak, the necessary corollary to the Commission's decision not to regulate rates for facsimile service. Such a ~~requirement~~ is clearly necessary if the consumer is to make an informed choice about which facsimile-service provider he wishes to patronize. As with the above policy regarding rate regulation, nearly all parties agreed to the proposition that facsimile-service providers should be required to prominently post rates.

d. Third number, collect, and auto-collect calls should not be permitted for the facsimile portion of the service. The Commission has traditionally restricted COCOTS billing authority to sent-paid calls and calls charged to commercial credit cards. Charges have been limited to the LEC on AT&T rates plus an operator surcharge plus $.25. The Commission has recently in its automated collect calling (ACC) proceeding authorized COCOTS to offer ACC subject to certain restrictions, such as positive response by the called party, and to obtain billing and collection services from a LEC for the ACC service.

The Commission provided that charges for ACC calls could not exceed charges for comparable live operator-assisted calls. The charge for an ACC call is for the call itself, a voice-capable communication, together with ancillary and regulated charges and does not include a charge for an additional or unrelated service. As such, the ACC call is subject to price regulation, and the called party who accepts the call has actual or constructive knowledge concerning what the charges are likely to be.

The called party would not enjoy a similar confidence as to what charges might be in the case of facsimile service billed by collect, auto-collect, or third-party mode, since charges for the facsimile service portion of the call are unregulated. Moreover, the called party has no certain method by which he might obtain that information. In the operator assisted context, for example, the operator would have no way of knowing what the charges would be for that individual facsimile service. In the ACC context, the information would simply be unobtainable.

The Public Staff has recommended against allowing third party and collect calls. In its comments, the Public Staff stated:

> The Public Staff has significant concerns about that prospect. At this time the Public Staff believes that third number and collect facsimile service should not be authorized. (At page 5)

The Commission agrees with the Public Staff on this point.

e. Facsimile service offered outside of guest rooms in hotels and similarly situated establishments is subject to regulation as set out in this Order.

G.S. 62-3(23)(g) reads as follows:

> The term public utility shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.

The Commission construes this provision to mean that telecommunications services provided inside the guest room by hotels, motels, or similarly situated establishments are exempt from regulatory oversight subject to the provisos stated. However, this provision does not exclude from the public utility definition any party, including the hotel or motel, which provides public facsimile service or other telecommunication services outside of the guest room, such as in a lobby or front desk, regardless of whether or not the charges are displayed. The Commission's rationale is that services provided in these areas are available to the public and not just to hotel or motel patrons. Furthermore, the clear subject of G.S. 62-3(23)(g) is telecommunications services within "occupant rooms" where prominent notice of applicable charges is to be displayed. Therefore, provision of public facsimile service by hotels

and motels in their public areas is subject to the same provisions as such service provided by other parties.

3. The LECs should be permitted to provide public facsimile service. The parties were unanimous that LECs should be permitted to provide public facsimile service. The Commission concludes that LECs should be permitted to provide public facsimile service under their certificates of public convenience and necessity granted under G.S. 62-110. The rules of operation should be comparable to those under which COCOT public facsimile are permitted. For example, no collect, third party, or auto-collect would be permitted. LECs desiring to offer public facsimile service should file amended Public Telephone tariffs.

IT IS, THEREFORE, ORDERED as follows:

1. That the rules set out in Appendix A are hereby promulgated, and interim Rule R13-1(1) on the same subject is repealed.

2. That LECs desiring to provide public facsimile service may file amendments to their public telephone tariffs under terms and conditions comparable to the rules promulgated regulating provision of public facsimile service by COCOTS.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of January 1990.

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

APPENDIX A

Rule R13-1(1) is promulgated to read as follows:

(1) The following rules apply to the provision of facsimile service to the public for compensation:

(1) For the purposes of this rule, the following definitions apply:

(a) "Facsimile" refers to the device or process by which information on documents is converted to an electronic format, conveyed over the telephone network, and reconverted into documentary form.

(b) "Voice-facsimile" refers to a device providing facsimile service with associated voice capability so that the end-user may make a conventional voice telephone call.

(c) "Voiceless-facsimile" refers to a device providing facsimile service with no associated voice capability for the end-user to make a conventional voice telephone call.

(2) Persons providing voice-facsimile service or voiceless facsimile service to the public for compensation:

(a) May charge an unregulated rate to end-users for the facsimile portion of the service.

(b) Shall conspicuously display rates and charges for the facsimile portion of the service on the facsimile machine.

(c) Shall not levy a surcharge for a facsimile call charged to a credit card which exceeds the surcharge for a voice call charged to a credit card.

(d) Shall not offer or provide facsimile services on a third number, collect, or automated collect basis.

(3) Persons providing voice-facsimile service to the public for compensation must:

(a) Obtain a special certificate from the Commission for the operation of a customer-owned pay telephone.

(b) As to the voice portion of the device or service, comply with all provisions of the rules applying to voice-only pay telephones, including but not limited to the regulation of rates, notice to end-users, and the requirements regarding the capabilities and standards for such devices.

(4) Persons providing voiceless-facsimile service to the public for compensation must obtain a Public Telephone Access Service line from the local exchange company for the transmission of such facsimile messages but are not required to obtain a special certificate from the Commission.

DOCKET NO. P-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Issuance of Special Certificates for the Provision<br>Of Telephone Service by Means of Customer-Owned<br>Pay Telephones | )<br>)<br>) | ORDER PROMULGATING<br>COCOT RULE<br>RECODIFICATION |

BY THE COMMISSION: On January 25, 1990, the Public Staff filed a proposed recodification of Rule R13 dealing with private pay telephones, also known as COCOTs. On January 31, 1990, the Commission issued an Order requesting comments on recodification of Rule R13. Attached to that Order as an appendix were the rules proposed by the Public Staff. The January 31, 1990, Order also promulgated interim rules on automated collect calling to be effective on the same date as the Southern Bell tariffs were effective.

The following parties submitted comments: North Carolina Payphone Association (NCPA), Southern Bell Telephone and Telegraph Company (Southern Bell), Carolina Telephone and Telegraph Company (Carolina), and the North Carolina Department of Corrections. The Public Staff filed reply comments on

March 15, 1990. AT&T filed reply comments on March 19, 1990. By and large, the parties supported the rewrite while offering certain changes of their own.

After careful consideration of the filings in this docket, the Commission is of the opinion that the Recodification of Rule R13, as proposed by the Public Staff and as modified by the Public Staff's recommendations in its reply comments, should be promulgated to replace the current Rule R13. A copy of the new rules is attached to this Order as Appendix A.

A discussion of the changes proposed by the Public Staff in its reply comments and the associated issues is set out below:

1. Rule R13-8(c). Insert "calling card" after the word "third number." This addition to the facsimile service ("COCOFAX") rules was suggested by Southern Bell and supported by the Public Staff. AT&T disagreed with this addition. It cited language in the Commission's January 12, 1990, Order as meaning that the Commission was primarily concerned for the called party in a collect or third-party context who might not know what facsimile charges he was subject to. The Commission has carefully examined both points of view and found merit in the points made by all the parties. However, on balance, the Commission believes it would be better at this time to exclude calling cards and restrict facsimile service to sent-paid or commercial credit cards. Calling cards are far from immune from fraudulent abuse, and it is not hard to imagine that such abuse may give rise to numerous billing and collection difficulties which Southern Bell, as a provider of such services, might prefer to avoid.

2. Rule R13-5(n). Rewrite first sentence to clarify Commission policy regarding interexchange company (IXC) equal access. This language was suggested by the Public Staff in response to Carolina's comments. Carolina noted that the Commission had, over time, approved various local exchange company (LEC) tariffs allowing Public Telephone Access Service (PTAS) subscribers to purchase certain call-blocking options. Thus, COCOTs can technically circumvent the equal access requirements by purchasing the call-blocking option. The Commission agrees with the Public Staff that the policy should be clarified to reaffirm that COCOT providers who are not also IXCs must arrange their phones for equal access to IXCs on a non-discriminatory basis. This has been long-standing Commission policy. To emphasize this point, the Commission concludes that it should draw specific attention to the equal access provision and should order that a copy of this Order be served on all certificated COCOT providers.

The Commission further notes that the PTAS tariffs need to be revised to ensure that blocking options that conflict with Rule R13-5(n) are not offered to COCOT providers and to accommodate other changes made in Rule R13. In order to expedite the process and ensure uniformity, the Commission believes that Southern Bell should prepare a revision of the PTAS tariffs for review by the Public Staff and Commission, with a view toward other LECs copying or concurring in this tariff. Southern Bell should submit the revised tariff within 30 days of the date of this Order.

3. R13-4(e). Insert words "coin access" before word "charge." This addition was suggested by the NCPA. The Public Staff agreed that this was consistent with the intent of the Rule and did not object. The Commission concurs in the addition.

4. R13-7(b) and (c). Clarification that positive response means unequivocal acceptance. The NCPA's proposed modification to Rule R13-7(c) seemed, in effect, to define the term "positive response" as either positive acceptance or positive refusal. The Public Staff objected to this or any other change carrying the implication that positive refusal could be required. The Commission agrees with the Public Staff that the intent of the rule is that unequivocal acceptance of the call be required. The rule should be so amended as to make this point even more evident.

5. R13-6(b). Modify confinement facility rules limitation on conversation time from 20 minutes to 10 minutes. This change was proposed by the North Carolina Department of Corrections and supported by memoranda from numerous corrections facilities who have considerable familiarity with the problems of providing telephone access to inmates and their own staff limitations. The Public Staff did not object to this change. The Commission believes that this modification is reasonable and should be made.

6. Miscellaneous. In addition to the proposed changes by NCPA noted above, NCPA also made several other proposals for what amount to substantive change. For instance, the NCPA proposed that on-line screening (OLS), where available, should be required and should constitute an absolute defense against unauthorized interexchange 1+ billing to PTAS lines. In addition to noting that OLS is used for 0+, not 1+ calling and that its purpose is not fraud control, AT&T argued that providing an "absolute defense" would shift the responsibility for fraud and uncollectibles from the COCOT to the IXC. The NCPA also suggested that the Commission institute a proceeding to establish "fair compensation" for PTAS providers for allowing access to carriers other than the one designated by the PTAS provider. AT&T replied that the PTAS providers are already being compensated in the form of the $0.25 charge and that no showing has been made that this is inadequate or unfair. For its part, the Public Staff noted that equal access is a long-standing policy imposing no new costs for which additional compensation is necessary. The Public Staff criticized the NCPA proposals as "unnecessary, inconsistent with Commission policy and the intent of the Rules, and contrary to the public interest." The Commission concurs with AT&T and the Public Staff and concludes that NCPA's suggestions should not be adopted.

Forms. On February 2, 1990, the Public Staff filed a set of three forms to be used by COCOTs in the future: An Application Form, a Request for a Name Change or Address Change Form, and a Request for Additional Authority (Automated Collect) Form. The Chairman has already approved the use of the Name Change and Additional Authority forms on an interim basis. The Name or Address Change Form required some modification because the Commission is not authorized to charge a filing fee for such a change. These three forms will henceforth be the official forms to be used by the Commission regarding COCOTs and are attached to this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the Chapter 13 Rules (Rule R13-1 et seq.) as set out in Appendix A be promulgated and the hitherto existing Chapter 13 Rules be repealed as of the date of this Order.

2. That those portions of the Chapter 13 Rules dealing with provision of automated collect calling be promulgated as final rules as of the date of this Order, superseding the interim rules on the same subject promulgated by Ordering Paragraph No. 2 of the January 31, 1990, Order in this docket.

3. That Southern Bell submit a revision of the PTAS tariffs to reflect the changes in Rule R13-1 et seq. to the Public Staff and Commission for review within 30 days of the date of this Order.

4. That a copy of this Order be served on all certificated COCOT providers.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of March 1990.

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

(A Copy of the Application for COCOT Certificates can be found on the Official Copy of this Order in the Chief Clerk's Office.)

## CHAPTER 13
## PROVISION OF TELEPHONE SERVICE BY MEANS OF CUSTOMER-OWNED PAY TELEPHONE INSTRUMENTS

Rule R13-1. Definitions.

(a) Provider, COCOT Provider, or PTAS Subscriber. The subscriber to a Public Telephone Access Service (PTAS) line offering telephone service to the public by means of a coin, coinless, or key-operated PTAS instrument.

(b) Automated Collect Call. A call placed and billed to the called telephone number without the assistance or intervention of a human operator.

(c) Sent-Paid Call. A call paid for at the time and place of origination with cash or commercial credit card.

(d) End User. The person initiating a call from a pay telephone instrument.

(e) Facsimile. The device or process by which information on documents is converted to an electronic format, conveyed over the telephone network, and reconverted into documentary form. A facsimile device which does not incorporate a telephone is a "voiceless-facsimile device."

(f) PTAS Instrument. A coin, coinless, or key-operated telephone or facsimile device, other than a voiceless-facsimile device, capable of originating and receiving voice telephone calls.

Rule R13-2. PTAS Line.

(a) All PTAS instruments and all voiceless facsimile devices operated for compensation must be connected to the telephone network through Public Telephone Access Service lines furnished by the local exchange telephone company. Connection through other facilities or systems is prohibited.

(b) The PTAS subscriber is responsible for abiding by all applicable telephone company tariffs. Failure to do so is grounds for immediate disconnection of service.

Rule R13-3. Certificate.

(a) Every provider, before offering any telephone service other than voiceless-facsimile service, shall obtain a certificate (COCOT certificate) from the Commission. A certificate is not required for provision of voiceless facsimile service.

(b) Application shall be made on a form specified by the Commission.

(c) Every holder of a COCOT certificate wishing to offer automated collect service shall first obtain specific additional authority from the Commission to do so. Application for additional authority shall be made on a form specified by the Commission. Providers making initial application for COCOT certification may request authority to offer automated collect service on the initial application.

(d) Every provider is responsible for ensuring that the mailing address for all local exchange company bills for lines installed pursuant to a COCOT Certificate is the same as the address shown on the certificate. The provider is responsible for requesting a revision of the certificate concurrent with a change of name or address by filing an appropriate application with the Commission.

(e) Copies of the COCOT certificate must be provided to the local exchange telephone company prior to the establishment of service.

Rule R13-4 Required Notice. The following information must be posted at each PTAS instrument:

(a) The appropriate emergency number (911, operator or other).

(b) Clear operating instructions and procedures for handling repair, refunds, and billing disputes.

(c) The current telephone number of the PTAS line and the local address.

(d) The name, address and COCOT Certificate Number of the provider. The name, address and COCOT Certificate Number shown on the instrument must be the same as those shown on the provider's COCOT Certificate.

(e) A prominent display of the coin access charge, if any, which will be imposed for completion of a 0+ or 10xxx-0+ local or long distance call and for an 800 call.

(f) The name of the presubscribed interexchange carrier(s) or, in non-equal access areas, the name of the carrier to which 0+ and 00+ calls will be routed.

Rule R13-5 General Requirements - Service and Equipment.

(a) The provider is responsible for the installation, maintenance and operation of PTAS instruments.

(b) The provider is responsible for payment of a maintenance of service charge as covered in Section 15 of the applicable telephone company tariff. The charge is applicable for each visit by the telephone company to the premises of the provider, when the service difficulty or trouble report results from the use of equipment or facilities provided by the provider.

(c) The provider is responsible for meeting all federal, state and local requirements with respect to provision of customer-provided telephone equipment for use by hearing-impaired and handicapped persons.

(d) The provider may not contract with, or arrange for his PTAS instruments to automatically access, any non-certified carrier for completion of intrastate calls.

(e) The provider may not contract with, or arrange for his PTAS instruments to automatically access, any carrier other than the serving local exchange company to carry local intrastate calls originated from his PTAS instruments.

(f) All PTAS instruments must be registered and connected to the telephone network in compliance with Part 68 of the FCC Rules and Regulations as well as the regulatory and certification requirements of the North Carolina Utilities Commission. Subscribers to Public Telephone Access Service (PTAS) must provide the telephone company the FCC registration number of each instrument to be connected.

(g) All PTAS instruments must be installed in compliance with the current National Electrical Code and National Electrical Safety Code.

(h) All PTAS instruments must be capable of completing local and long-distance calls.

(i) All PTAS instruments must allow access to the "Operator" and completion of 0- local and long distance calls billed to a credit card, a third number, or the called number (collect) at no charge to the end user.

(j) All PTAS instruments must allow completion of 0+ local and long distance calls billed to a credit card, a third number, or the called number (collect).

(k) All PTAS instruments must allow access to 911 Emergency Service, where available, at no charge to the end user.

(l) All PTAS instruments must be arranged or programed to allow access to local and long distance directory assistance at no charge.

(m) All PTAS instruments must allow receipt of incoming calls at no charge.

(n) All PTAS instruments, other than those provided by COCOT providers which are also interexchange carriers, must be arranged or programmed to allow access to all available interexchange carriers on a non-discriminatory basis. In an equal access environment, this requires that the end-user be allowed to access a chosen carrier by dialing 10xxx-0+, 10xxx-0-, or 950-xxxx. Access through 10xxx-1+ or 10xxx-011+ is not required.

(o) Coin-operated PTAS instruments must be equipped to return the coins to the caller in the case of an incomplete call.

(p) Coin-operated PTAS instruments must be equipped to accept nickels, dimes and quarters.

(q) The provider shall at all times maintain a current and complete local telephone directory at each PTAS instrument.

Rule R13-6 Special Rules for service within confinement facilities. Notwithstanding any other rules in this Chapter, PTAS instruments located in the detention areas of local, state or federal confinement facilities:

(a) May, if specifically requested by the administration of the confinement facility, be arranged or programmed to allow outward-only calling;

(b) May, if specifically requested by the administration of the confinement facility, and if the local exchange company and presubscribed interexchange carrier are notified by the provider, be arranged or programmed to terminate calls after 10 minutes of conversation time;

(c) Shall be arranged or programmed to block directory assistance (411) calls, provided that a copy of a current local telephone directory must be available for inmate access;

(d) Shall be arranged or programmed to allow only 0+ collect calls for local, intraLATA toll, and interLATA toll calls and to block all other calls 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 if specifically requested by the administration of the confinement facility, 1+ toll and seven digit local dialing may be permitted if the local exchange company or the telephone instrument can block additional digit dialing after initial call set-up.

Rule R13-7. Automated Collect Capability. PTAS instruments may be arranged or programmed to provide automated collect calling and the provider may bill called parties who agree to pay for calls, provided:

(a) The provider has secured the authority to furnish such service as specified by Rule R13-3(c);

(b) The PTAS instrument is arranged or programmed to require a positive response from the called party indicating willingness to pay for the call before completing the call, and to terminate the call without charge in the absence of a positive response;

(c) Except in the case of a call originated from a confinement facility, if the recipient of an automated collect call does not act to either accept or reject the call, the call must be terminated and a call must be initiated to an operator of certified carrier, or instructions must be provided on how to complete the call using an operator of a certified carrier. In the case of a call originated from a confinement facility, the call must be terminated;

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

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

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

(g) The billing authority granted by this rule may be exercised only in connection with automated collect calls; and

(h) Authorization to employ automated collect 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. See Rule R13-5(i) and (j).

Rule R13-8 Facsimile Service. Providers of facsimile service:

(a) May charge an unregulated rate for the facsimile portion of the service;

(b) Shall conspicuously display rates and charges for the facsimile portion of the service on or near the facsimile device;

(c) Shall not offer or provide facsimile service on a third number, calling card, collect or automated collect basis.

Rule R13-9 Charges. The provider is responsible for insuring that calls originated or terminated at his PTAS line are rated in accordance with the following:

(a) Local Sent-paid. The end user of a PTAS instrument may not be charged more than 25 cents for the carriage and completion of a local sent-paid call.

(b) Intrastate, InterLATA Sent-paid. The end user of a PTAS instrument may not be charged at a rate higher than the AT&T MTS rate applicable to the PTAS provider plus 25 cents for the carriage and completion of an intrastate, interLATA, sent-paid toll call.

(c) Intrastate, IntraLATA Sent-paid. The end user of a PTAS instrument may not be charged at a rate higher than the local exchange company's MTS rate applicable to the PTAS provider plus 25 cents for the carriage and completion of an intrastate, intraLATA, sent-paid toll call.

(d) 0+ Other Than Automated Collect. The end user of a PTAS instrument may not be charged more than 25 cents by the PTAS provider for a 0+ or 10xxx-0+ local or toll call billed to a calling card, to a third number, or to the called party (collect). The tariffed charges of the local exchange company or certificated interexchange carrier handling the call will also apply to these calls. These tariffed charges are billed by or on behalf of the carrier handling the call and are retained by that carrier.

(e) 0+ Automated Collect. The recipient of an automated collect call may not be charged more for the call than would have been charged by the local exchange company for a local or intraLATA collect call or by AT&T Communications for an interLATA collect call.

(f) 0- Calls. All PTAS instruments outside of confinement facilities must allow access to the "Operator" at no charge. The provider may not impose a charge for completion of 0- local and toll calls billed to a calling card, a third number, or the called number (collect).

(g) 800 Calls. The end user of a PTAS instrument may not be charged more than 25 cents for the carriage and completion of an 800 call.

DOCKET NO. P-100, SUB 109

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Tariff Filings by Raleigh/Durham MSA, Fayetteville MSA,)
United TeleSpectrum, and Centel Cellular Company to ) ORDER APPROVING
Establish Rates for Wide Area Call Reception ) WIDE AREA CALLING

HEARD IN: North Carolina Utilities Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on November 28 - 30, 1989

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:

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For: The Using and Consuming Public

For the Public Staff:

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For: The Using and Consuming Public

BY THE COMMISSION: On May 9, 1989, Raleigh-Durham MSA Limited Partnership; Fayetteville MSA Limited Partnership; United TeleSpectrum, Inc.; and Centel Cellular Company of North Carolina (collectively, the Applicants) filed revisions to their tariffs to offer a new service known as "wide area call reception" (WACR) effective August 1, 1989. This new service would allow cellular subscribers to receive calls paced to their regular local cellular numbers while they were located in specific foreign cellular geographic service areas (CGSAs, also referred to as metropolitan statistical areas, or MSAs). On July 19, 1989, the Public Staff filed a motion requesting that the tariffs be suspended. The Public Staff also noted that the Centel Cellular was reselling long distance service rather than passing through the rates of AT&T as required by their tariffs, and that the Applicants proposed to provide long distance service over their own facilities. The Public Staff stated that the proposed

service exceeded the authority granted by the Applicants' certificates of public convenience and necessity and raised substantial generic questions concerning additional certification requirements, application of access charges and compensation.

On July 28, 1989, the Applicants filed a response in opposition to the Public Staff's motion to suspend tariffs requesting that the Commission allow the proposed tariffs to become effective as filed or, in the alternative, schedule a public hearing to consider the proposed tariffs but refrain from ordering any change in the manner in which the Applicants charge customers for long distance calls outside of their respective MSAs.

On July 31, 1989, the Commission issued an Order suspending the tariffs, instituting an investigation, and scheduling a public hearing. By subsequent Orders, the Commission extended the times for intervention and filing of testimony and propounded the following questions:

1. Should cellular companies be allowed to resell long distance service? Should cellular companies be allowed to use their own facilities to provide long distance service?

2. If cellular companies are allowed to resell long distance or use their own facilities for long distance, should they be required to obtain a certificate as an interexchange carrier pursuant to G.S. 62-110(b) and abide by the same regulations as the long distance companies?

3. What rates and charges should the cellular companies be required to pay the LECs when they (a) resell service or (b) use their own facilities to complete intraLATA and interLATA calls?

4. Should the rates and charges in question 3 above be a part of the contract or should they be tariffed?

Petitions to intervene were filed by United States Cellular Corporation of North Carolina; AT&T Communications of the Southern States, Inc.; Carolina Metronet, Inc.; Fayetteville Cellular Telephone Company; Triad Metronet, Inc.; Carolina Telephone and Telegraph Company; Central Telephone Company; Vanguard Cellular Systems, Inc.; Southern Bell Telephone and Telegraph Company; McCaw Cellular Communications, Inc.; GTE South, Inc.; and Metro Mobile CTS of Charlotte, Inc. All the petitions were allowed. The Attorney General filed notice of intervention.

The hearing began on November 28, 1989. Mr. John Campbell of Fayetteville, North Carolina, testified as a public witness sponsored by the Applicants. Thereafter, the following witnesses offered testimony and exhibits:

Charles F. Wright, Executive Vice President of Staff; Gregory J. Ramage, Regional Vice President - North Carolina; Thomas J. Curran, Director-External Affairs; and Edward W. Mullinix, Executive Vice President - Operations, all of Centel Cellular Company, testified as a panel on behalf of the Applicants.

Kurt C. Maass, Assistant Vice President of External Affairs, McCaw Cellular Communications, Inc.; Wesley Howe, Director of Engineering and Operations, Providence Journal Cellular Management Services, Inc.; William S. Arnett, Corporate Vice President for Marketing Operations, United States Cellular Corporation; and John A Bauschka, Vice President of Corporate Development, Vanguard Cellular Systems, Inc., testified as a panel on behalf of other intervening cellular telephone companies.,

Nancy H. Sims, Operations Manager, Southern Bell Telephone and Telegraph Company; William E. Cheek, Director of Toll Revenues and Industry Relations for Carolina Telephone and Telegraph Company; and Edward C. Beauvais, Director - Pricing Policy for GTE Telephone Operations, testified as a penal on behalf of the intervening local exchange companies (LECs).

Millard N. Carpenter III, Utilities Engineer, Communications Division, testified on behalf of the Public Staff.

T. P. Williamson of Emerald Isle, North Carolina, offered rebuttal testimony on behalf of the Applicants.

On January 2, 1990, the Public Staff filed a petition alleging that Centel Cellular Company (Raleigh/Durham MSA) was offering local service between its Raleigh/Durham and Burlington service areas. The petition asked the Commission to allow as a late-filed exhibit the filing of an advertisement published in the 1989-1990 Southern Bell Telephone Director for Raleigh, and to take judicial notice of the tariffs of Centel Cellular Company and of the Order of September 16, 1987, in Docket Nos. P-148, Sub 2, and P-157, Sub 2. The petition also asked that a cease and desist Order be issued to Centel Cellular Company requiring that such service not be offered or provided. The motion of the Public Staff for leave to file a late-filed exhibit is hereby granted and judicial notice taken of the tariffs of Centel Cellular Company and of this Commission's Order of September 16, 1987.

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. Raleigh-Durham MSA Limited Partnership; Centel Cellular Company of North Carolina; and TeleSpectrum, Inc. (formerly United TeleSpectrum, Inc.), are wireline-affiliated, facilities-based cellular telephone companies. By Commission Order of November 30, 1989, Raleigh-Durham MSA Limited Partnership and TeleSpectrum, Inc., were granted permission to operate under the assumed name "Centel Cellular Company."

2. Raleigh-Durham, MSA Limited Partnership is authorized to provide wholesale cellular telephone service within the Raleigh, Durham, Chapel Hill, North Carolina, metropolitan statistical area, and within the Burlington, North Carolina, metropolitan statistical area and to provide wholesale and retail cellular telephone service within the Fayetteville, North Carolina, metropolitan statistical area, replacing Fayetteville MSA Limited Partnership in that area.

3. TeleSpectrum, Inc., is authorized to provide retail cellular telephone service within the Raleigh, Durham, Chapel Hill, North Carolina, metropolitan statistical area, and within the Burlington, North Carolina, metropolitan statistical area and to provide wholesale and retail cellular telephone service within the Jacksonville, North Carolina, metropolitan statistical area and within the Wilmington, North Carolina, metropolitan statistical area.

4. Centel Cellular Company of North Carolina is authorized to provide wholesale and retail cellular telephone service within the Greensboro and Winston-Salem metropolitan statistical area.

5. The service proposed by the Applicants, known as Wide Area Call Reception (WACR), would allow a subscriber purchasing the service to be reached in the Raleigh-Durham, Greensboro, Burlington, and Fayetteville MSAs by dialing only that subscriber's cellular telephone number. The service eliminates the need for a person calling a cellular subscriber outside of his home service area (a "roamer") to dial an access number for the MSA in which the subscriber is located prior to dialing his mobile telephone number. The Applicants propose to carry calls themselves from the MSA in which the call is delivered to the cellular company to the subscriber in a distant MSA.

6. Land-to-mobile, mobile-to-land, and mobile-to-mobile WACR is in the public interest. Cellular telephone companies must seek and receive authority from the Commission beyond that granted in their certificates of public convenience and necessity before offering WACR to their subscribers or providing long distance service between MSAs over their own facilities.

7. The rate structure for cellular companies to provide WACR should generally be based on the access charges paid by IXCs.

8. The Public Staff has argued that Centel Cellular has violated certain statutes, tariffs, and regulations. Centel Cellular should be required to show cause for providing illicit long distance service.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-5

The evidence for these findings of fact is contained in the filings of the Applicants and in the testimony of the Centel panel and Mr. Carpenter of the Public Staff. These findings are largely procedural and jurisdictional and were not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The Commission concludes that the provision of WACR by cellular companies is in the public interest under the conditions set out below. WACR represents a natural, perhaps inevitable, technological and structural evolution by which calling parties can obtain more expeditious access to called parties over a wider calling area. Enthusiasts for WACR have spoken of a "seamless web" whereby eventually the entire state and perhaps the entire country will be woven together with WACR. This "seamless web" does not yet exist. Its ultimate character must be the result of searching examination.

While WACR represents a technological advance, from another perspective it can be viewed simply as a more sophisticated method by which a cellular company

can offer long distance service. While service within the cellular geographic service area is viewed as local, service between CGSAs is obviously long distance in character. In the past, cellular companies lacked the authority or capability to offer such service over their own facilities. To offer interCGSA service to customers, they have had to utilize IXCs. The Commission has not required the cellular companies themselves to obtain certification as long distance resellers to their customers as long as the rates charged by the underlying carrier were simply passed through to the customer[1]. With WACR the cellular companies are now in a position to carry long distance service between CGSAs over their own facilities. Even with WACR, however, there will still be a need to offer customers ways to make long distance calls, for example, to CGSAs operated by different cellular companies and to areas of the State which are not served by cellular companies at all. These will not be WACR calls but will have to be carried through the traditional arrangement. Thus, WACR eliminates part of the traditional long distance equation in cellular but not all of it. The immediate task for this Commission is to set out a general framework by which cellular companies may offer WACR under appropriate regulatory conditions.

There was general consensus among the parties that cellular companies should be able to offer WACR. Not surprisingly, some of the LECs were leery of the cellular companies providing the service over their own facilities. The Commission concludes that, in order to provide WACR, cellular companies may resell long distance service and construct and use their own facilities. The operative phrase here is "in order to provide WACR." The Commission is not authorizing cellular companies to use these facilities and any concomitant "excess capacity" for any purpose other than WACR, unless they have received appropriate authority. As evident below in the discussion of rates, the Commission does not propose to disturb the foundations laid in its June 6, 1986, Order in Docket No. P-100, Sub 79. That Order laid the basis for intraCGSA cellular service. This Order is primarily concerned with interCGSA service.

Centel Cellular's original proposal included provisions relating only to land-to-mobile WACR. The Commission notes that the questions posed to the parties were general and far-reaching in nature and that the issues developed at the hearing were expansive. The Commission believes that a record has been developed that would sustain a grant of authority to the cellular companies to offer land-to-mobile, mobile-to-land, and mobile-to-mobile WACR, provided proper compensation arrangements are made with the LECs. The Commission believes that this approach will avoid duplicative and protracted hearings, will expedite the offering of a service which is in the public interest, and will not violate the due process rights of the parties. The Commission possesses ample authority to enlarge or restrict its inquiries unless a party is clearly prejudiced thereby. No party appears to be prejudiced by enlarging consideration of the WACR tariff to this degree.

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1 However, if a cellular company is offering non-WACR long distance service on a non-pass-through basis, it needs to seek additional authority from the Commission.

The certification requirement that the Commission has found expedient to impose, despite WACR's nature as a type of long distance service, is one that does not require the cellular company to obtain an IXC certificate in order to offer WACR. In so deciding, the Commission is following the recommendation of the Public Staff that additional authority under the present certificate is preferable to requiring a cellular company to obtain an IXC certificate.

The rationale for this approach can be found in the testimony of the Centel panel and Mr. Carpenter of the Public Staff, in the late-filed exhibit of the Public Staff, and in the records of the Commission. Each of the Applicants is a public utility holding one or more certificates of public convenience and necessity (CPCN) granted by this Commission. Each CPCN authorizes its holder to provide cellular mobile radio telephone service on a retail, wholesale, or retail and wholesale basis in a particular metropolitan statistical area.[2] No CPCN held by any of the Applicants, and in fact no CPCN issued by this Commission to date, authorizes provision of cellular mobile radio telephone service between metropolitan statistical areas. Furthermore, none of the Applicants is authorized to provide facilities-based long distance service.

For purposes of certification, cellular telephone companies are considered to be radio common carriers. G.S. 62-120 requires that such carriers obtain a CPCN before beginning or continuing "the construction or operation of any radio system, or any extension thereof." The Public Staff in its testimony cited G.S. 62-110 which applies to public utilities in general. In either case, the Commission finds that the proposed WACR differs significantly from the service authorized by the CPCNs of the Applicants. WACR necessarily requires carriage of calls beyond the limits of one MSA. In most cases, the completion of a call through this service will involve more than one certificated cellular carrier in addition to one or more local exchange telephone companies and, possibly, an interexchange carrier. Whether this service constitutes an "extension" of service or a new category of service, the Commission concludes that G.S. 62-110, G.S. 62-120, or both, require that the carrier seek additional authority before constructing or operating the service.

No one, specifically including the Applicants, has applied to this Commission for the authority to provide such interMSA cellular service. Mr. Wright, testifying for the Applicants, expressly acknowledged these facts. Tr. Vol. 2, pp. 77-83. The Commission concludes that before commencing operation of WACR the cellular companies must apply to this Commission for additional authority. Mr. Carpenter testified that in his opinion it is not necessary that a cellular carrier offering WACR to its own cellular customers be certificated as an interexchange carrier.

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2 The Commission also notes that the Order of September 16, 1987, which allowed Raleigh-Durham MSA Limited Partnership to operate both the Raleigh-Durham and Burlington service areas with a single switch located in Raleigh, specified in Ordering Paragraph 3 "[t]hat the Burlington, North Carolina CGSA shall constitute a separate service territory and local calling area from the Raleigh-Durham CGSA."

The Commission concludes that amendments to current CPCNs will be sufficient provided that the concerns over rates and charges addressed below can be resolved. The Commission further concludes that this requirement does not impose so onerous a regulatory burden on the cellular companies as to in any way impede their ability to provide adequate and competitive service to their subscribers.

Because the present provision of the cellular tariffs which requires that long distance rates be passed through to the customer will no longer be applicable to WACR calls for companies providing their own service, and because cellular companies do not provide equal access to long distance carriers, some safeguards are appropriate. The Commission finds that those cellular companies wishing to resell long distance service or provide WACR between MSAs must in addition to other requirements file rates with the Commission under N.C.G.S. § 62-138 and N.C.U.C. Rule R9-4 and show that the rates proposed are competitive with those of alternate long distance carriers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Not surprisingly, there was a diversity of views among the parties as to what the most appropriate rate structure for WACR should be. Generally speaking, the cellular companies resisted the notion that any new charges should be levied, although Carolina Metronet, Triad Metronet, and Fayetteville Metronet were willing to entertain the option of negotiating with the LECs for a composite rate.

Southern Bell proposed a composite rate which would be weighted using three existing tariff charges but would, as a composite, necessarily affect the current intraCGSA rate. GTE recommended that two rates based on state switched access tariffs be established.

The Attorney General recommended that the cellular companies and LECs negotiate access charge tariffs for that portion of the interCGSA cellular calling which represents diverted rather than new calling. The Public Staff argued that the LECs and cellular companies should negotiate a composite rate reflecting reasonable assumption of local/toll rates and compensation.

Lastly, in a proposal adumbrating the approach that the Commission has chosen to take, Carolina argued that, to the extent cellular companies act as resellers in carrying interCGSA traffic, they should be subject to the same regulations, rates, and charges as any other reseller of long-distance service. Cellular companies choosing to carry interCGSA traffic over their own facilities should pay the existing intrastate interLATA access charges already approved by the Commission.

After careful consideration of all of the proposals, the Commission finds greatest merit with the Carolina Telephone approach. Accordingly, the Commission believes that the following constitutes the best framework for WACR:

1. The cellular company should pay the appropriate access charge from the access tariff of its connecting LEC for all intra and interLATA traffic carried over its own facilities.

2. The cellular company should pay the same rates charged to resellers--i.e., a WATS charge plus access charges--for intraLATA traffic carried over LEC facilities.

3. The cellular company should pay only the terminating carrier common line portion of the access charge for mobile-to-mobile interCGSA traffic.

4. The LECs should file amendments to their access tariffs to make cellular companies eligible for such service.

5. Before offering carriage of interCGSA traffic over their own facilities, the cellular companies should negotiate with their connecting LECs to develop reports necessary to allow the LEC to properly bill the cellular carrier. The LECs should be authorized to audit the call records of the cellular companies at their discretion but no more frequently than annually. If reported traffic is found to be understated by more than 5%, the cellular company should be required to reimburse the LEC for the reasonable cost of the audit.

There are several considerations which figured significantly in the Commission's decision:

First, the Commission believes that a reopening of Docket No. P-100, Sub 79, on the subject of intraCGSA compensation is premature. Several of the proposals offered by parties would have required the modification of rates for intraCGSA calling and involved issues related to calling within a CGSA but outside the local LEC rate area. While the Commission recognizes that the proliferation of mobile cellular--including the advent of portable, personal cellular--may make it necessary to revisit Docket No. P-100, Sub 79, the Commission does not believe that this time has yet arrived. As noted above, this docket is solely concerned with interCGSA calling.

Second, the Commission believes that cellular companies have no inherent right to offer calling between CGSAs whether it be "old" or "new." While the cellular carriers are co-carriers, they assume different status depending on the service they provide. Unlike intraCGSA calls, interCGSA calls are more nearly equivalent to interexchange service and more functionally similar to the services provided by IXCs. It is therefore only fair and appropriate that cellular carriers should be required to pay access charges in these circumstances. The use of intrastate access charges will not thwart the use of wide area calling technology but it will minimize the prospect of harm to local rates and to subscribers of local service.

Third, the Commission believes the access charge approach is an equitable one. Access charges were initially designed to provide the same level of contribution that existed prior to divestiture and access charge implementation. The contribution aspect remains even though several access charge reductions have been approved. Currently, in the absence of WACR, LECs receive either revenue from toll or access charges when the roaming feature is used. These revenues will be lost with WACR if a method is not found to recoup at least a portion of these expenses. It is certainly conceivable that as the costs to cellular companies decline and the cost of cellular telephones continues to decrease, cellular companies will increasingly compete with the

IXCs for toll calls. The negative effect of the support for the local loop is obvious.

The Commission recognizes, of course, that mobile-to-mobile calls carried over the cellular's own facilities "bypass" the LEC entirely. The Commission believes that in this case it is appropriate that only the terminating carrier common line portion of the access charge be assessed.

Lastly, the Commission notes that much was made in the hearing in this docket of "new" versus "old" toll and the adequacy, or rather inadequacy, of the Southern Bell studies on lost toll. These disputes had an unreal quality to them. It is obvious that there is lost toll involved, but it seems impossible to determine exactly how much, at least without much more extensive studies within a framework of agreed assumptions. The Commission's approach avoids these sterile disputes. It is taken as a given that cellular companies are not inherently entitled to provide interCGSA service. Consequently, when they do provide this service, they behave functionally like an IXC. A structure of access charges has already been erected, one of the major purposes of which is to provide support for the local network. This local network is important not only in an economic and technical sense as a gateway to landline subscribers but as a social nexus, the value of which increased as the society approaches universal service. There is no reason that cellular companies, when they behave like IXCs, should not share the costs and responsibilities of IXCs. This means payment of access charges.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The Public Staff has argued that (1) Centel Cellular had already constructed facilities to offer WACR in violation of G.S. § 62-120, (2) has been providing illicit long distance service, and (3) has unlawfully provided local service between Raleigh/Durham/Chapel Hill and Burlington.

The basis for the assertion that Centel Cellular has constructed facilities is Mr. Carpenter's testimony that Centel Cellular representatives so informed him at a June 21, 1989, meeting. Mr. Carpenter further stated that it was his understanding that microwave facilities and software had been constructed or created for the purpose of offering WACR. For its part, Centel Cellular admitted that investments for the service had been made, but it denied that any facilities were being used presently to provide WACR or were of such a nature that they could not or were not being otherwise employed for authorized services. The Commission concludes that the Public Staff has not presented sufficient evidence for the Commission to conclude that Centel Cellular has violated the provision barring construction of facilities without a certificate. The Public Staff has, however, raised an issue with which the Commission is concerned. As noted before, the Commission in this Order forbids the use of WACR facilities for other purposes without authorization and will view any violation of this restriction with great seriousness. Centel Cellular is cautioned to exercise fidelity in following the General Statutes and Commission regulations.

The Public Staff also argued that Centel Cellular had been providing illicit long distance service. Based on statements that Centel Cellular made to him at the June 21, 1989, meeting mentioned above, Mr. Carpenter said Centel Cellular had violated the provisions of tariffs whereby long distance is to be

handled on a pass-through basis. The Public Staff maintained that this would also constitute a violation of G.S. 62-139. Centel Cellular replied that its Fayetteville, Burlington, and Raleigh-Durham tariffs make specific reference to "billing" or "passing along" toll charges at the prevailing AT&T and Southern Bell rates, while the Greensboro tariff is silent. Centel Cellular stated that it had originally subscribed to AT&T as its interLATA and interstate toll service provider but that it had subsequently changed to US Sprint, resulting in a marginal cost differential to it. Nevertheless, Centel Cellular has continued to bill at AT&T and Bell rates. Centel Cellular argued that there was no violation of G.S. 62-139 because it was charging the tariffed rates and it reasonably believed that it was not authorized to charge otherwise.

After careful consideration of the arguments and evidence presented by the Public Staff and Centel Cellular, the Commission concludes that Centel Cellular presently lacks the authority to provide long distance service to its subscribers on other than a pass-through basis. In so concluding, the Commission looks to the substance of the long distance and tariff arrangements. In order to offer such long distance service to its customers, Centel Cellular must buy services from an LEC or IXC. As long as Centel Cellular passes its actual charges through, the Commission does not consider this to be a resale and does not subject Centel Cellular to a requirement to obtain additional authority. However, if the charges to Centel Cellular are actually less than what Centel Cellular is charging its customers, the Commission must consider that a resale has occurred.

Going to the instant case, the Commission notes that originally Centel Cellular had subscribed to the services of AT&T but then subscribed to those of US Sprint for a lesser amount, while continuing to charge its customers the higher AT&T rate. The tariffs continued to reference the AT&T rate. At the time that Centel Cellular switched over to US Sprint while maintaining AT&T charges to its customers, Centel Cellular went from a pass-through mode to a resale mode. It is immaterial that Centel Cellular's tariff still was tied to AT&T rates. Tariffs should reflect reality. At that point, Centel Cellular was under an obligation to revise its tariff to maintain the pass-through or, alternatively, seek additional authority from the Commission for charging the differential. It did neither.

Accordingly, Centel Cellular should cease and desist from charging its customers more than it pays for long distance service. If it wishes to charge its customers more than it pays for long distance service, it should seek additional authority. Since Centel Cellular's violation of the pass-through principle has existed at least since it switched long distance carriers, the ultimate disposition of the extra monies so acquired is a proper subject for Commission inquiry. Centel Cellular should be required to show cause why it should not be fined or other appropriate sanctions levied.

Lastly, the Public Staff filed a petition on January 2, 1990, requesting that Centel Cellular be ordered to cease and desist offering local services between its Raleigh/Durham and Burlington services areas. In its petition, the Public Staff cited as evidence a 1989 Yellow Pages advertisement for Centel Cellular stating "Local calling area includes Raleigh/Durham/Burlington/Chapel Hill," and conversations with Centel Cellular representatives to the effect that local service in Raleigh/Durham/Chapel Hill includes service to Burlington. The Public Staff pointed out that this practice was directly

contrary to the tariffs of Centel Cellular and to the Commission's Order in Docket Nos. P-148, Sub 2 and P-157, Sub 2. Ordering Paragraph No. 3 of those Orders plainly states:

> That the Burlington, North Carolina, CGSA shall constitute a separate service territory and local calling area from the Raleigh-Durham CGSA, even though, as a matter of cellular technology, such area will be operated through a switch or MTSO in common with the Raleigh-Durham CGSA.

Centel Cellular filed a response on February 12, 1990. Centel Cellular admitted that it had not been charging for mobile-to-mobile and mobile-to-land calls originating in Raleigh-Durham and terminating in Burlington. Centel Cellular also admitted that the advertisement cited by the Public Staff was misleading, but it maintained that its violations were inadvertent and unintentional. Upon verification that several of the Public Staff's allegations are correct, Centel Cellular stated that it has taken measures to come into compliance and has thus already "ceased" and "desisted." Further Commission action is thus not necessary.

After careful consideration of the filings in this matter, the Commission concludes that, since Centel Cellular has already acted to clear up this matter, a cease and desist order is no longer necessary. Significantly, however, Centel Cellular did not contest the substance of the Public Staff's allegations in this matter. Rather, it pleaded inadvertence. The Public Staff was correct in maintaining that the Orders and tariffs were explicit. As stated above, Centel Cellular is cautioned to exercise fidelity in following the General Statutes, the tariffs, and Commission Orders and regulations.

IT IS, THEREFORE, ORDERED as follows:

1. That the LECs shall file amendments to their access tariffs to make cellular companies eligible for WACR within 60 days of the date of this Order. These tariffs shall conform to the following requirements:

   a. That the cellular company pay the appropriate access charge from the access tariff of its connecting LEC for all intra and interLATA traffic over the cellular companies' own facilities.

   b. That the cellular company pay the same rates charged resellers--i.e., a WATS charge plus access charges--for intraLATA traffic carried over LEC facilities.

   c. That the cellular company pay only the terminating carrier common line portion of the access charge for mobile-to-mobile interCGSA traffic.

2. That, before offering carriage of interCGSA traffic over their own facilities, the cellular companies negotiate with their connecting LECs to develop reports necessary to allow the LECs to properly bill the cellular carriers. The reporting requirements shall include provisions whereby the LECs are authorized to audit the call records of the cellular companies at the LEC's discretion but no more frequently than annually and whereby, if the reported traffic is found to be understated by more than 5%, the cellular company is

required to reimburse the LEC for the reasonable cost of the audit. An auditing agreement must be concluded before the additional authority to offer WACR will be granted.

3. That, following the adoption of appropriate tariffs by the LECs, any cellular company authorized to operate in North Carolina, may request authority to offer WACR service between CGSAs as defined in this Order.

4. That these cellular companies granted authority to offer WACR and facilities-based long distance service between CGSAs shall file proposed rates with the Commission in accordance with GS 62-138 and NCUC Rule R9-4 and show in their filing that the proposed rates are competitive with those of alternative long distance carriers.

5. That Centel Cellular Company shall appear before this Commission on Tuesday, July 17, 1990, at 9:30 a.m. in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, to show cause, if any there be, why this Commission should not seek fines or other appropriate sanctions for the Company's offering of long distance service illicitly. Furthermore, Centel Cellular Company shall cease and desist immediately from charging its customers more than it actually pays for long distance service.

6. That any cellular company offering non-WACR long distance service on a non-pass-through basis without authority shall immediately cease and desist from doing so. If any cellular company wishes to offer such service on a non-pass-through basis, it should seek additional authority to do so.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of May 1990.

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

DOCKET NO. P-100, SUB 109

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Tariff Filings by Raleigh/Durham MSA,<br>Fayetteville MSA, United Telespectrum, and<br>Centel Cellular Company to Establish Rates<br>for Wide Area Call Reception | ) | ORDER DENYING MOTION FOR<br>RECONSIDERATION EXCEPT AS<br>TO MOBILE-TO-MOBILE CALLS |

BY THE COMMISSION: On May 9, 1989, Applicants filed revisions in their tariffs to offer a new service known as "wide area call reception (WACR)." This new service provided over Applicant-provided facilities would allow cellular subscribers to receive calls placed to their regular local cellular numbers while located in specific foreign cellular geographic areas.

The Commission suspended the tariff and held a hearing on November 28, 1989. An Order was issued on May 11, 1990, setting out the Commission's "best framework" for WACR as follows:

1. The cellular company should pay the appropriate access charge from the access tariff of its connecting LEC for all intra and interLATA traffic carried over its own facilities.

2. The cellular company should pay the same rates charged to resellers--i.e., a WATS charge plus access charges--for intraLATA traffic carried over the LEC facilities.

3. The cellular company should pay only the terminating carrier common line portion of the access charge for mobile-to-mobile interCGSA[1] traffic.

4. The LECs should file amendments to their access tariffs to make cellular companies eligible for such service.

5. Before offering carriage of interCGSA traffic over their own facilities, the cellular companies should negotiate with their connecting LECs to develop reports necessary to allow the LEC to properly bill the cellular carrier. The LECs should be authorized to audit the call records of the cellular companies at their discretion but no more frequently than annually. If reported traffic is found to be understated by more than 5%, the cellular company should be required to reimburse the LEC for the reasonable cost of the audit.

On July 12, 1990, Centel Cellular filed a Motion for Reconsideration. This followed a July 9, 1990, Joint Notice of Appeal and Listing of Exceptions. G.S. 62-80 authorizes the Commission "at any time . . . rescind, alter or amend any Order or decision made by it."

The following companies supported Centel Cellular's motion: Vanguard Cellular, U.S. Cellular Corporation, Carolina Metronet, Triad Metronet, Fayetteville Cellular and McCaw Cellular. Southern Bell Telephone and Telegraph Company and Carolina Telephone and Telegraph Company filed comments in opposition to the motion.

After careful consideration of the filings in this docket, the Commission is of the opinion that Centel's Motion for Reconsideration should be denied, except that the requirement in the "best framework for WACR" as set out in Ordering Paragraph 1.(c) of the May 11, 1990, Order, to the effect that the cellular companies are to pay only the terminating carrier common line portion of the access charge for mobile-to-mobile interCGSA traffic should be deleted. All other parts of the May 11, 1990, Order are upheld.

In its July 12, 1990, Motion for Reconsideration, Centel Cellular desired reconsideration of those portions of the Commission's Order "generally contained in Findings of Fact Nos. 6-8" and the associated evidence and

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1 CGSA stands for "cellular geographic service area." This is the same as a "metropolitan statistical area" or MSA. The Federal Communications Commission (FCC) has provided that each CGSA is to have two facilities-based cellular companies serving it and any number of cellular resellers.

conclusions and ordering paragraphs. Those findings of fact, in essence, found that cellular companies must obtain amendments to their certificates before offering WACR, that the appropriate rate structure for WACR was the "best framework" approach based upon access charges, and that Centel Cellular should show cause why the Commission should not seek fines or other appropriate sanctions for offering illicit long-distance service. This last item was based upon evidence that Centel Cellular had been offering non-WACR long-distance service on a non-pass-through basis without authority.

In support of its Motion of Reconsideration, Centel Cellular vigorously argued that cellular companies should not be required to "subsidize" LECs, that the requirement that they do so would injure their financial prospects and the incentive to introduce new services, and that "landline concepts of resale" should not apply to cellular carriers.

The Commission finds Centel Cellular's arguments on the whole to be without merit for the reasons generally as set forth in the May 11, 1990, Order and as set out below.

The legal regime under which cellular service exists is composed of federal and state elements. The Federal Communications Commission (FCC) has preempted the states regarding the present and future need for cellular service (e.g., with respect to entry regulation and technical standards), but this preemption does not extend to other terms upon which cellular service may be offered.

Docket No. P-100, Sub 79, was specifically concerned with erecting a regulatory framework for intraCGSA cellular traffic, although the principles it enunciated respecting state commission jurisdiction apply to this docket as well. By its nature, cellular traffic within a CGSA spans exchange, company, and even LATA boundaries. The CGSA becomes, in effect, the cellular companies' "local" service area. The intraCGSA rate structure for interconnection that the Commission decided upon was one based on economic costs. The Commission also decided that loss of toll revenue would not be considered in the initial interconnection agreements but that a joint study should be undertaken in hopes of quantifying toll revenue loss with respect to intraCGSA traffic. Thus, the Commission did not rule out lost toll as a component of even intraCGSA interconnection rates. Interconnection agreements for intraCGSA calling have been negotiated, and North Carolina is the site of numerous CGSAs where cellular service is offered. The Commission is already in the process of considering the next wave of cellular applications--this time to provide service in the Rural Service Areas (RSAs).

The FCC, as noted by the Commission in the June 6, 1986, Order in Docket No. P-100, Sub 79, explicitly reserved to the states jurisdiction over the charges, classifications, practices, services, facilities, and regulations for service. The Commission has indeed recognized cellular companies as having "the status of common carriers, with the local exchange companies," but this label is no talisman which can be used to exempt cellular companies from needful regulations and responsibilities. As the Commission noted in its June 6, 1986, Order in Docket No. P-100, Sub 79, in reasoning that applies with equal force to this docket:

> . . .[I]t is likewise clear that the FCC views compensation arrangements between the cellular companies and the local exchange company to be a matter of concern for the carriers and state regulatory commission. Thus the approval of common carrier status does not dictate in the Commission's opinion specific compensation arrangement as alleged by the cellular carriers. (at p.9)

As noted above, prior to this docket, the Commission has been directly concerned only with setting the terms and conditions for intraCGSA cellular traffic. The provision of interCGSA traffic was accomplished by the expedient of tariffs filed by the cellular companies and allowed by the Commission addressing access to the so-called "roamer," --i.e., calling the cellular customer located in some other CGSA. Such access required the long-distance services of an IXC. The cellular tariffs generally spoke to "billing" or "passing along" the prevailing AT&T or Southern Bell rates. As long as such charges were simply passed through, the Commission did not view this service as a resale, and the cellular company was not required to obtain additional authority.

WACR marks a significant departure in the offering of interCGSA service. First, the system is more technologically advanced and efficient because it eliminates the need for a person calling a cellular subscriber outside his home service area to dial an access number for the CGSA in which the subscriber is located prior to dialing his mobile phone number. All one need do is dial the roamer's cellular telephone number. Second, the Applicants propose to carry the call themselves from the one CGSA to the other. In effect, they become facilities-based long-distance carriers.

The Commission is favorable to technological development and to the provision of new and beneficial services to the people of North Carolina. After all, the Commission approved WACR and expanded authority beyond land-to-mobile to include mobile-to-land and mobile-to-mobile calls. But, the Commission is required to balance the interests of all the parties within the context of the overall public interest.

The appropriate balance struck by the Commission and supported both factually and logically was the requirement that cellular companies pay access charges similar to those of IXCs as set out in the "best framework" to the LECs when providing WACR and that the cellular companies obtain appropriate additional authority.

Additional authority is legally necessary because, as the Commission pointed out in its May 11, 1990, Order, the Cellular companies "have no inherent right to offer calling between CGSAs." As the May 11, 1990, Order stated:

> No CPCN [certificate of public convenience and necessity] held by any of the Applicants and in fact no CPCN issued by this Commission to date authorizes provision of cellular mobile radio telephone service between metropolitan statistical areas. Furthermore, none of the Applicants is authorized to provide facilities-based long distance service. (Emphasis in original, May 11, 1990, Order, p. 7).

The cellular companies cannot offer a service which they are not authorized to provide. To offer such a service requires additional authority.

The Commission further concluded that, when a cellular company is providing WACR between CGSAs, it is "behaving functionally like an IXC." (May 11, 1990, Order, p. 10). This conclusion is nearly unavoidable when one reflects that the CGSA constitutes the local service area of a cellular company. Connecting two or more CGSAs is analogous to connecting two or more local service areas. Obviously, then, the cellular companies would be providing a long-distance service.

Since the cellular companies are behaving functionally like an IXC, then it follows that they should be subject to requirements similar to those of an IXC. This was the rationale for the "best framework" approach adopted by the Commission which required access charges.

The "best framework" approach is simply that the cellular companies should pay access charges to the LECs. This is what IXCs do. The purpose of the payment of access charges is to pay the economic cost of interconnection to the local network by the long-distance carrier and to provide contribution to the local network. Contribution is a form of support for local rates--a means by which local rates can be kept affordable--not a subsidy or form of "tribute" to LEC stockholders.

The importance of the maintenance of the local network can hardly be overemphasized. Access to the local network is as indispensable to the cellular companies as to any IXC. Both the federal and state governments have recognized the importance of the goal of universal service and access to the local network as necessary to full societal participation. (See, e.g., the Subscriber Line Waiver Program and the Link-Up Carolina Program). The North Carolina General Assembly has more than once affirmed the importance of "reasonably affordable local exchange service" before certificates for various forms of competitive service can be authorized. (See, e.g., G.S. 62-110(b) (long distance) and G.S. 62-110(c) (private payphones)). The Commission also notes that there is a complex web of cross-support in telecommunications. The LECs assist each other in meeting the universal service goal through uniform tariffs and intraLATA pooling. The IXCs contribute through access charges. If no similar responsibility was placed on the cellular carriers, they would be the first major segment excluded from bearing a part of this burden. This would be especially incongruous in view of the fact that the marketing of cellular companies targets those who make more than $30,000 a year. Indeed, it is arguable that the Commission would be remiss if it did not provide for the payment of access charges by cellular companies for WACR.

The cellular companies argue that they are already paying for interconnecting to the local network. This argument is disingenuous. The cellular companies are paying for access with respect to their local intraCGSA calling. This docket concerns interconnection for the provision of what is essentially a long-distance service.

The Commission, however, does recognize one area where an access charge may not be appropriate at the present time. This is the portion of the May 11, 1990, Order requiring the cellular companies to pay the terminating carrier common line portion of the access charge for mobile-to-mobile interCGSA

traffic. These are calls handled by the cellular company with no LEC participation. A case can be made that even this is an appropriate charge because of the lost toll--i.e., revenue that would have gone to support the local network--but in the instant case, there does not appear to be sufficient record to make such a finding. However, if in the future the growth of this type of case results in a genuine threat to the loss of revenues to the LECs and to universal service and evidence is presented to the Commission to that effect, the issue may be re-examined.

Having dealt with the question of the "best framework," the Commission now turns to the other major points raised by the cellular companies. First, the Commission is not convinced of the alleged ruinous effect of requiring cellular companies to pay access charges. The companies presented no substantial evidence that this is so. The Commission would simply note that many relatively new industries, with high capital expenditures, are not immediately profitable. Given the enthusiasm with which cellular certificates are pursued and traded, one could be excused for thinking that the longer-term prospects appear much brighter. Second, with respect to the illicit long distance provided by Centel Cellular, the Commission would simply note that Centel Cellular had the choice of applying for additional authority to act as a reseller if it found the pass-through arrangement unsatisfactory. The fact is that it did not. Inconvenience to the company cannot justify a tariff violation.

IT IS, THEREFORE, ORDERED that the Motion for Reconsideration filed on July 9, 1990, be denied, except that the requirement as set out in Ordering Paragraph No. 1. (c) of the May 11, 1990, Order regarding payment of the terminating carrier common line portion of the access charge for mobile-to-mobile interCGSA traffic be deleted.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of October 1990.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 111

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>An Investigation of Billing and<br>Collection Services for 700,<br>900, and 976 Services | ) | ORDER FORBIDDING CUT-OFF AND<br>AUTHORIZING BLOCKING FOR<br>NONPAYMENT OF 900 AND 900-LIKE<br>CHARGES |

BY THE COMMISSION: On August 22, 1990, the Public Staff filed a petition later verified, and the Attorney General filed a motion seeking an investigation of billing and collection services for 700, 900 and 976 services. Both parties also maintained that local exchanges companies (LECs) and interexchange carriers (IXCs) should be prohibited from disconnecting or suspending local or intrastate long-distance service for nonpayment of 700 and

900 charges. For the sake of more expeditious relief, the Public Staff further asked the Commission:

> [T]o issue immediately an interlocutory order prohibiting an LEC from disconnecting local service and an IXC from suspending intrastate long distance service for failure to pay for 700 or 900 calls.

On August 24, 1990, the Commission entered an Order in Docket No. P-100, Sub 111, scheduling a hearing for Tuesday, September 4, 1990, during the Regular Commission Staff Conference to consider whether to enter a Restraining Order to prohibit all LECs from disconnecting local service and all IXCs from suspending intrastate long distance service for failure to pay for 700 or 900 calls pending the conclusion of this docket.

This matter came before the Regular Commission Conference on September 4, 1990. The following persons appeared to speak on this matter: A. W. Turner of the Public Staff; Jo Ann Sanford and Lorenzo Joyner of the Attorney General's Office; Clayton Rawn of Central Telephone Company (Central); Jack H. Derrick of Carolina Telephone and Telegraph Company (Carolina); Kent Burns representing Randolph and Ellerbe Telephone Companies; Ed Rankin of Southern Bell Telephone and Telegraph Company (Southern Bell); Joe W. Foster of GTE South; Katie Cummings of AT&T Communications of the Southern States, Inc. (AT&T); Tiane Sommer of MCI Telecommunications Corporation (MCI); and Peter Reynolds of SouthernNet Services/Telecom USA.

The Public Staff argued in favor of interlocutory relief. The gist of the Public Staff's argument was that 900 and 900-like services do not constitute a telecommunications service for which local or long distance service ought to be in jeopardy if charges are not paid. Far from being POTS ("plain old telephone service"), the Public Staff maintained that 900 calls are a method whereby a vendor sells goods or services to a customer and the telephone company essentially acts as a collection agent for the vendor. Local and long distance telephone service is an important, even vital, service in today's society, deprivation of which can lead to grievous consequences in an emergency. It is therefore unjust and unreasonable that a person may lose this service for nonpayment of what is not truly a telecommunications charge. The Public Staff stated that the danger of cut-off was real and cited an example of one such cut-off. The Public Staff also noted that GTE South, in accordance with provisions in the Commission's August 24, 1990, Order in this docket, had reported several potential cut-offs for nonpayment including nonpayment of charges for 900 services. Furthermore, the companies maintain their right to effect such cut-offs and thus further cut-offs may occur at any time. Interlocutory relief is appropriate because both former acts and present policy present a standing threat of irreparable harm to subscribers who have not paid 900 charges. The Public Staff maintained that the Commission was not bound by strict requirements in granting injunctive relief because of its special position as a quasi-judicial, quasi-legislative administrative body. Nevertheless, the Public Staff believed that the situation satisfied the criteria for preliminary injunctive relief.

The Attorney General's office supported the Public Staff's request for interlocutory relief. The Attorney General maintained that the LECs could not rightfully exercise cut-off authority for nonpayment of 900 service now. The Attorney General cited policies governing the electric and natural gas

utilities which forbid cut-off for failure to pay for non-utility service, as, for example, in Rule R6-17 (insufficient reasons for denying service). The Attorney General further noted that some have called 900-services "the credit card of the 90's" whereby multitudes of goods and services are sold over the telephone and the telephone company acts essentially as a collection agent. Many of the 900 services are useful and beneficial, but their rapid proliferation raises significant issues of consumer protection. The Attorney General lastly argued that the Public Staff had adequately satisfied the criteria for the granting of a preliminary injunctive relief.

Central stated that it based its authority to disconnect for nonpayment of 900 services on language in its tariff and that such service was essentially viewed as a long distance service. However, Central's policy on the matter is currently in flux, and Central is initiating a new policy whereby removal of blocking would require a personal appearance by the customer. Central stated that it does buy charges for 900 service (along with charges related to other billing and collection services) as accounts receivable but that uncollectibles are repurchased by the interexchange carrier (IXC).

Carolina also maintained its right under its tariff to disconnect service for nonpayment of 900 charges and it argued that a preliminary injunction was inappropriate. However, Carolina's current policy with respect to 900 numbers is as follows:

a. If the subscriber is willing to make payment for these calls, arrangements are made for payment.

b. If the subscriber challenges the bill (and even if the subscriber admits making the calls, but is unable to pay) the calls are written-off on the first such occasion, and the subscriber is offered 900 blocking at no charge.

c. If the subscriber refuses blocking, the subscriber is advised that charges for subsequent calls will not be written-off.

Carolina stated that it derived approximately $75,000 in revenue from billing and collection for 900 calls and it expected this revenue to increase.

The representative of Randolph and Ellerbe Telephone Companies argued that the Commission should not regulate billing and collection for 900 service but should seek to regulate the service directly if problems exist.

Southern Bell stated that its policy is not to disconnect for nonpayment of 900 charges but that it doubts the necessity for a restraining order. However, Southern Bell maintained that it has authority under its tariff to disconnect for nonpayment of 900 charges.

GTE South argued that a restraining order is unnecessary but that it has revised its policy within the past few days to minimize or eliminate customer cut-offs for nonpayment of 900 charges. A part of that policy is to insist that a non-paying customer accept blocking of 900 service under certain circumstances.

AT&T stated its belief that charges for premium-billed (non-tariffed) calls to 900 number are not communications charges and thus not appropriate charges to include in local service criteria. AT&T also explained provisions of its MultiQuest tariff designed to protect callers, including a provision that LECs are not to disconnect for nonpayment of such charges. While supportive of Commission investigation, AT&T sees no urgent need for a restraining order.

MCI explained that responsibility for uncollectibles is ultimately shifted back to the vendor. SouthernNet/Telecom USA indicated its concern that 700 numbers used to access its network and non-900 purposes not be impeded.

After careful consideration of the filings and arguments made in this docket, the Commission is of the opinion that, pending the final outcome of this docket, LECs should not be permitted to disconnect customers for nonpayment of 900 or 700 charges (when 700 calls are used in a 900-like manner) but that the LECs should be explicitly authorized to compel nonpaying customers to accept free blocking of 900 service under certain circumstances and according to certain requirements. Furthermore, IXCs should not be permitted to cut off intrastate long-distance service for nonpayment of 900 or 700 charges (when 700 calls are used in a 900-like manner). The Commission believes that this ruling strikes a balance between the interests of the using and consuming public and those of the telephone companies[1].

There are substantial questions as to whether the Commission is subject to the strict requirements which would otherwise apply in other courts when the Commission is issuing a restraining order in its specific area of competence concerning the regulation of utilities. The Commission enjoys special status as a quasi-judicial, quasi-legislative body. It is, for example, required to apply the rules of evidence only "insofar as practicable." (G.S. 62-65(a)). The Commission prescribes its own practice and procedure, but, unlike a court of general jurisdiction, it lacks the authority to impose damages. The Commission is, of course, subject to the fundamental fairness requirement arising from the due process provisions of the United States and North Carolina Constitutions.

The Commission believes that the instant case is an appropriate one for interlocutory relief in the form of a preliminary injunction pending final disposition of this case. The Commission makes no finding regarding the usefulness or desirability of 900 services. Many such services may in fact be useful and desirable. The sole question here is whether LECs or IXCs should be allowed to terminate service for nonpayment of 900 charges. The Commission does not believe this should be allowed, pending the outcome of its investigation into this matter in this docket.

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1 The Commission is aware of the distinction between premium-billed (non-tariffed) and so-called dial-it (tariffed) 900 services. However, the Commission does not believe that the public-at-large makes this distinction and perhaps, more importantly, it would be difficult, if not impossible, to separate out such charges on a bill or to impose blocking that would not affect both.

The Commission at this point agrees with the Public Staff, the Attorney General, and AT&T that charges for 900 service are not for communication services and thus do not and should not fall within traditional local service denial criteria. The Commission thus provisionally finds it unjust and unreasonable to cut off local or long distance service for nonpayment of such charges. Access to the telecommunications network, once a luxury, is now almost a necessity. Denial of such access for nonpayment of non-telecommunications services can have grave consequences for a customer, especially in his ability to reach emergency services if needed. Moreover, the subscriber has no adequate remedy at law. The General Assembly has assigned special responsibility to the Commission to regulate public utilities and forbidding cut-off is the appropriate remedy here which the Commission is percularly well situated to enforce. The denial of local or long distance service for nonpayment of 900 service denies a substantial right.

Nor is the prospect of such cut-off merely speculative. Although some of the LECs are modifying and softening their policies in response to perceived equities and Commission activity, all the LECs at the Conference maintained their right to make such cut-off. The Public Staff cited a specific case of such a cut-off. GTE South submitted data concerning four customers who were disconnected or due for disconnection for nonpayment of their accounts, which included 900 number calls. There is therefore substantial evidence that some cut-off has occurred in the past and there is no guarantee that such cut-offs will not occur in the future. It is not appropriate that even one customer should be cut off for nonpayment of 900 services pending final resolution of this docket. Action by the Commission will protect this class of subscribers and prevent the invasion of substantial rights and the infliction of irreparable harm upon these subscribers.

In so ruling, the Commission is acting to protect and restore the status quo. The status quo is not, as some of the LECs suggest, merely a ratification of present asserted policies of cut-off, but rather the situation as it existed in fact before the advent of 900 services. The status quo can also be viewed in more immediate and personal terms as the right of the customer to continue local service unhindered. This right is endangered by an LEC or IXC cut-off policy for nonpayment of 900 service.

The issuance of interlocutory relief will not substantially disadvantage the LECs or IXCs. It is the Commission's judgment based on the hearing at the Regular Commission Conference that the companies will suffer little material detriment, especially since industry practice indicates ultimate responsibility for uncollectibles is shifted back to the vendor. The financial impact on the companies will be minimal. Carolina, for instance, indicated that the revenue derived from billing and collection for 900 service was relatively small.

The Commission is concerned, however, that certain irresponsible subscribers not be led to believe that they can incur 900 service charges indefinitely and with impunity. To allow this might unduly burden the LECs. The Commission is, therefore, authorizing compulsory blocking of 900 service in certain circumstances as outlined in the Ordering Paragraphs below. Subscribers should also be aware that the ruling here is limited to the ability of LECs or IXCs to cut off local or long-distance service for nonpayment of 900 charges. The 900-number vendors retain their ordinary legal rights to pursue overdue charges in the courts.

In view of the Commission's overall position on this issue, it is reasonable to believe that the Public Staff would prevail on this issue when the final decision is made. This satisfies another requirement for injunctive relief.

Lastly, the Commission notes that prohibiting cut-off for non-utility related service is not new. Rule R6-17 prohibits such activity related to natural gas, and the current 976 tariff provides that nonpayment of 976 charges shall not be cause for denial of local service. Federal policy, too, is tending against disconnection for nonpayment of 900 charges. The FCC has specifically instructed AT&T to "ensure that communications services to callers are not disconnected for failure to pay premium billing charges" (In Re AT&T 900 Dial-It Services and Third Party Billing and Collection Services, Memorandum Opinion and Order, Released April 12, 1989, p. 5), and expressly left termination of service policies to the states (In Re Matter of Retariffing Billing and Collection Services, Report and Order 102 FCC 2d 1150 (1986).

In conclusion, the Commission emphasizes the preliminary nature of the relief granted here. It believes it has fashioned a remedy which balances the interest of the customer and those of the LEC.

IT IS, THEREFORE, ORDERED as follows:

1. That pending the final outcome of this docket, all LECs subject to the jurisdiction of this Commission be prohibited from cutting off local service for nonpayment of 900 service or of 700 service when such service is used in a 900-like manner.

2. That LECs follow the following procedure with regard to outstanding 900 service charges:

a. If the subscriber is willing to make payment, the LEC shall attempt to make reasonable arrangements for payment.

b. If the subscriber challenges the bill or is otherwise unwilling or unable to pay, the LEC shall write off the charges on the first such occasion. The subscriber shall be offered free blocking.

c. If the subscriber, on a second occasion, incurs charges which he challenges or is otherwise unwilling or unable to pay, the LEC shall be authorized to block the 900 service of such subscriber at no charge to the subscriber.

3. That, pending the final outcome of this docket, all IXCs subject to the jurisdiction of the Commission be prohibited from cutting off intrastate long-distance service for nonpayment of 900 service or of 700 service when such service is used in a 900-like manner.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of September 1990.

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

Commissioner Sarah Lindsay Tate dissents.
Commissioner Laurence A. Cobb did not participate.

DOCKET NO. W-100, SUB 15

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Investigation of Proper Procedures<br>For Sale or Assignment of Utility<br>Franchises | ) | ORDER ESTABLISHING<br>PROCEDURES FOR SALE<br>OR ASSIGNMENT OF<br>UTILITY FRANCHISES |

BY THE COMMISSION: The Commission has become very concerned that sales of certain water and sewer utility companies are being accomplished prior to complying with North Carolina law dealing with the sale or assignment of utility franchises. The relevant State law in this area is G.S. 62-111(a), which provides as follows:

> "No franchise now existing or hereafter issued under the provisions of this Chapter...shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity..."

This statute was recently interpreted as follows in the Pinehurst decision rendered by the North Carolina Court of Appeals on July 3, 1990:

> "G.S. 62-111(a) plainly requires that "[n]o franchise...shall be sold, assigned, pledged, or transferred...except after application to and written approval by the Commission[.]" (Emphasis added.) We flatly reject any suggestion that the statute permits the completion of transfers contingent upon or subject to Commission approval. Such a proposition plainly flies in the face of the clear wording of the statute."
>
> "We recognize that before a proposed transfer can become ripe for consideration by the Commission, there must be an agreement to transfer; i.e., the owner of the franchise and the proposed buyer must have reached the agreement on the terms and conditions of the transfer or acquisition. But the actual transfer of assets or operational control may never precede the Commission's written approval. This requirement, imposed by the General Assembly, is based on the sound rationale that, if such a change of control and assets were effected before approval has been granted, the Commission would then be placed in the wholly untenable position of having to nullify a de facto transfer as part of the approval proceedings, if the public convenience and necessity so required. The risk of disruption to the public and the practical problems posed by such a circumstance are obvious. Franchise assets could be encumbered, franchise operations and control assumed by the transferee, and the transferor thereafter dissolved--all before the Commission has given its approval to such transfer, and all under the guise that no

transfer has actually taken place because the transaction has not been "legally consummated" in that it was contingent upon or subject to Commission approval. The statute may not be so circumvented. Our Legislature, by the unambiguous terms of the statute, clearly intended to prohibit such de facto transfers of franchises before the Commission has had the opportunity to pass upon the merits of the transfer under the public convenience and necessity test."

The Commission wishes to stress here, in the strongest possible terms, that G.S. 62-111(a) , as interpreted by the Court of Appeals must be followed in all utility transfer transactions. Failure to do so will result in denial of the transfer application.

Examples of violation of G.S. 62-111(a) include, but are not limited to, the following events, if implemented prior to Commission approval:

1. Transfer of deeds from seller to purchaser,
2. Payment of purchase price, in whole or part, to the seller,
3. Transfer of operating control to the purchaser.

The Commission has reviewed the transfer application form and has determined that it should be revised to more clearly reflect the requirements of G.S. 62-111(a). The following reflects a change made to the Application For Transfer of Public Utility Franchise and For Approval of Rates by the Commission:

1. Item 3, page 6 should be changed to read: Enclose a copy of (1) exhibits showing that the seller has ownership of all property necessary to operate the utility and (2) a purchase agreement reduced to writing. Any changes in the purchase agreement should be filed immediately with the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That each water and sewer utility be and hereby is, ordered to follow the requirements of G.S. 62-111(a) in all transactions involving the sale or assignment of utility franchises.

2. That the Application For Transfer of Public Utility Franchise and For Approval of Rates be modified as noted in this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of December 1990.

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

DOCKET NO. E-2, SUB 582

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Adventures in Faith Ministries, Inc., Post Office Box 1319, Atlantic Beach, North Carolina 28512,<br>Complainant<br>vs.<br>Carolina Power & Light Company,<br>Respondent | ) | RECOMMENDED ORDER DENYING COMPLAINT |

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, September 19, 1990 at 10:00 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Complainant:

No Attorney of Record

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 Respondent:

Andrew H. McDaniel, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

BENNINK, HEARING EXAMINER: On June 25, 1990, Adventures in Faith Ministries, Inc. (Complainant), filed a complaint against Carolina Power & Light Company (CP&L or Respondent). By Order entered in this docket on June 26, 1990, the Commission served the complaint on CP&L and required the Respondent to either satisfy the demands of the Complainant or file an answer to the complaint. CP&L filed its answer in opposition to the complaint on July 18, 1990. CP&L's answer was thereafter served upon the Complainant by Commission Order dated July 25, 1990. On August 17, 1990, the Complainant requested the Commission to schedule a public hearing to consider its complaint. On August 22, 1990, the Commission entered an Order scheduling a hearing in this docket for Wednesday, September 19, 1990, at 10:00 a.m.

Upon call of the matter for hearing at the appointed time and place, the Complainant offered the testimony of Richard Derreth, its President, David William Page, its Youth Counselor, and Evelyn Batts Derreth, its Secretary.

CP&L offered the testimony of Jim Phillips, its Morehead City Area Manager, and Gurney Reece Dillard, its Director of Rate Administration.

Based upon a careful consideration of the entire record in this proceeding, the Hearing Examiner now makes the following

FINDINGS OF FACT

1. CP&L is a public utility subject to the jurisdiction of the North Carolina Utilities Commission.

2. The Complainant was not overcharged for electricity supplied to its soup kitchen/game room during the period from July 1987 through October 1988.

3. To establish a commercial account, CP&L requires a corporate officer to make application for service and furnish copies of the company's articles of incorporation and letterhead with corporate seal affixed, and a designation of the company's corporate officers.

4. CP&L did not act improperly in the way it handled the Complainant's requeset for electric service at the miniature golf course in April 1990.

WHEREUPON, the Hearing Examiner reaches the following

CONCLUSIONS

The Complainant has failed to carry the burden of proof to show that it was overcharged for electricity supplied to its soup kitchen/game room during the period from July 1987 through October 1988. During this period of time, the account in question was in the name of Evelyn B. Derreth. Service to that facility was connected on July 14, 1987, and was disconnected on October 26, 1988, for nonpayment of bills. The original electric meter serving the soup kitchen/game room was in place at that location at least as far back as November 6, 1986. It was replaced with a new meter on September 28, 1989, because it had registered a demand reading of 700 kilowatts or more during the months of July and September 1989. The Complainant's normal demand reading ranged from 10 to 24 kilowatts. The original meter was tested and found it to be accurate in terms of both kWh and demand registrations. The demand registration problem was thereafter found by CP&L to have been the result of defective wiring leading from the transformers to the meter. This defective wiring subsequently resulted in abnormally low kWh and demand registrations on the new meter during the months of October, November, and December 1989. The Complainant was not billed for any additional usage and the meter wiring was finally repaired in January 1990. CP&L witness Dillard testified that he had never seen an instance where faulty wiring had caused a meter to record higher than normal usage. To the contrary, he testified that loss of power to the meter or meter malfunction always results in registration of lower rather than greater consumption. Mr. Dillard's testimony was credible and, in the absence of more compelling credible evidence to the contrary, supports denial of the complaint on this issue.

The Hearing Examiner further concludes that CP&L did not act improperly in the way it handled the Complainant's request for power at the miniature golf course in April 1990. The facts surrounding this incident are as follows. Mr.

Norman Terpstra came into CP&L's Morehead City business office on the afternoon of Wednesday, April 11, 1990, and requested service for a miniature golf course in the name of Adventures in Faith Ministries, Inc. Mr. Terpstra was informed by CP&L that he would have to show some documentation of his position with the corporation and his authority to open an account in the corporate name, along with the payment of past amounts due CP&L by the corporation for electric service and the posting of a security deposit in accordance with NCUC Rules R12-2 and R12-3. Mr. Terpstra then left CP&L's business office stating that Mr. Derreth would handle the application.

On the morning of Thursday, April 12, 1990, Messrs. Terpstra and Derreth came to CP&L's business office. Mr. Derreth dictated the following message for delivery to the manager of the office: "You have an adversarial relationship with me and I am going to call Craig Stevens to file for a formal complaint." Messrs. Terpstra and Derreth left the business office without making application for service to the miniature golf course.

On the afternoon of Thursday, April 12, 1990, Mr. David Page came to CP&L's business office and applied for service to the miniature golf course. Mr. Page indicated that he was Complainant's Youth Director and was on Complainant's Board of Directors and desired to apply for service in the name of Adventures in Faith Ministries, Inc. He was likewise advised that he needed to meet the same criteria required of Mr. Terpstra the prior day. Mr. Page then applied for service in his own name, paying the past bills due from Complainant and making the required security deposit. Upon completion of his application at approximately 3:00 p.m., Mr. Page requested that CP&L guarantee that service would be connected at the miniature golf course that day. Mr. Page was advised that new service account connection orders were worked in the order of their being received; that CP&L could not guarantee same-day connect service; that the following day was a CP&L holiday (Good Friday); and that CP&L would connect service to this new account as soon as reasonably possible. CP&L set a meter and connected service to the miniature golf course at 11:10 a.m. on the Company's next business day which was Monday, April 16, 1990.

CP&L's actions regarding the Complainant's request for electrical service to the miniature golf course were not unreasonable. The Company's policy of requiring a corporate officer to make an application for service on behalf of a corporation is sound and not arbitrary or capricious. In this instance, power was connected on the first business day after service was requested by Mr. Page. Mr. Phillips offered credible testimony that the days surrounding the Easter weekend are always very busy with a backlog of orders and that CP&L had a great amount of work to do during the period of time in question. The Hearing Examiner concludes that CP&L connected this service within a reasonable period of time considering all of the relevant circumstances.

The Hearing Examiner encourages the Complainant and CP&L to strive to establish a better working relationship in the future. A relationship of trust clearly does not exist today. Both parties bear some fault and need to be more conciliatory. The Complainant now knows what it must do to have service placed in its name for its various accounts and CP&L should respond in good faith to any such request.

IT IS, THEREFORE, ORDERED that the complaint filed in this docket by Adventures in Faith Ministries, Inc., be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of December 1990.

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

DOCKET NO. E-7, SUB 456

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Mr. W. L. Morrison, Advanced Heating Systems, Inc.,<br>Complainant<br>v.<br>Duke Power Company,<br>Respondent | ) | ORDER DENYING COMPLAINT AND APPROVING LOAN PROGRAM |

HEARD IN: Courtroom 6B, Forsyth County, Hall of Justice, 250 N. Main Street, Winston-Salem, North Carolina, on May 15, 1990, at 11:00 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Julius A. Wright and Charles H. Hughes

APPEARANCES:

For the Complainant:

Pro se, Willard L. Morrison, Advanced Heating Systems, 3034 Trenwest Drive, Winston-Salem, North Carolina 27103

For Duke Power Company:

W. Larry Porter, Associate General Counsel, Duke Power Company, 421 N. Church Street, Charlotte, North Carolina 28241

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

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

BY THE COMMISSION: On August 16, 1989, the Commission issued an Order serving the complaint of Mr. Willard L. Morrison, President of Advanced Heating

Systems, Incorporated, on Duke Power Company ("Duke" or the "Company"). On September 8, 1989, Duke filed an Answer and Motion to Dismiss, stating that the complaint failed to state a claim upon which relief could be granted.

On January 5, 1990, the Complainant advised the Commission that he was not satisfied with the answer of Duke Power Company and requested an evidentiary hearing. Hearing was set for March 1, 1990, and rescheduled for May 15, 1990, to give the Complainant additional time to file testimony. Prefiled testimony was filed by the Complainant on March 23, 1990. Notice of Intervention was filed by the Attorney General on April 11, 1990. Duke prefiled the testimony of two witnesses on April 30, 1990.

The matter came on for hearing on May 15, 1990, as scheduled. The Complainant offered his own direct and rebuttal testimony. The Company objected to the admission of Mr. Morrison's rebuttal testimony on the basis of timeliness and relevancy. The Commission in a bench ruling permitted the rebuttal testimony and exhibits, but gave Duke an opportunity to file a reply brief on the rebuttal evidence. Duke then presented the testimony and exhibits of a panel consisting of Robert W. Taylor, Manager of Residential Energy Services, and David L. Weisner, Manager of the Energy Analysis Department. The Public Staff and the Attorney General appeared through counsel, but neither presented evidence.

Subsequent to the hearing and pursuant to Commission Order, on May 25, 1990, the Company filed three late-filed exhibits. Proposed Orders were filed June 29 and July 3, 1990. The Complainant was permitted to respond to both Duke's rebuttal filing and the Proposed Orders of Duke and the Attorney General.

On August 17, 1990, the Commission issued a Data Request to Duke in order to assist the Commission in a decision in this docket. The Data Request required Duke to file with the Commission, and serve a copy on the parties, a statement of how the Company accounts for all revenues and costs associated with its loan program to those customers who purchase a "Comfort Machine." The statement was to show whether the revenues and cost of this loan program are being assigned to the Company's ratepayers or to its shareholders. The Attorney General and the Public Staff were permitted to file a response to the data within three days after receipt of it from Duke.

On August 23, 1990, Duke filed its response to the Data Request. The responses stated:

> "The incidental costs of administering the loan program are charged to electric operating expense. The interest charged on the loans of 9.9%, which approximates Duke's costs of debt financing, is recorded as OTHER ELECTRIC REVENUE over the life of the loan."

On August 28, 1990, the Public Staff filed a Motion for Permission to File Comments on Duke's Data Response no later than September 18, 1990. The Commission issued an Order granting this Motion.

On September 18, 1990, the Public Staff filed a response to Duke's Data Request. In its response, the Public Staff stated as follows:

"Inasmuch as this Loan Program has been available for some three years and is similar to loan programs offered by other electric utilities in the State, the Public Staff does not oppose its approval at this time. It is likely, however, that modifications and improvements to the Loan Program will be proposed by the Public Staff in connection with Duke's expected 1991 general rate case."

On September 14, 1990, Duke filed a letter requesting Commission approval of Duke's Residential Comfort Loan Program. Attached to the letter was a description of the Loan Program.

On September 19, 1990, the Complainant filed a response to Duke's filing of its Loan Program.

Based upon a careful consideration of the entire record in this proceeding, including the evidence presented at the May 15, 1990, hearing and the subsequently filed documents and pleadings, the Commission makes the following

## FINDINGS OF FACT

1. The Complainant Willard L. Morrison is President of Advanced Heating Systems, Incorporated.

2. Complainant's Company, Advanced Heating Systems, Incorporated, is a North Carolina corporation with offices at 3034 Trenwest Drive, Winston-Salem, North Carolina. Advanced Heating Systems sells and installs hydronic electric baseboard heating systems. These systems are a zoned heating system similar to baseboard resistant heat strip heating except that the hydronic systems use electricity to heat tubes of water or liquid silicon which then radiate heat out into a room.

3. Respondent, Duke Power Company, is a public utility subject to the jurisdiction of this Commission pursuant to the Public Utilities Act, G.S. 62-1 et seq.

4. The Complainant seeks an Order from this Commission

   A. Compelling Duke Power Company to cease and desist from promoting heat pumps;

   B. Directing Duke Power Company to inform its representatives not to degrade other forms of electric heating when it receives written or verbal inquiries about heating systems; and,

   C. Directing Duke Power to refrain from the practice of financing the purchase of heat pumps or from utilizing the purchase of a heat pump as the basis for a lower electrical rate.

5. The Complainant, as the owner of a business selling heating equipment, objects to the programs of Duke which promote a particular type of electrical heating equipment--that is, the Comfort Machine heat pump--"in competition with private enterprise."

6. Specifically, the Complainant challenges the programs of Duke which promote the "Comfort Machine" heat pump and offer loans to its customers for the purchase of such heat pump.

7. Duke encourages the use of high-efficiency heat pumps by its residential customers.

8. Duke is largely a summer-peaking utility, and its construction requirements, including generation facilities, are strongly influenced by summer peak demand growth. Ninety-six percent (96%) of all new residential construction in Duke's service area has central air conditioning. Duke's policy is to encourage electric space heating in order to make the best use of its generation capacity in the non-summer months. This policy allows Duke to spread the fixed costs of its generation over a larger base of energy sales to minimize the average costs per unit of energy.

9. Duke's policy of promoting heat pumps also helps Duke minimize the growth rate of summer peak demand.

10. Duke has determined that the use of high-efficiency heat pumps by its residential customers helps improve load factor while providing the customer a competitive operating costs when compared with other fuels and other electric heating systems.

11. Although Duke agreed that a room-by-room heating system can be more economical to operate than a central system, Duke did not agree that a room-by-room system is more economical to operate when the entire structure is conditioned. Although Duke recommends baseboard heating for certain applications, most of Duke's customers are interested in heating and cooling their entire house throughout the year.

12. Duke encourages the technology of a high-efficiency system which provides both heating and cooling, provides a lower contribution to the summer peak than a typical central air conditioning system, and for heating provides two to three times the heating output for each unit of energy output. Although Duke does not promote a particular type or brand of heat pump, Duke does encourage the installation of highly efficient heating equipment which may be more expensive to install than less efficient equipment.

13. Duke offers financing through its "Comfort Machine" loan program to encourage its residential customers to purchase high-efficiency heat pumps. The benefits of this program are lower energy bills for the customers, less contribution to the summer and winter peak loads of Duke, and improvements in Duke's overall load factor.

14. Duke's residential "Comfort Machine" loan program, which was submitted to the Commission for approval on September 14, 1990, provides direct loans to qualified homeowners for the following:

"1. Financing of up to $5,000 for one Comfort Machine or up to $7,500 for two or more Comfort Machines.

"2. Financing of up to $2,500 for replacement of an existing heat pump's indoor or outdoor unit with a high-efficiency unit."

To qualify for a loan under this program, the homeowners must install a heat pump with a seasonal energy efficiency ratio (SEER) of nine or greater. The program is available to customers in existing single-family residential structures where the customer owns the real property (or a mobile home and the real property on which it is located). To qualify for a loan under the program, the "Comfort Machine" must be installed by an authorized "Comfort Machine" dealer certified by Duke.

The owner must secure the loan from his local Duke Power office. Loans to qualifying owners will be made for a period up to 60 months at 9.9% APR. (If the amount of the loan is less than $5,000, the term of the loan shall not exceed 42 months.) The owner is to pay nominal filing fees to record any liens.

15. It is the policy of the Commission to encourage Duke and other electric utilities to implement load management programs which control the growth rate of peak demand while encouraging customers to use energy during off peak periods.

16. Duke's Residential Service Conservation Rate Schedule (RC rate) does not require a specific type of fuel or heating equipment. Residential customers who meet the conditions of the RC rate are given a reduction of 2% in the energy charges per kWh in the rate. The RC rate encourages customers to meet important conservation goals and has been approved by the Commission.

## CONCLUSIONS

### I

The Commission concludes that the Complainant has failed to carry the burden of proof to show that Duke's Residential Loan Program is an unjust and unreasonable practice of the Company. Consequently the Commission issues this Order denying the complaint.

In his testimony, Mr. Morrison, the President of Advanced Heating Systems, Inc., the Complainant in this proceeding, testified as to the purpose of his testimony:

> "My purpose stems from a two-fold concern--first, as a private citizen subject to the monopoly enjoyed by the Duke Power Company as a public utility; and second, as the owner of a business selling heating equipment which finds this public utility promoting a particular type of equipment in competition with private enterprise. We raise the basic question as to whether this action is permissible under the original purposes and intent of the franchise granted by the N.C. Public Utilities Commission to Duke Power Company. Certainly the fundamental purpose of Duke Power is to generate and sell electrical energy in competition with other forms of energy such as oil and gas. And it behooves Duke Power to advertise and promote the perceived advantages of using electrical energy to heat and cool homes."

More particularly, Mr. Morrison took issue with the practices of Duke in promoting and encouraging "the sale of one particular type of equipment solely

utilizing electricity to the detriment of another form of equipment also sold solely using electrical power." He identified the equipment promoted by Duke as the heat pump bearing the name of "The Comfort Machine."

Mr. Morrison continued: "My premise is that Duke Power should not be permitted to promote any particular type of heating or cooling. This should be performed by private companies without monopoly under the free enterprise system." Mr. Morrison contended that Duke's program of financing the customer purchases of heat pumps by loans of up to $5,000 at a rate of interest of 9.9% APR places Duke in competition with local banks and savings and loan institutions. Mr. Morrison also took issue with Duke's claims in its literature about the advantages of heat pumps. In conclusion, Mr. Morrison requested the Commission:

"1. To cause Duke Power Company to cease and desist from the promotion of heat pumps.

"2. To direct Duke Power to inform its representatives not to degrade other forms of electric heating when inquiries, verbal or written are received by Duke Power Company from potential users.

"3. To direct Duke Power to refrain from the practice of financing the purchase by customers of heat pumps, or from utilizing the purchase of a heat pump by a Duke Power customer on the basis for a lower electrical rate."

Duke presented the testimony of Robert W. Taylor, Manager of Residential Energy Services for Duke, and David L. Weisner, Manager of the Energy Analysis Department of Duke. Mr. Taylor discussed Duke's reasons for encouraging the use of high-efficiency heat pumps. Mr. Weisner discussed the effect of the heating and cooling load on Duke's generation requirements. Briefly summarized, Duke's testimony tended to show that the Company does encourage the use of heat pumps by its residential customers. Duke's witnesses testified that Duke is a summer-peaking utility and that its construction requirements, including generation facilities, are determined by summer-peak demand growth. Duke encourages electric space heating in order to make the best use of its generation capacity in the winter, which is an off-peak period for the Company. Duke has determined that the use of high-efficiency heat pumps by its residential customers helps the Company to improve its load factor while providing the customer competitive operating costs when compared with other fuels and other electric heating systems. Duke does not, however, promote any particular type or brand of heat pump. Duke does encourage the installation of highly efficient heating equipment which may be more expensive to install than other systems. Duke's loan program was developed to encourage its customers to install the most efficient type of heat pump available. Customers replacing their heating equipment would tend to install cheaper, less efficient heating equipment if the loan program were not available. In the opinion of Duke's witnesses, the benefits of the loan program are lower energy bills for the customers, less contribution to the peak of Duke, and overall improvements in Duke's load factor. Furthermore, the installation of a high-efficiency system which provides both heating and cooling results in a lower contribution to Duke's summer peak than a typical, less efficient central air conditioning system.

G.S. 62-73 allows complaints against public utilities on the grounds that any rule, regulation, or practice of the utility is "unjust and unreasonable." G.S. 62-75 provides that the burden of proof shall be upon the Complainant to show that the rule or practice complained of is unjust and unreasonable.

Upon consideration of all the evidence in this proceeding, the Commission concludes that the practices of Duke in promoting the use of high-efficiency heat pumps through its literature and the loan program are not unjust and unreasonable. As pointed out by Duke's witness Weisner: "Duke has very little control over customer behavior to operate their heating and cooling systems." Duke has an obligation to meet the electrical energy needs of all of its customers, including residential customers. The type of equipment selected by Duke's customers and the manner in which that equipment is operated "can have a major impact on the peak load requirements for which the utility system must be designed." Mr. Taylor pointed out that 96% of all new residential construction has central air conditioning. Duke is largely a summer-peaking utility, and its construction requirements are strongly influenced by summer-peak demand growth. Consequently, Duke encourages the use of electric space heating by its residential customers, since this allows the Company to make the best use of its generation capacity in the winter. Duke's policy of encouraging electric space heating benefits all of the Company's customers, since the use of electric space heating allows Duke to spread the fixed costs of its generation, which is required to meet the summer peak demand, over a larger base of energy sales to minimize the average cost per unit of energy.

Duke does not merely encourage the use of electric space heating by its residential customers. Instead it encourages the use of high-efficiency heat pumps in conjunction with central air conditioning systems. Mr. Weisner stated that heat pumps offer the most efficient whole house method of providing electric heating and cooling requirements of the customers. Duke agreed that a room-by-room heating system, as advocated by the Complainant, can be more economical to operate than a single system. Duke did not agree, however, that a room-by-room system is more economical to operate when the entire structure is conditioned. Most of Duke's customers are interested in heating and cooling their entire house throughout the year.

Duke's attempts to minimize the growth rate of the summer peak demand and to make greater use of its generating capacity during the winter months by encouraging electric space heating is in accord with often-stated goals of this Commission. Indeed, the Commission is under a continuing mandate from the General Assembly "to promote adequate, economical and efficient utility service to all of the citizens and residents of the state." G.S. 62-155. The Commission has encouraged a wide range of load management and conservation activities by the electric utilities under its jurisdiction. Load management programs have been implemented by the utilities not only to curtail the growth in summer peak demand, but also to encourage the off-peak use of electrical facilities, including electrical residential space heating in the winter, to make use of the generation capacity required to meet summer peak demand.

The Commission is of the opinion and therefore concludes that the activity of Duke in encouraging the use of high-efficiency heat pumps through its literature and through the residential loan program is a permissible undertaking for the Company. Duke has an obligation to meet the energy needs of all of its customers. Duke's encouragement of the residential use of

high-efficiency heating and cooling systems allows the Company to control in some manner the growth in its summer peak and to encourage greater utilization of its generation capacity in the winter months. Duke does not promote a particular type or brand of heat pump. The residential loan program allows Duke to encourage the its customers to install a high-efficiency heat pump. Through this loan program, the goals of Duke to slow the growth in the peak and to improve Duke's load factor are met.

The parties also testified about the respected merits and demerits of baseboard heating systems and high-efficiency heat pumps. It is outside the scope of this proceeding for the Commission to weigh the respective merits of these heating systems. Suffice it to say, the economies and efficiencies of different types of heating systems depend upon a variety of factors, including use (whole house versus individual rooms, for example) and manner of operation. In any event, the Complainant failed to show that Duke's promotion of the high-efficiency heat pump constituted an unjust and unreasonable practice.

Finally, the Commission finds no merit in the Complainant's contention that the Residential Conservation Rate unfairly favors the purchase of a heat pump by a Duke customer. This rate meets important energy conservation goals by requiring, as a condition of the rate, the use of energy conservation practices in the home. The rate has been approved by the Commission and has been reviewed by the Commission in Duke's subsequent rate cases. The rate does not require a specific type of fuel or heating equipment.

II

Duke's Residential Comfort Machine Loan Program, which was filed with the Commission on September 14, 1990, should be approved by the Commission, subject to further review in the Company's next general rate case.

On September 14, 1990, Duke filed with the Commission the provisions of the its Residential Comfort Machine Loan Program and requested Commission approval. Duke pointed out that during the course of this complaint proceeding, the Company determined that the loan program, which was begun in 1987, was not previously filed with nor approved by the Commission. Duke pointed out that the loan program is designed to encourage the use of high-efficiency heat pumps for residential use. On September 19, 1990, both the Complainant and the Public Staff filed letters commenting on the loan program. The Complainant stated in part:

> "Should a public utility be permitted to go into competition with local financial institutions offering loans to buy a heat pump at 9.9% interest rate (currently below prime)?
>
> "First they compete with private enterprise in the promotion of a particular product and then they compete with private enterprise by offering unrealistic interest rates which, in essence, 'bribe' the consumer to buy a particular type of product."

The Public Staff in its comments stated that inasmuch as the loan program has been available for some three years and is similar to other loan programs offered by electric utilities in the State, the Public Staff does not oppose its approval at this time. The Public Staff further commented that it is

likely that modifications and improvements to the loan program will be proposed by the Public Staff in Duke's next general rate case, which is expected to be filed in 1991.

Having determined that Duke's practices in regard to the promotion of the high-efficiency heat pump, including its residential loan program to purchase this equipment, does not constitute a unjust and unreasonable practice, the Commission is of the opinion that the Residential Loan Program, the details of which were filed by Duke on September 14, should be approved by the Commission, provided that the program shall be subject to further review in the Company's next general rate case. The Commission notes in passing that Duke's residential loan program is similar to programs that have been implemented by other regulated electric utilities.

IT IS, THEREFORE, ORDERED as follows:

1. That the complaint in this docket be denied.

2. That the Residential Comfort Machine Loan Program, which was filed by Duke Power Company in this docket on September 14, 1990, be approved, subject to further review in the Company's next general rate case.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of December 1990.

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

DOCKET NO. E-7, SUB 459

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>John Lee Morris, 308 North Driver Street,<br>Durham, North Carolina 27703,<br>Complainant<br>vs.<br>Duke Power Company,<br>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 Wednesday, June 20, 1990, at 9:30 a.m.

BEFORE: Chairman William W. Redman, Jr., Presiding, and Commissioners Sarah Lindsay Tate, Julius A. Wright, Charles H. Hughes, and Lawrence A. Cobb

APPEARANCES:

For Complainant:

John Lee Morris, 308 North Driver Street, Durham, North Carolina 27703
For: Himself

For Respondent:

W. Larry Porter, Associate General Counsel, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242
For: Duke Power Company

BY THE COMMISSION: On March 30, 1990, Commission Hearing Examiner Sammy R. Kirby entered a Recommended Order in this docket denying the complaint filed by John Lee Morris against Duke Power Company. As part of that Order, Duke was required to file a report regarding the 1981 deposits reflected by Morris Exhibit D.

Duke filed responses to Morris Exhibit D as required by the Recommended Order on April 26, 1990, and April 30, 1990.

On April 29, 1990, the Complainant filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

The matter was thereafter scheduled for oral argument on exceptions before the Commission. Upon call of the matter for oral argument, Mr. Morris was present and represented himself. Duke Power Company was represented by counsel. Both parties offered oral argument for consideration by the Commission.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission finds and concludes that each of the findings of fact, conclusions, and decretal paragraphs contained in the Recommended Order are fully supported by the record. Therefore, good cause exists to affirm and adopt the Recommended Order as the Final Order of the Commission. The Commission has also reviewed Duke's responses to the Recommended Order and concludes that the Company properly computed interest on and refunded the Complainant's 1981 deposits. Accordingly, the exceptions filed by Mr. Morris are denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the Recommended Order entered in this docket on March 30, 1990, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

2. That the exceptions filed in this docket by the Complainant on April 29, 1990, be, and the same are hereby, overruled and denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of July 1990.

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

DOCKET NO. EC-51(T), SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Solomon Horney, Route 2, Box 31,<br>Banner Elk, North Carolina 28604,<br>Complainant | ) | |
| v. | ) | ORDER OVERRULING MOTIONS TO DISMISS AND SETTING COMPLAINT FOR HEARING ON OCTOBER 18, 1990 |
| Mountain Electric Cooperative,<br>Drawer 180, Mountain City,<br>Tennessee 37683,<br>Respondent | ) | |

HEARD: May 16, 1990, at 2:00 p.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chairman William W. Redman, presiding; Commissioners Sarah Lindsay Tate, Robert O. Wells, Julius A. Wright, Charles H. Hughes and Laurence A. Cobb

APPEARANCES:

For Mountain Electric Cooperative, Inc.:

William B. Cocke, Jr., Attorney at Law, Post Office Box 605, Newland, North Carolina 28657

For North Carolina Electric Membership Corporation:

Thomas J. Bolch, Attorney at Law, North Carolina Electric Membership Corporation, Post Office Box 27306, Raleigh, North Carolina 27611

and

Christopher J. Blake, Moore & Van Allen, Attorneys at Law, Post Office Box 26507, Raleigh, North Carolina 27611

For the Using and Consuming Public:

A. W. Turner, Jr., Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On February 16, 1990, Solomon Horney, of Banner Elk, filed a complaint with the Commission against Mountain Electric Cooperative, Inc. ("Mountain Electric"), of Mountain City, Tennessee. In his complaint, Mr. Horney alleged that Mountain Electric wants to build a 69 KV transmission power line from Horney Hollow, Banner Elk, where he lives, to Beech Mountain; that there is an existing transmission line and substation going to the top of Beech Mountain at the present time; that Mountain Electric stated that it would not use the existing line right-of-way but would use a new right-of-way; that the proposed new transmission line and right-of-way, and its transformer box, would be within 200 feet of his house; that he and his family are concerned about possible health effects from the closeness of the proposed line; that he is concerned about the effect of the proposed transmission line on the market value of his home; that there are other options available to Mountain Electric instead of the proposed right-of-way but Mountain Electric refuses to consider these options.

On February 22, 1990, the Commission issued Order Serving Complaint, serving the complaint of Mr. Horney upon Mountain Electric. The Order required Mountain Electric to file an answer or satisfy the demands of the complaint within 20 days after the receipt of the Order Serving Complaint.

On February 28, 1990, the North Carolina Electric Membership Corporation ("NCEMC") filed Petition to Intervene and Motion to Dismiss for Lack of Jurisdiction. In its Motion to Dismiss, NCEMC alleged that it is a generation and transmission cooperative both corporately and physically sited within the State and is authorized by law to build and operate generating and transmission facilities within the State. NCEMC further alleged that the Commission lacks jurisdiction to hear and determine matters such as the complaint of Mr. Horney in this docket. NCEMC further alleged:

> "In order to protect itself and its 27 member distribution EMCs corporately sited and operating within North Carolina from unnecessary expense in future proceedings before the Commission such as this wherein the Commission lacks jurisdiction, NCEMC finds it necessary to intervene in this proceeding and ask the Commission to dismiss this proceeding for lack of jurisdiction."

On March 16, 1990, Mountain Electric filed its Motions to Dismiss and Answer. In this pleading, Mountain Electric alleged that the Commission does not have jurisdiction to hear the complaint of Mr. Horney in this docket. In its answer, Mountain Electric essentially alleged that it was planning to construct a 69 KV, single pole, narrow profile, transmission line from Banner Elk to Beech Mountain, as alleged in the complaint, and that the proposed transmission line will tap an existing 69 KV transmission line from Cranberry to Banner Elk by adding a single pole mounted switch and that this switch structure will be located in the existing 69 KV transmission line right-of-way, approximately 300 feet from the Complainant's house. Mountain Electric also alleged that the proposed 69 KV transmission line cannot be routed over the

existing distribution route, as contended by the Complainant; that the existing route was not pursued due to excessive construction costs, required outages during construction periods, inadequate clearance to existing structures for 69 KV circuits, inadequate existing right-of-way to accommodate exposed line, and the loss of reliability to all facilities on one line route. Mountain Electric either denied the remaining allegations of the complaint or alleged that it did not have sufficient information with respect to the allegations. Mountain Electric specifically denied that the Complainant would "practically lose the value of [his] home."

On April 5, 1990, the Commission issued an Order allowing the Petition to Intervene of North Carolina Electric Membership Corporation, serving the Motions to Dismiss and Answer on Mr. Horney, and scheduled oral argument on the Motions to Dismiss for Lack of Jurisdiction for May 2, 1990, at the Commission Hearing Room in Raleigh.

By subsequent Orders, the oral argument was rescheduled to May 16, 1990.

The Motions to Dismiss for Lack of Jurisdiction came on for oral argument before the full Commission on May 16, 1990. The parties, including the Public Staff-North Carolina Utilities Commission, were present and represented by counsel. The Commission heard oral argument from Mountain Electric Cooperative, Inc., NCEMC, and the Public Staff. Upon consideration of the complaint, the Motions to Dismiss, the oral argument on May 16, 1990, and the entire record in this docket, and the judicial notice of certain other Commission dockets to be more fully set forth below, the Commission issues this Order denying the motions to dismiss for lack of jurisdiction and setting the complaint of Mr. Horney for hearing.

## CONCLUSIONS

The Commission is of the opinion, and so concludes, that it has jurisdiction to hear and determine the complaint of Mr. Horney with respect to the siting of the proposed transmission line by Mountain Electric.

As correctly pointed out by NCEMC and Mountain Electric, the Commission does not have complete jurisdiction over electric membership corporations. G. S. 62-3(23)d provides in pertinent part: "The term 'public utility', except as otherwise expressly provided in this Chapter, shall not include . . . electric . . .membership corporation(s). . . " An EMC is subject to the regulatory jurisdiction of this Commission in the following instances, as expressly provided by statute: (a) for certification of a generating plant (G.S. 62-110.1); (b) for assignment or reassignment of service territories (G.S. 62-110.2); (c) upon complaint for alleged discrimination in rates, service practices, promotional activities, and the like (G.S. 62-140(c)); and (d) for service, extensions of service and facilities, and other acts that reasonably need to be made, as more fully enumerated in G.S. 62-42(a)(1-5).

The EMC-Intervenors contend that the complaint of Mr. Horney does not fall within any of the above statutory categories. The Public Staff, on the other hand, contends that G.S. 62-42 does give the Commission authority to hear the complaint of Mr. Horney.

The above-cited statutes do not expressly provide that the Commission has jurisdiction over transmission line siting complaints against an electric membership corporation. As the parties recognized at the oral argument on May 16, 1990, the issue presented by the Motions to Dismiss requires the Commission to construe the statutes in G.S. Chapter 62 relating to electric membership corporations. The Commission agrees with the Public Staff that the applicable statute which vests the Commission with jurisdiction to hear the Horney complaint is G.S. 62-42. Subsection (c) of that statute provides:

> "(c) For the purpose of this section, 'public utility' shall include any electric membership corporation operating within this State."

It is helpful, in reaching a decision on the issue before the Commission, to review the Commission's jurisdiction with respect to transmission line complaints against the electric companies Carolina Power & Light Company, Duke Power Company, North Carolina Power, and Nantahala Power and Light Company, which are "public utilities" pursuant to G.S. 62-3(23)a. In a series of cases beginning in 1974, the Commission has held that it has jurisdiction to hear and determine complaints against the electric public utilities involving the siting of electric transmission and distribution lines. 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"); Kill Devil Hills v. Vepco, 73 Orders and Decisions 102 (1984) (Docket No. E-22, Sub 274); Camp Gwynn Valley v. Duke Power Company, 78 Orders and Decisions 186 (1988) (Docket No. E-7, Sub 414); Crohn, et. al v. Duke Power Company, 78 Orders and Decisions 213 (1988) (Docket No. E-7, Sub 430); and The Jocassee Watershed Coalition et. al v. Duke Power Company, (Docket No. E-7, Sub 432) (Orders of April 3 and May 30, 1989) (unpublished).

In each of these cases, beginning with the Kirkman case in 1974, which involved the construction by Duke of a transmission line across Mr. Kirkman's property, the Commission held that it had jurisdiction to hear and determine these types of complaints against the electric public utilities. In so deciding, the Commission concluded that the scope of its authority was defined by the following statutes: G.S. 62-2(5) provides that the policy of the State is to "encourage and promote harmony between public utilities, their users and the environment." (emphasis added). G.S. 62-30 provides that the Commission "shall have and exercise such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties." G. S. 62-73 provides that the Commission may hear complaints against public utilities with respect to rates, service, rules, or practices.

G. S. 113A-3 of the North Carolina Environmental Policy Act of 1971 declares that "it shall be the continuing policy of the State of North Carolina to conserve and protect its natural resources and to create and maintain conditions under which man and nature can exist in productive harmony. Further, it shall be the policy of the State to seek, for all of its citizens, safe, healthful, productive and aesthetically pleasing surroundings; to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety; and to preserve the important historic and cultural elements of our common inheritance."

G.S. 113A-4(1) provides that "the policies, regulations, and public laws of this State shall be interpreted in accordance with the policies set forth in this Article."

The Commission has held in the Kirkman and other cited cases that, construed together, these statutes give the Commission jurisdiction to hear and determine transmission line siting complaints against electric public utilities.

In each of these cases, the Commission further concluded that the "arbitrary and capricious" standard of review was applicable in reviewing the siting of the lines. See, Duke Power Company v. Ribet, 25 N.C. App. 87 (1975).

The Commission has not had the occasion, until the instant case, to consider G.S. 62-42 in the context of a transmission line siting complaint against the electric public utilities. (In the above-cited complaint cases, the electric utilities had initiated their own plans to construct and site the transmission lines complained of.) The Commission is of the opinion, and so concludes, that in a proceeding under G.S. 62-42 involving the siting and construction of a public utility transmission line, the Commission can consider a complaint about the environmental impact arising out of the proposed siting of the transmission line.

Consequently, the environmental impact of a proposed public utility transmission line, whether complained of under G.S. 62-73 or under G.S. 62-42, may be considered by the Commission; the Commission can find no reasonable basis for considering environmental impact under G.S. 62-73 but not under G.S. 62-42. ". . . . the acts and activities of public utility firms operating in North Carolina are not free from considerations of environmental criteria and 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." The Kirkman case, supra, at 93-94.

The question remains: Do the provisions of G.S. 62-42 vest the Commission with jurisdiction to hear a complaint about the siting of a transmission line proposed by an electric membership corporation? We are mindful of G.S. 62-3(23)(d), which expressly provides that the term "public utility" except as otherwise expressly provided in G.S. 62 shall not include an electric membership corporation. As noted earlier, however, G.S. 62-42(c) provides that for the purposes of G.S. 62-42, "'public utility' shall include any electric membership corporation operating within this State." Subsection (c) is unambiguous. The Commission concludes that under the plain terms of subsection (c), G.S. 62-42 is applicable to electric membership corporations in the same manner and to the same degree as it is to a public utility such as Duke Power Company or Carolina Power & Light Company.

There are at least three subdivisions under G.S. 62-42(a) which give the Commission jurisdiction to hear and determine the complaint of Mr. Horney against Mountain Electric:

> "(1) That the service of any public utility is inadequate, insufficient or unreasonably discriminatory, or

. . . . .

"(3) That additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility, of any two or more public utilities ought reasonably to be made, or

. . . . .

"(5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity."

These three subdivisions, construed either singly or together, are sufficiently broad in scope to include the activity complained of. We particularly note subdivision (5), which stresses "any other act [that] is necessary . . . . reasonably and adequately to serve the public convenience and necessity." Under the Kirkman case, it is clear that the obligations of a public utility arising out of the public convenience and necessity standard include an obligation to give due regard to the environmental policy set forth in G.S. Chapter 113A.

Therefore the Commission is of the opinion, and so concludes, that the Commission may consider upon complaint the environmental impact of a transmission line siting proposed by an electric membership corporation such as Mountain Electric.

Having concluded that the Commission has jurisdiction to hear the complaint of Mr. Horney, the Commission issues this Order denying the Motions to Dismiss of NCEMC and Mountain Electric Cooperative and scheduling the complaint for hearing at the time and place set forth below.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motions to Dismiss for Lack of Jurisdiction of North Carolina Electric Membership Corporation and of Mountain Electric Cooperative, Inc., be denied.

2. That the complaint of Mr. Horney shall be set for hearing at the following time and place:

Thursday, October 18, 1990, at 9:30 a.m.,
Commission Hearing Room, Dobbs Building,
430 North Salisbury Street, Raleigh,
North Carolina.

3. That discovery shall be completed by September 14, 1990.

4. That Mr. Horney, and any party supporting him, shall file testimony in writing with the Commission, and serve a copy thereof upon the Respondent and the other parties, on or before September 24, 1990.

5. That the Respondent, and any party supporting it, shall file testimony, and serve a copy thereof upon the Complainant and the other parties, on or before, October 9, 1990.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of July 1990.

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

DOCKET NO. E-2, SUBS 537 & 333

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Application by Carolina Power & Light<br>Company for an Increase in Rates and<br>Charges | )<br>)<br>)<br>) | ORDER<br>ON REMAND |

BY THE COMMISSION: In its opinion dated November 9, 1989, the North Carolina Supreme Court remanded this case to the Commission for further action consistent with the opinion. Specifically, the Supreme Court ordered the Commission to transfer $389,442,000 of Harris Plant common facilities from rate base to cancelled plant. The Court further authorized the Commission to review the allowed rate of return and to make appropriate adjustments to reflect the fact that $389,442,000 of prudently incurred costs were being transferred from rate base to cancelled plant. Finally, the Court authorized the Commission to include in rate base any common facilities the Commission expressly found were "used and useful".

The Public Staff and Carolina Power & Light Company have negotiated a proposed settlement of the issues remanded to the Commission. The Attorney General has no objection to the proposed settlement. The Public Staff, Attorney General and Carolina Power Light Company were the only parties involved in the appeal in this case and are the only parties that have filed briefs before the Commission on remand. Though the current level of rates will remain the same under the proposed settlement as those set in our previous order in this docket, the ratepayer will benefit over the entire life of the plant.

Based upon a careful review of the Supreme Court's opinion and our previous order, we find that the proposed settlement is a fair resolution of this case. The settlement would require treating $389,442,000 of common facilities as cancelled plant, amortizing these costs through a special rider over 5.925 years from the date of the original order, and leaving the rate of return on common equity at 12.75%. This results in no change in the current level of rates, which we found to be just and reasonable; is fully consistent with the opinion of the Supreme Court; maintains the current allowed rate of return; and will result in lower rates for the consumer upon expiration of the special amortization rider in mid -1994. We hereby adopt the terms of the settlement. While this resolution of the issue maintains the current level of rates, the impact on CP&L's earnings will be a reduction of approximately $71 million, or $0.84 per share, and thus there will be an adverse effect on stockholders. However, we believe that by preserving cash flow for the Company over the amortization period and removing the $389,442,000 from rate base, we have considered the interest of both the stockholders and the customer.

All parties to the appeal have consented to this order, as shown by the signatures of counsel for the Public Staff, the Attorney General, and the Company.

IT IS, THEREFORE, ORDERED:

1. That within 10 days CP&L shall file proposed tariffs which shall implement the intent of this order by amending each tariff to transfer from base rates to a special amortization rider that amount per kWh required to amortize $389,442,000 over 5.925 years, without any return on the unamortized balance, and providing for the automatic termination of the rider 5.925 years from the date of the original order in this case; and

2. That notice of the change in tariffs be included as a bill insert.

3. That this Order is based upon the unique circumstances in this case and shall not be relied upon as, or establish, a precedent in or for any future proceeding, except that, in CP&L's future rate cases, there will be no specific incremental adjustment to the rate of return based on this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of July 1990.

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

CONSENTED TO:

PUBLIC STAFF -- NORTH CAROLINA UTILITIES COMMISSION
By: James D. Little, Staff Attorney

LACY H. THORNBURG, ATTORNEY GENERAL
By: Karen E. Long, Assistant Attorney General

CAROLINA POWER & LIGHT COMPANY
By: Richard E. Jones, Vice President,
General Counsel & Secretary

DOCKET NO. E-2, SUB 579

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Application by Carolina Power & Light<br>Company for Authority to Adjust Its<br>Electric Rates and Charges Pursuant<br>to G.S. § 62-133.2 and NCUC Rule R8-55 | )<br>)<br>)<br>) | ORDER APPROVING FUEL<br>CHARGE ADJUSTMENT |

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, August 7, 1990, at 9:30 a.m.

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

APPEARANCES:

For Carolina Power & Light Company:

Robert W. Kaylor, Attorney at Law, Patterson, Dilthey, Clay, Cranfill, Sumner & Hartzog, Post Office Box 310, Raleigh, North Carolina 27602-0310

Adrian N. Wilson, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

For Carolina Industrial Group for Fair Utility Rates:

Ralph McDonald, Bailey & Dixon, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865

For the Carolina Utility Customers Association, Inc.:

Theodore C. Brown, Jr., Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605-2547

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 North Carolina Department of Justice:

Jo Anne Sanford, Special Deputy Attorney General, and Tom Zweigart, 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: On June 6, 1990, 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 of the North Carolina General Statutes and Commission Rule R8-55. In its Application, CP&L proposed an increment of 0.078¢/kWh (0.081¢/kWh including gross receipts tax) to the base factor of 1.276¢/kWh approved in Docket No. E-2, Sub 537. The resulting preliminary fuel factor of 1.354¢/kWh was based on the adjusted historical 12-month test period ending March 31, 1990. The Company also requested a decrement of 0.006¢/kWh (0.006¢/kWh including gross receipts tax) for the Experience Modification Factor (EMF) to refund approximately $1.5 million of excess fuel revenues collected (plus interest) during the April 1, 1989 to March 31, 1990 period. The Company proposed that the EMF rider be in effect for a fixed 12-month period.

On June 15, 1990, the Carolina Industrial Group for Fair Utility Rates (CIGFUR-II) filed its Petition to Intervene which the Commission granted on June 20, 1990.

On June 20, 1990, the Commission issued its Order Scheduling Hearing and Requiring Public Notice and establishing certain filing dates.

On June 23, 1990, Thomas S. Lam filed testimony on behalf of the Public Staff.

On June 25, 1990, the Attorney General filed a Notice of Intervention pursuant to G.S. § 62-20.

On July 20, 1990, the Carolina Utility Customer Association, Inc. (CUCA) filed its Petition to Intervene. The Commission issued an Order dated July 25, 1990, allowing CUCA's intervention.

The intervention of the Public Staff is noted pursuant to Commission Rule R1-19(e).

On August 3, 1990, the Company filed the affidavits of publication showing that public notice had been given as required by the Commission Order.

The matter came on for hearing as ordered on August 7, 1990, at 9:30 a.m. CP&L presented the testimony and exhibits of Dale M. Bouldin, Manager - Rate Development and Cost Analysis. The Public Staff presented the testimony and exhibits of Thomas S. Lam, Engineer, Electric Division. CUCA, the Attorney General, and CIGFUR-II did not present witnesses.

On August 10, 1990, in response to requests made during the hearing, the Public Staff filed Public Staff Late-Filed Exhibits Nos. 1 and 2.

All parties to the proceeding were provided an opportunity to file proposed orders with the Commission on or before August 31, 1990.

Based upon the verified Application, the testimony, and exhibits received into evidence at the hearings, the late-filed exhibits and the record as a whole in this proceeding, 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 generating, transmitting, and selling electric power to the public of North Carolina. CP&L is lawfully before this Commission based upon the application filed pursuant to G.S. §62-133.2.

2. The test period for purposes of this proceeding is the 12-month period ended March 31, 1990.

3. CP&L's fuel procurement and power purchasing practices were reasonable and prudent during the test period.

4. The adjustments proposed by the Company to normalize for weather and customer growth are reasonable and appropriate for use in this proceeding.

5. A normalized generation mix, as required by Commission Rule R8-55 using the latest five-year industry average data for boiling water reactors (BWR) and pressurized water reactors (PWR) from the North American Electric Reliability Council's (NERC) Equipment Availability Report 1984-1988, is appropriate for use in this proceeding. These normalized capacity factors by unit result in a reasonable and representative normalized system nuclear capacity factor of 57.44%.

6. The use of burned fuel costs for the month of March 1990 is reasonable and appropriate for purposes of this proceeding.

7. A fuel cost factor of 1.354¢/kWh (excluding gross receipts tax) for North Carolina retail service is appropriate for use in this proceeding. This results in a fuel cost increment of 0.078¢/kWh (0.081¢/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, the Company's last general rate case.

8. The operation of the Company's base load nuclear and fossil plants was reasonable and prudent during the test period.

9. An Experience Modification Factor (EMF) decrement of 0.006¢/kWh (0.006¢/kWh including gross receipts tax) is reasonable and appropriate for use in this proceeding. This EMF includes interest and reflects 100 percent of the difference between CP&L's actual 12-month (April 1, 1989 to March 31, 1990) level of reasonable and prudently incurred costs for fuel and purchased power fuel expense and the fuel-related revenues, exclusive of the EMF-related revenues, collected as a result of the Commission Orders in Docket No. E-2, Sub 544 and Sub 562. The 0.006¢/kWh rider decrement will become effective on September 15, 1990, and will remain in effect for the next 12 months.

10. The net fuel factor approved in this proceeding after consideration of the EMF and related interest is 1.348¢/kWh (1.393¢/kWh including gross receipts tax). The rate impact of the net fuel factor approved of 1.348¢/kWh compared to the net fuel factor of 1.374¢/kWh approved in the last fuel proceeding results in a net decrease of 0.026¢/kWh (0.027¢/kWh including 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 test period ". . . in such form and detail as the Commission may require. . ." Pursuant to Commission 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 June 6, 1990, utilized the 12 months ended March 31, 1990, as the test period in this proceeding. All prefiled exhibits and testimony submitted by the Company in support of its Application utilized the 12 months ended March 31, 1990, 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, 1990, adjusted for weather normalization, customer growth, and generation mix.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding of fact is found in the Company's Application and the monthly fuel reports on file with this Commission. Commission Rule R8-52(b) requires each electric utility to file a Fuel Procurement Practices 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 filed in Docket No. E-100, Sub 47. In addition, the Company files monthly reports as to the Company's fuel costs under its present procurement practices.

The Commission concludes that CP&L's fuel procurement and power purchasing practices and procedures were reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is found in the testimony and exhibits of Company witness Bouldin and Public Staff witness Lam. The Company's proposed adjustment to normalize the test year for weather and customer growth were unopposed by any party in this proceeding. Therefore, there being no evidence to the contrary, the Commission concludes that the adjustments proposed by the Company to normalize for weather and customer growth in this proceeding are reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is contained in the testimonies and exhibits of Company witness Bouldin and Public Staff witness Lam. The Company

normalized its nuclear units in accordance with Commission Rule R8-55 which provides in subsection (c)(1) 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.

Accordingly, CP&L used nuclear capacity factors based on the five-year North American Electric Reliability Council (NERC) Equipment Availability Report 1984-1988 for boiling water reactors (BWR) and pressurized water reactors (PWR). Brunswick Unit Nos. 1 and 2 which are BWRs were normalized at 51.53% and Robinson Unit No. 2 and Harris Unit No. 1 which are PWRs were normalized at 63.56%. The Company's normalization results in a system nuclear capacity factor of 57.44%. Commission Rule R8-55 also provides that normalization of capacity factors may be adjusted to reflect unique, inherent characteristics of a utility, including but not limited to plants two years or less in age and unusual events. The Company proposed and the Commission approved the use of a 70% capacity factor during the period of time that Harris Unit No. 1 was two years or less in age. However, now that Harris Unit No. 1 is more than two years old, the Company normalized the plant using the five-year NERC average, consistent with its other PWR facilities and Commission Rule R8-55.

The Public Staff's fuel calculation used the same five-year NERC data as was used by the Company, with the exception of Harris Unit No. 1. Witness Lam proposed that Harris Unit No. 1 be normalized to 68.43%, which is the average of the unit's lifetime capacity factor of 73.3% and the latest NERC five-year average for PWRs of 63.56%. Witness Lam testified that his 68.43% capacity factor is appropriate for Harris Unit No. 1, because the unit has now operated for over three years and is considered a mature nuclear power plant not subject to the start-up problems which usually are associated with new or immature power plants. In witness Lam's opinion the fact that two years have passed should not automatically change Harris' normalized nuclear capacity factor from 70% to 63.56% when plant performance justifies the use of 68.43%. Further, witness Lam pointed out that in CP&L's last fuel proceeding, when Harris Unit No. 1 had just completed its first two years of operating life (commercial operation achieved May 2, 1987) prior to the company's filing date (May 30, 1989), the Company proposed a fuel factor with Harris Unit No. 1 continuing at a 70% nuclear capacity factor. Accordingly witness Lam stated that if there was no reason to lower Harris Unit No. 1's nuclear capacity factor to the NERC five-year average then, there is even less reason to lower it to that number now based upon last year's actual performance.

The Attorney General concurred with the Public Staff that the appropriate system nuclear capacity factor should be calculated based on the latest NERC five-year average capacity factors for PWRs and BWRs except for Harris Unit No. 1 which should be 68.43% as proposed by witness Lam.

CIGFUR-II's position, as discussed in its brief, is that the use of the most recent five-year period national averages of capacity factors as reflected in the NERC Equipment Availability Report assures inaccuracy in establishing the fuel cost rider. In its brief CIGFUR-II stated that CP&L's internal forecast of nuclear capacity factors for the period ending September 30, 1991, resulted in a systemwide nuclear capacity factor of 64.8% which is significantly higher than the 57.44% recommended by CP&L. CIGFUR-II recommended that the Commission consider CP&L's internal forecasts of its systemwide nuclear capacity factor in the normalization process, and suggested that the Commission enlarge the scope of its pending rulemaking proceeding in Docket No. E-100, Sub 55, to consider changing the manner by which capacity factors for nuclear production facilities are normalized in establishing the fuel cost rider.

CUCA recommended in its proposed order that the Commission use a systemwide nuclear capacity factor of 65.91% which is CP&L's actual test year nuclear capacity factor for the 12 months ended March 31, 1990. CUCA believes this factor which is materially greater than the normalized factor advocated by CP&L will more accurately match actual fuel costs with fuel revenues and minimize any over or underrecovery of fuel costs.

Based upon the foregoing, the Commission is not persuaded that the national average capacity factor should be adjusted for Harris Unit No. 1 and believes that Harris should be treated in a manner consistent with Commission Rule R8-55 and the normalization treatment afforded the Company's other nuclear facilities. The Commission finds that the normalized nuclear capacity factor for Harris Unit No. 1 should be 63.56% as proposed by the Company.

The Commission does not believe that the Public Staff, Attorney General, CUCA, nor CIGFUR-II provided any evidence which tended to show that the Harris Plant was unique or inherently different from other operating PWRs and should be treated differently. The Attorney General and CUCA cross-examined CP&L witness Bouldin as to the appropriateness of the five-year NERC data for normalization in light of actual and projected performance by the individual units. Witness Bouldin stated that in the years prior to adoption of Commission Rule R8-55, CUCA and its predecessor, NC Textile Manufacturers Association, argued for normalization and against use of actual test year results and future projections. Commission Rule R8-55 provides normalization rules which are fair for both the customer and the Company. The Rule states that national averages are a proper starting place for determining nuclear capacity factors. The Rule also provides an avenue for adjustments to the national averages based on unique or inherent characteristics of each utility. The opposing parties did not introduce evidence with respect to this issue and the Commission is not persuaded that unusual conditions exist for CP&L that warrant adjustments to the national average capacity factors. The Commission recognizes that if the performance of the Company's nuclear units exceeds the national averages and an overcollection results, the Company will be required to refund such amounts with interest to the customer.

The Public Staff, in addition to its proposal of a 68.43% capacity factor for Harris Unit No. 1, also recommended that Robinson Unit No. 2's Maximum Dependable Capacity (MDC) be modified from 665 MW to 700 MW, which would result in a further change in the overall system nuclear capacity factor. The combination of these two modifications would result in the Public Staff

recommending an overall system nuclear capacity factor of 58.84%. However, as discussed in the Evidence and Conclusions for Finding of Fact No. 7, the Public Staff has adopted the Company's proposals in this proceeding.

Witness Lam testified that based upon examination of Robinson Unit No. 2's performance, as shown in the Nuclear Regulatory Commission's (NRC) Monthly Licensed Operating Reactors Report ("Grey Book") for the 45 months from June 1986 through February 1990, this unit has generally operated at 700 MW or greater, with the major exceptions having been during start up, shut down, and periods of plant equipment problems. Witness Lam noted that the high water temperatures during the summer months play a major role in determining a unit's MDC rating and that Robinson Unit No. 2 has exceeded its current MDC rating of 665 MW in over 90% of its operating summer months (June, July, August, and September) in this 45-month period. The Public Staff, therefore, believes that uprating Robinson Unit No. 2's MDC rating to its 700 MW design electrical rating is appropriate. Alternatively, the Public Staff recommended that CP&L, prior to its next fuel proceeding or next general rate case, whichever comes first, file a report with the Commission on the proper MDC rating of Robinson Unit No. 2.

The Attorney General believes that in this proceeding the Commission should find the MDC rating for Robinson Unit No. 2 to be 700 MW and employ this rating in the calculation of its fuel factor to reflect a reasonable level of fuel expenses.

During cross-examination witness Lam agreed that it would be proper for CP&L to review the MDC ratings of all of its nuclear units. Since CP&L offered no objection to the Public Staff's request for an MDC rating review, the Commission concludes that CP&L should review the MDC ratings of all its nuclear units and file a report prior to its next fuel proceeding or next general rate case, whichever comes first. Further, the Commission does not accept any rerating of Robinson Unit No. 2 for the purpose of determining the fuel factor in this proceeding.

Therefore, based on the evidence presented, the Commission concludes that the appropriate system nuclear capacity factor for this proceeding is 57.44% based on use of the NERC five-year data for PWRs and BWRs and an MDC rating for Robinson Unit No. 2 of 665 MW.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is contained in the testimony and exhibits of Company witness Bouldin and Public Staff witness Lam. The Company requested a fuel factor of 1.354¢/kWh based on March 1990 burned fuel costs. The Public Staff calculated a fuel factor of 1.382¢/kWh using May 1990 burned fuel costs but recommended adoption of the lower fuel factor proposed by the Company. Company witness Bouldin also calculated a fuel factor of 1.393¢/kWh using burned cost for June 1990, the latest month available, but did not recommend that the Commission adopt it.

The Commission believes that the fuel factor should reflect the most recent burned fuel cost. However, since none of the parties proposed the use of such costs, the Commission concludes that the burned fuel costs at March 1990 are appropriate for this proceeding.

CP&L witness Bouldin testified that the Company included in the derivation of the fuel factor the fuel cost associated with the Company's purchase of power from American Electric Power Company (AEP), which commenced on January 1, 1990. No party offered evidence challenging inclusion of these costs in the calculation of the fuel factor. The Commission therefore concludes that the fuel cost associated with the AEP purchase is appropriate for inclusion in the calculation of the fuel factor.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

As discussed previously, the Public Staff presented for the Commission's information a fuel factor of 1.382¢/kWh based on a system nuclear capacity factor of 58.84% and May 1990 fuel prices. Nevertheless, 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, the Public Staff recommended adoption of the 1.354¢/kWh fuel factor proposed by the Company.

The Attorney General in its proposed order recommended a fuel factor of 1.336¢/kWh based on a system nuclear capacity factor of 58.84% determined using a 68.43% normalized capacity factor for Harris Unit No. 1 and an MDC rating of 700 MW for Robinson Unit No. 2 and March 1990 fuel prices.

Based on the foregoing, the Commission concludes that a fuel factor of 1.354¢/kWh and its associated system nuclear capacity factor of 57.44% as proposed by the Company and supported by the Public Staff is just and reasonable. This factor is 0.078¢/kWh higher than the base fuel factor of 1.276¢/kWh approved in Docket No. E-2, Sub 537. The calculation of the 1.354¢/kWh fuel factor is shown in the following table:

| Description | MWH Generation | $/MWH | Fuel Cost |
|---|---|---|---|
| Coal | 24,521,747 | 18.15 | $445,069,708 |
| IC | 84,055 | 79.83 | 6,710,111 |
| Nuclear | 15,623,144 | 4.89 | 76,397,174 |
| Hydro | 716,242 | - | - |
| Purchases: Cogeneration | 2,528,889 | - | 32,117,429 |
| AEP Rockport | 1,766,244 | 12.30 | 21,731,903 |
| SEPA | 180,385 | - | - |
| Other | 767,615 | 18.41 | 14,131,792 |
| Sales | (1,869,012) | 17.85 | (33,361,864) |
| Total Adjusted | 44,319,309 | | $562,796,253 |
| NCEMPA Adjustments: | | | |
| Power Agency Nuclear | | | (10,179,039) |
| Power Agency Coal | | | (21,803,486) |
| Harris Buyback | | | 1,419,830 |
| Mayo Buyback | | | 3,163,363 |
| Net Fuel Cost | | | $535,396,921 |
| kWh for Fuel Factor | | | 39,536,290,564 |
| Fuel Factor (¢/kWh) | | | 1.354 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is found in the Company's Application and the testimony of CP&L witness Bouldin.

The Company files with this Commission monthly Fuel Reports and Base Load Power Plant Performance Reports. These reports were filed in Docket No. E-2, Sub 554, for calendar year 1989 and Docket No. E-2, Sub 573 for calendar year 1990. Witness Bouldin testified that the Company passed the prudency test as set forth in Commission Rule R8-55.

No party offered testimony or evidence challenging the Company's operation of its baseload plants. The Commission concludes that the operation of the Company's baseload nuclear and fossil plants was reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence supporting this finding of fact is found in the direct testimony of Company witness Bouldin and Public Staff witness Lam.

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 Bouldin and Public Staff witness Lam indicated that during the test year ending March 31, 1990, the Company overrecovered approximately $1,306,735. The over-recovery amounts to an EMF decrement of .005¢/kWh (excluding gross receipts tax). The Commission therefore concludes that an EMF decrement of .005¢/kWh is appropriate for use in the proceeding.

Further, amended Rule R8-55(c)(5) provides:

> 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.

Company witness Bouldin and Public Staff witness Lam both indicated that the interest due the ratepayers is $190,783.

Pursuant to the Commission's Order of June 24, 1988, in Docket No. E-100, Sub 55, adopting the method for calculating such interest, the Commission concludes that the appropriate level of interest on the overrecovery achieved

during this test period is $190,783, which results in an EMF interest decrement of .001¢/kWh (excluding gross receipts tax).

The Commission concludes that the EMF decrement of 0.006¢/kWh (0.006¢/kWh including gross receipts tax) to refund $1,497,518 of overrecovered fuel revenues (plus interest at 10%) experienced during the period April 1, 1989, through March 31, 1990, is appropriate for use in this proceeding and that the decrement shall remain in effect for a fixed 12-month period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

As a result of the Commission's decision in this docket, CP&L's rates will include a net fuel factor of 1.348¢/kWh (1.393¢/kWh including gross receipts tax), as shown in the chart below:

| Description | Amount (¢/kWh) |
|---|---|
| Base fuel factor | 1.276 |
| Primary fuel adjustment rider | .078 |
| Experience modification factor rider | (.006) |
| Net fuel factor excluding gross receipts taxes | 1.348 |

The rate impact of the net fuel factor approved of 1.348¢/kWh compared to the net fuel factor of 1.374¢/kWh approved in the last fuel proceeding results in a net decrease in rates of 0.026¢/kWh (0.027¢/kWh including gross receipts tax).

In Docket No. E-2, Sub 562, the Commission required CP&L to include in its rate schedules a clear statement indicating the effect of the Commission Order on rates. The Commission finds it appropriate to continue to require CP&L to include such a clarifying statement to enable the ratepayers to quickly ascertain the effect of the Commission decision on their rates. Therefore, the following language should be included in CP&L's rate schedules:

Docket No. E-2, SUB 579

> The effect of the Commission Order included in the above kilowatt-hour charges is a decrease, including gross receipts tax, of 0.027¢/kWh as compared to the rates in effect immediately prior to September 15, 1990.

IT IS, THEREFORE, ORDERED as follows:

1. That, effective for service rendered on and after September 15, 1990, CP&L shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a 0.078¢/kWh increment (0.081¢/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 this Commission in a general rate case or fuel case.

2. That CP&L shall further adjust the fuel component herein by a decrement of 0.006¢/kWh (0.006¢/kWh including gross receipts tax) for the EMF. The EMF is to remain in effect for a 12-month period beginning September 15, 1990.

3. That CP&L shall file a report on the proper MDC ratings of all its nuclear units prior to its next fuel proceeding or next general rate case, whichever comes first.

4. 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 working days from the date of this Order. The format of this filing relating to fuel costs shall be consistent with the format reflected in the rate schedules and riders which are hereby superseded.

5. 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 Reduction", attached as Appendix A, as a bill insert with bills rendered during the Company's next normal billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of September 1990.

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

APPENDIX A

DOCKET NO. E-2, SUB 579

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application by Carolina Power & Light | ) | NOTICE TO |
| Company for Authority to Adjust Its | ) | CUSTOMERS OF |
| Electric Rates and Charges Pursuant | ) | NET RATE |
| to G.S. § 62-133.2 and NCUC Rule R8-55 | ) | REDUCTION |

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order on September 14, 1990, after public hearings, approving a fuel charge net rate reduction of approximately $7 million in the rates and charges paid by the retail customers of Carolina Power & Light Company in North Carolina. The net rate reduction will be effective for service rendered on and after September 15, 1990. The rate decrease was ordered by the Commission after review of CP&L's fuel expense during the 12 month test period ended March 31, 1990, 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 reduction of $0.27 for a typical residential customer using 1,000 kWh per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of September 1990.

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

DOCKET NO. E-7, SUB 462

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 | ) ) ) | ORDER APPROVING NET FUEL CHARGE RATE REDUCTION |

Heard In: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Tuesday, May 1, 1990, 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 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.:

Theodore C. Brown, Fruitt and Brown, Attorneys 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:

Karen E. Long, 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 1, 1990, 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 1.1611¢/kWh (including nuclear fuel disposal costs and excluding gross receipts tax), which is a reduction of .0054¢/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 .1049¢/kWh and .0157¢/kWh for the Experience Modification Factor (EMF) and EMF interest, respectively.

On March 15, 1990, the Commission issued its Order scheduling the hearing, establishing certain filing dates and requiring public notice.

On March 6, 1990, the Attorney General filed Notice of Intervention pursuant to G.S. 62-20. On April 12, 1990, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene. The Petition to Intervene was allowed by Commission Order issued April 17, 1990. The intervention of the Public Staff is noted pursuant to NCUC Rule R1-19(e).

At the public hearing, Duke presented the testimony and exhibits of William R. Stimart, Vice President, Regulatory Affairs. The Public Staff presented the testimony and exhibits of Thomas S. Lam, Engineer, Electric Division. 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 Order.

Based upon the verified application, the evidence adduced at the hearing, the Orders in Docket Nos. E-7, Subs 408, 417, 434, and 447 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, 1989, 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 for this proceeding.

6. The kWh generation from each nuclear unit should be normalized based on a 65.31% capacity factor. The reasonable and appropriate level of total normalized nuclear generation for use in this proceeding is 29,053,460 mWh.

7. The use of the most recent nuclear fuel cycle costs for nuclear units scheduled to be shut down for refueling in September 1990 or earlier and for start-up in November 1990 or earlier is appropriate in this proceeding.

8. The primary fuel factor appropriate for use in this proceeding is 1.1356¢/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 0.0309¢/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.

9. An Experience Modification Factor (EMF) decrement of 0.1049¢/kWh is reasonable and appropriate for use in this proceeding.

10. An EMF interest refund factor of 0.0157¢/kWh is reasonable and appropriate for use in this proceeding. This decrement is based on an interest liability to the ratepayers of $6,239,000.

11. The net fuel factor approved in this proceeding after consideration of the EMF and related interest is 1.0150¢/kWh.

12. The difference between the approval net fuel factor of 1.0150¢/kWh and the net fuel factor of 1.0541¢/kWh approved in the last fuel charge proceeding Docket No. E-7, Sub 447 is 0.0391¢/kWh (excluding gross receipts tax). However, due to the deferral of implementation of 0.0099¢/kWh of the 1.0541¢/kWh net fuel factor, leaving only a 1.0442¢/kWh net fuel factor in rates since July 1, 1989, the rate impact of the approved net fuel factor of 1.0150¢/kWh will be a decrease of 0.0292¢/kWh (excluding 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 an 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 1, 1990, utilized the 12 months ended December 31, 1989, 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, 1989.

The Commission concludes that the test period which is appropriate for use in this proceeding is the 12 months ended December 31, 1989, 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, 1989, as indicated by Stimart Exhibit No. 3.

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 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. Duke witness Stimart proposed to use a 63.56% nuclear capacity factor based on the NERC five-year national average for the purpose of setting rates in this proceeding. The Public Staff proposed a 65.31% nuclear capacity factor which was derived by an average of the NERC five-year average nuclear capacity factor of 63.56% and Duke's cumulative lifetime average capacity factor of 67.06¢. CUCA and the Attorney General proposed use of Duke's cumulative lifetime nuclear capacity factor.

Duke's actual system nuclear capacity factor for the test period was 77% which raised Duke's cumulative lifetime average capacity factor to 67.06%. Further, the NERC five-year average capacity factor has exceeded the 62% previously used by the Commission. Based upon past nuclear performance for the Duke system and national data, the Commission believes that Duke's nuclear performance during the test year should be normalized. Commission Rule R8-55(c)(1) provides that:

> . . . capacity factors for nuclear production facilities will be normalized based generally on the national average for nuclear production facilities as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, adjusted to reflect unique, inherent characteristics of the utility including but not limited to plants two years or less in age and unusual events. The national average capacity factor for nuclear production facilities shall be based on the most recent five-year period available and shall be weighted, if appropriate, for both pressurized water reactors and boiling water reactors.

As the Commission recognized when we 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. The Commission used 62% in earlier proceedings rather than the NERC five-year average because unique factors justified a higher capacity factor.

The Commission is of the opinion that unique factors continue to exist which justify a variation from the NERC five-year average in order to establish a normalized nuclear capacity factor for this case. Duke's capacity factors, both for the test period and lifetime, continue to exceed the NERC average. The Commission concludes that Duke's nuclear capacity factor should be normalized and that a nuclear capacity factor higher than the previously used 62% should be used in this proceeding. The Commission concludes that the 65.31% capacity factor proposed by the Public Staff is just and reasonable as a normalized capacity factor for determining the appropriate fuel costs for this proceeding. The Public Staff's proposed factor starts with the NERC five-year average and averages it with Duke's lifetime average to reflect unique characteristics of Duke. We do not find it reasonable to rely solely on Duke's lifetime average as proposed by the Attorney General.

Mr. Stimart testified that Duke had no problem with use of the Public Staff's nuclear capacity factor of 65.31% for setting the fuel factor, but had concerns with use of that number as a basis for prudency because that would end up comparing Duke with itself over time. Mr. Stimart proposed to use the nuclear capacity factor of 62% for prudency. Upon cross-examination by the Public Staff, Mr. Stimart admitted that the Public Staff's recommendation takes the NERC 5-year average and averages that with Duke's lifetime, so to the extent that the NERC 5-year average is given 50 percent weight it is not correct that Duke has to perform to its average or better. He also agreed that non-attainment of the nuclear capacity factor level set for prudence would create only a presumption of imprudence and that the presumption is rebuttable.

Commission Rule R8-55(i) provides for a rebuttable presumption of imprudence if the utility fails to achieve a nuclear capacity factor in either the test year or in the test year and the proceeding year averaged together "that is at least equal to the systemwide nuclear capacity factor used for setting the rate in effect during the test year. . . " Thus, the nuclear capacity factor used for setting rates in one case becomes, in the next case, the standard for measuring the prudence of the fuel expenses in that case. Duke is asking the Commission to deviate from the Rule in this proceeding, but the reasons given relate to the Rule itself, not to the particular facts of this proceeding. The Commission finds no good cause to make an exception in this Order. However, the wisdom of using the same nuclear capacity factor for setting rates and as a standard for prudency has been questioned not only in this proceeding, but in other contexts as well. The present Commission Rule R8-55(i) was adopted on April 27, 1988, in Docket No. E-100, Sub 55, in response to the directive of the General Assembly that the Commission "adopt a rule that establishes prudent standards and procedures with which [the Commission] can appropriately measure manangement efficiency in minimizing fuel costs." G.S. 62-133.2 (d1). Although the Commission will not deviate from the Rule in this Order, the Commission will reopen its rulemaking proceeding to consider whether Commission Rule R8-55(i) should be rewritten in order to establish some more appropriate and effective standard of prudency.

5. Pursuant to Commission Rule R8-55(d)(4), Duke witness Stimart presented revised exhibits showing fossil fuel costs based on unit prices burned in the test year. The 1.1611¢/kWh revised system fuel cost requested by the Company included the test year burned price for coal of 1.688¢/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 and the NERC 5-year nuclear capacity factor, would be 1.1912¢/kWh, which is higher than that requested and noticed by Duke. This fuel factor was not recommended to the Commission by Mr. Lam because, "[i]t 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 1.1356¢/kWh which is obtained by correcting Mr. Stimart's system fuel factor of 1.1611¢/kWh to use the Public Staff's nuclear capacity factor and the new nuclear fuel cycle prices after start-up for Oconee 2 and McGuire 2. Mr. Lam's testimony was that Oconee 2 and McGuire 2 are scheduled to be shut down for refueling in September 1990 and to be restarted in November 1990, and that the correct price for nuclear fuel in Mr. Stimart's system fuel calculation should be .544¢/kWh rather than .561¢/kWh. He further testified that the most accurate fuel cost for a nuclear unit refueled in September, is obtained by use of the fuel cycle cost after start-up, but that that was as far into the future as he would want to go to update nuclear fuel prices. The Attorney General objected to the Public Staff adjustment on grounds that it is too speculative and that it violates the historic test-period concept.

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. The Commission believes that this is permitted by G.S. 62-133.2(d) which allows consideration of evidence of changes in fuel prices "within a reasonable time (as determined by the Commission) after the test period is closed. . . " 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 September 1990 is appropriate in this proceeding. Therefore, the correct nuclear fuel cost in this proceeding is .544¢/kWh.

6. Based upon the previously discussed evidence and conclusions, the Commission concludes that a fuel factor of 1.1356¢/kWh is just and reasonable. This factor is .0309¢/kWh lower than the existing base fuel factor of

1.1665¢/kWh approved in Docket No. E-7, Sub 408. The calculation of the appropriate fuel factor of 1.1356¢/kWh is shown in the following table:

| | Adjusted Generation (MWH) | Fuel Price $/MWH | Fuel Dollars (000s) |
|---|---|---|---|
| Coal | 34,127,809 | 16.88 | 576,077 |
| Oil and Gas | 29,626 | 73.31 | 2,172 |
| Light Off | - | - | 3,674 |
| Nuclear | 29,053,460 | 5.44 | 158,051 |
| Hydro | 1,854,200 | - | - |
| Net Pumped Storage | -376,276 | - | - |
| Purchased Power | 548,843 | 12.62 | 6,926 |
| Interchange In | 305,296 | 26.47 | 8,081 |
| Interchange Out | -2,106,682 | 17.78 | -37,457 |
| Catawba Contract Purchases (including NFDC) | 7,804,828 | 5.67 | 44,253 |
| TOTAL | 71,241,104 | | 761,777 |
| Less: Intersystem Sales | 918,054 | | 16,620 |
| Line Loss | 4,705,029 | | |
| System MWH Sales & Fuel Cost | 65,618,021 | | 745,157 |
| Fuel Factor ¢/kWh | | | 1.1356 |

7. 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, 1989, test year, Duke experienced an over-recovery of $41,595,000, which amounts to an EMF decrement of .1049¢/kWh. These being no evidence to the contrary, the Commission concludes that an EMF decrement of .1049¢/kWh (excluding gross receipts tax) is appropriate for use in this proceeding.

8. The Public Staff and Duke presented a calculation of the interest liability due to the ratepayers pursuant to amended Rule R8-55(c)(5). This section reads as follows:

> Pursuant to G.S. 62-130(e), any overcollection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers

through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

Public Staff witness Lam and Company witness Stimart testified that the appropriate amount of interest to be refunded to the ratepayers is $6,239,000.

Pursuant to the Commission Order of June 24, 1988, in Docket No. E-100, Sub 55, that adopts said method, the Commission concludes that the appropriate level of interest on the over-recovery achieved during this test period is $6,239,000, which results in an EMF decrement of .0157¢/kWh (excluding gross receipts tax).

IT IS, THEREFORE, ORDERED as follows:

1. That effective for service rendered on and after July 1, 1990, 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 .0309¢/kWh decrement (excluding gross receipts tax); and further that Duke shall adjust the resultant approved fuel cost by decrements (excluding gross receipts tax) of .1049¢/kWh and .0157¢/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, 1990.

2. That Duke shall file appropriate rate schedules and riders with the Commission in order to implement the fuel charge adjustments approved herein not later than 10 days from the date of this Order.

3. That Duke shall notify its North Carolina retail customers of the fuel adjustments approved herein by including the "Notice to Customers of Net Rate Reduction" attached as Appendix A as a bill insert with bills rendered during the Company's next normal billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of June 1990.

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

APPENDIX A

DOCKET NO. E-7, SUB 462

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of Duke Power Company Pursuant<br>to G. S. § 62-133.2 Relating to Fuel Charge<br>Adjustments for Electric Utilities | )<br>)<br>)<br>) | NOTICE TO CUSTOMERS<br>OF NET RATE REDUCTION |

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order June 26, 1990, after public hearings, approving a fuel charge net rate reduction of approximately $12 million on an annual basis in the rates and charges paid by the retail customers of Duke Power Company in North

Carolina. The net rate reduction will be effective for service rendered on and after July 1, 1990. The rate decrease was ordered by the Commission after review of Duke's fuel expense during the 12-month test period ended December 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's Order will result in a monthly net rate reduction of approximately 30¢ for a typical residential customer using 1,000 kWh per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of June 1990.

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

DOCKET NO. E-13, SUB 148

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of Nantahala Power and Light<br>Company for Approval of Method of Accounting<br>For Ratchet Costs | )<br>)<br>)<br>) | ORDER APPROVING<br>STIPULATION |

BY THE COMMISSION: On October 26, 1990, Nantahala filed an application for approval of a method of accounting for costs incurred under a ratchet provision of its interconnection agreement with the Tennessee Valley Authority (TVA). Because of its interconnections with Duke Power Company effective September 30, 1990, and its plans to disconnect from TVA in October 1991, Nantahala will incur ratchet costs from TVA for two years. The estimated total system ratchet costs are $6,665,044, with $5,779,869 being expended in the first year. Nantahala initially proposed to defer these costs on its books, to add interest to the deferred account at its short-term borrowing rate, and to recover the total through amortization over an extended period in rates established in its next general rate case.

On November 2, 1990, Nantahala filed a motion to amend its application to begin amortization of the deferred account balance with its next purchased power adjustment (PPA) change in May 1991 and to accumulate interest at its overall net of income tax cost of capital. Under this proposal, the estimated monthly ratchet costs and interest (less customer payments beginning in May 1991) as well as monthly kWh sales for the next nine years would be used to establish a rate sufficient to amortize the total ratchet costs. Any balance at the end of the tenth year would be adjusted using the cost-free capital funds from Docket No. E-13, Sub 29. The rate could be adjusted any time during the nine-year period if the actual account balance varied significantly from the estimates.

By letter dated November 29, 1990, Dr. Myron Coulter, the Chancellor of Western Carolina University, posed three questions regarding Nantahala's application and requested that the Commission thoroughly examine those

questions in considering Nantahala's application. The questions raised by Dr. Coulter were: 1) why did Nantahala not "ramp down" its power purchases from TVA over the next two years; 2) why did Nantahala not continue to purchase power from TVA until the expiration of the TVA agreement in 1992; and 3) why did Duke not agree to bear the ratchet costs.

This matter was presented to the Commission by the Public Staff at the Commission Staff Conference held on Monday, December 3, 1990. The Public Staff stated that it had reviewed the amended application and work papers provided by the Company and agreed with Nantahala that beginning the amortization with the April 1991 PPA change is preferable to waiting until the next rate case, inasmuch as it more equitably distributes the cost of obtaining supplemental power from Duke to customers who enjoy the savings thereby obtained. The Public Staff also agreed that the addition of interest to the deferred account balance is appropriate in this case. After examining a range of scenarios, the Public Staff and Nantahala have agreed to the following method of accounting for and recovering the ratchet costs:

- five-year amortization period
- 10% interest
- levelized rate
- true-up after fifth year

Nantahala stated that the ratchet costs that would be incurred by the University over the next five years under Nantahala's proposed plan would amount to approximately $52,000 per year. Those costs are incurred because instead of purchasing supplemental power from TVA, Nantahala is purchasing it from Duke at a lower cost. According to Nantahala, the University will be saving approximately $82,000 in power costs each year over the same five-year period due to purchases from Duke. Thus, the net effect is that the University's electric power costs will be approximately $30,000 lower annually than they would have been if Nantahala continued to purchase all of its power from TVA. In fact, the University has been experiencing savings resulting from the Duke contract since last May because Nantahala's levelized annual purchased power adjustment factor, which went into effect in May, considered the lower cost Duke power that Nantahala anticipated it would and did begin receiving at the beginning of October 1990. Although the University will be paying ratchet costs in order to realize the benefits of the Duke interconnection and purchases from Duke, the University will realize an overall net savings of approximately $30,000 per year during the five-year period as a result of the interconnection. After the five-year period, the benefits of Nantahala's contract with Duke are anticipated to be even greater.

Nantahala and the Public Staff also filed a written stipulation setting forth the details of their agreement.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Nantahala serves its customers in western North Carolina through self-generation from its hydroelectric projects in the region and through purchases of supplemental power. In the past, Nantahala has purchased supplemental power from TVA pursuant to agreements between the two companies.

Under Nantahala's 1982 agreement with TVA, Nantahala is required to pay TVA a monthly reservation charge that is the higher of: 1) the term power scheduled by Nantahala pursuant to the agreement for the month at issue, or 2) 60% of the highest demand for term power supplied by TVA under the contract during either the current season or the previous corresponding season that began 12 months prior to the start of the current season.

In Docket No. E-7, Sub 427, Duke Power Company requested Commission approval to purchase 100% of the common stock of Nantahala from the Aluminum Company of America. During the course of the docket, the Public Staff, through discovery and other means, conducted an extensive investigation into Duke's proposed purchase of Nantahala. The Public Staff compared the proposed Duke Interconnection Agreement and the 1982 TVA contract to determine which was more favorable to Nantahala and its customers. In making that comparison, it was necessary to determine what termination costs would be incurred if Nantahala became interconnected with Duke and ceased purchasing power from TVA. Both the Public Staff and Nantahala concluded that the sum of the cost of purchases from Duke and the contractually required cost of termination of the TVA contract would be less to Nantahala's customers than the cost of the continued purchases from TVA. The Commission ultimately approved the purchase of Nantahala's stock by Duke as being in the best interest of Nantahala's customers.

At midnight, September 30, 1990, upon completion of the new transmission line between Duke and Nantahala, Duke assumed the public service obligation to plan and build its power supply system, recognizing its obligation to sell all required supplemental power to Nantahala. At that point in time, Nantahala began purchasing the lower cost power from Duke which triggered the termination provision of the FERC-approved TVA contract. Nantahala is still purchasing a small amount of power from TVA at Marble to serve a portion of the Andrews area. The amount of power purchased at Marble is less than the minimum ratcheted billing demand, and, therefore, Nantahala has begun to pay ratchet costs to TVA. Nantahala plans to improve its facilities in that area and to disconnect from TVA in October 1991 at Marble. Thereafter, Nantahala will be paying ratchet costs for the Marble purchases for 12 months. Thus, Nantahala will incur ratchet expenses from TVA for two years, with the majority of the dollars expanded in the first 12 months.

In Docket No. E-13, Sub 142, Nantahala stated that it intended to defer the ratchet costs and to seek to recover those costs through amortization over a reasonable period of time in rates established in its next rate case. In its original filing in this docket, the Company sought to defer the ratchet costs until its next rate case and to accrue interest on the ratchet amounts until they were reflected in retail rates. Under this method of accounting, interest costs on the ratchet amounts would continue to increase since Nantahala has no definite plans for a retail rate case.

Nantahala modified its original filing and asked to begin collecting the ratchet costs in the Company's next purchased power adjustment, scheduled to be made in April 1991. This modification to begin recovery earlier is less expensive to customers because it reduces the level of carrying costs and is more equitable because customers who are currently receiving the benefit of the lower Duke power costs will be paying the ratchet costs. The modified filing also requested recovery over 10 years using the net of income tax cost of capital last approved by this Commission. In discussions with the Public

Staff, however, the parties agreed to a five-year recovery period, with a "true-up" in year six, if needed, and a carrying cost of 10%.

The Federal Energy Regulatory Commission approved both the 1982 Nantahala contract with TVA and the 1987 Nantahala interconnection agreement with Duke. The ratchet costs that Nantahala is now incurring flow directly from the 1982 TVA contract, and the event marking the beginning of Nantahala's incurrence of the ratchet costs was Nantahala's initial purchases of power under the Duke agreement beginning October 1, 1990. Both the Public Staff and the Commission originally reviewed Nantahala's ratchet costs in 1988 within the context of Duke Power Company's 1987 application for approval of its purchase of 100% of the common stock of Nantahala in Docket No. E-7, Sub 427, and Nantahala's 1989 request to levelize purchased power costs in Docket No. E-13, Sub 142. Having analyzed the ratchet costs and examined their consequences on those occasions and in the context of the instant docket, the Commission believes that Nantahala's request to recoup the ratchet costs from ratepayers is just and reasonable.

Western Carolina questions why Nantahala did not "ramp down" its power purchases from TVA over the next two years. The idea of ramping was pursued by the Public Staff during consideration of Duke's application to purchase the Nantahala system. The evidence in that investigation showed that the idea of ramping had been discussed in Nantahala's interconnection negotiations with Duke. The Nantahala interconnection agreement provides benefits to the customers of both Nantahala and Duke. To interconnect with and sell power to Nantahala, Duke had to incur costs to expand its system and assume a long-term service obligation to Nantahala. Any ramp down of purchases from TVA would have reduced the Nantahala purchases from Duke, possibly resulting in Duke's existing customer base subsidizing the interconnection with Nantahala. The Interconnection Agreement specifically provides that Nantahala's entire load will be served by Duke at such time as it becomes economically feasible. Nantahala determined that even if it were not allowed to ramp down and thus had to incur ratchet costs, there would still be a substantial net savings to its customers in purchasing power from Duke rather than TVA. The Public Staff has estimated overall savings in excess of 10%. Financially, it made sense for Nantahala to begin purchasing from Duke as soon as physically possible so that its customers could realize the substantial savings from the Duke interconnection despite the fact that they also had to pay ratchet costs.

Nevertheless, a certain amount of ramping is now occurring at Marble due to the capabilities of Nantahala's system. Nantahala must continue to buy power from TVA to serve portions of the Andrews area until it can complete certain system modifications in that portion of its system, which will take approximately one more year. However, this limited ramping down cut into Duke's sale of power to Nantahala by approximately 10% and, therefore, reduced the financial benefits to Duke from the sale.

Western Carolina also questions why Nantahala did not continue to purchase power from TVA until the expiration of the initial term of TVA agreement in 1992. The TVA agreement is automatically renewed year-to-year unless notice of termination is given within five years of the proposed termination date. Nantahala could not have given notice of termination until at least 1988 when approval was granted by this Commission and the FERC for the sale to and

interconnection with Duke. Furthermore, this Commission did not approve the transmission line interconnecting the Duke and Nantahala systems until 1989.

Western Carolina's final question concerns why Duke did not agree to bear the ratchet costs. Again, like the ramping proposal, this was a matter subject to arms-length negotiation by the parties as a part of the total Interconnection Agreement. The final agreement, as approved by this Commission, does not require Duke to bear such costs.

Accordingly, the Commission finds good cause to approve the stipulation filed by Nantahala and the Public Staff. We agree that the procedures outlined in the stipulation are fair and reasonable to Nantahala and its retail ratepayers in North Carolina. Specifically, Nantahala will defer the ratchet costs currently being incurred under its contract with TVA, will add to the deferred account the carrying costs of the ratchet expenses at a rate of 10%, and will recover the account balance through amortization over a five-year period. Nantahala has estimated the outstanding monthly ratchet costs and kWh sales for the next five years. From those calculations, Nantahala has established a levelized rate to amortize the ratchet costs, including carrying costs at a rate of 10%, over the five-year period. Nantahala will begin collection of a pro-rata portion of the deferred account balance through this levelized rate with its next purchased power adjustment, scheduled to be made in April 1991. The sixth year will be used to make the necessary corrections to ensure that the proper amount is paid by customers and received by Nantahala. If the actual account balance at the end of any year varies significantly from the estimates during the five-year period, Nantahala or the Public Staff may request a change in the factor prior to the sixth year.

IT IS, THEREFORE, ORDERED that the application filed in this docket by Nantahala Power and Light Company be, and the same is hereby, approved subject to the terms, conditions, and modifications set forth in the written stipulation filed by Nantahala and the Public Staff on December 3, 1990.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of December 1990.

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

DOCKET NO. E-22, SUB 308

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|---|
| In the Matter of<br>Application of North Carolina Power<br>Pursuant to N.C.G.S. § 62-133.2 and<br>NCUC Rule R8-55 Relating to Fuel Charge<br>Adjustments for Electric Utilities | ) | ORDER APPROVING FUEL CHARGE ADJUSTMENT |

HEARD: Tuesday, March 13, 1990, at 9:30 a.m., in the Commission Hearing Room, Dobbs Bulding, 430 North Salisbury Street, Raleigh, North Carolina

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

APPEARANCES:

For North Carolina Power:

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

and

James S. Copenhaver, North Carolina Power, Post Office Box 26666, Richmond, Virginia 23261

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 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

For Carolina Utility Customers Association, Inc. (CUCA):

Theodore C. Brown, Fruitt & Brown, Attorneys at Law, 1042 Washington Street, Raleigh, North Carolina 27605-2547

BY THE COMMISSION: N.C.G.S. § 62-133.2 requires the North Carolina Utilities Commission to hold a hearing for each electric utility engaged in the generation and production of electric power by fossil or nuclear fuel within 12 months after the last general rate case order for each utility for the purpose of determining whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel component of purchased power over or under the base fuel component established in the last general rate case. The statute further requires that additional hearings be held on an annual basis, but only one hearing for each utility may be held within 12 months of the last general rate case. In addition to the increment or decrement to reflect changes in the cost of fuel and the fuel component of purchased power, the Commission is required to incorporate in its fuel cost determination the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test year. The last general rate case order for North Carolina Power (or "the Company") was issued by the Commission on December 5, 1983, in Docket No. E-22, Sub 273. The last order approving a fuel charge adjustment for the Company became final on December 21, 1988, in Docket No. E-22, Sub 304.

On September 5, 1989, the Commission issued an Order establishing a procedural schedule for this docket and setting a hearing date of December 7, 1989. Pursuant to this Order, North Carolina Power filed testimony and exhibits in accordance with NCUC Rule R8-55 and N.C.G.S. § 62-133.2 on October 5, 1989. North Carolina Power filed testimony and exhibits for the following witnesses: Larry W. Ellis - Vice President, System Planning and Power Supply; William R. Cartwright - Vice President, Nuclear Operations; Charles W. Keller - Supervisor, Accounting (Fuel) in the Controller's Department; and Andrew J. Evans - Director, Rate Design. The Company also filed information and workpapers required by NCUC Rule R8-55(d).

The Commission issued an Order requiring North Carolina Power to publish notice of this proceeding. In response to a Motion for Continuance filed by the Public Staff, the Commission issued an Order on November 2, 1989, rescheduling the public hearing to March 13, 1990.

On November 14, 1989, North Carolina Power filed revised testimony decreasing its proposed fuel cost level. On November 16, 1989, North Carolina Power requested permission to implement its proposed rates on an interim basis subject to refund effective with the billing month of January 1990. By Order dated November 29, 1989, the Commission approved North Carolina Power's Motion so that the timing of any change in fuel factors arising from the proceeding would conform to North Carolina Power's historical practice of a January implementation. The Commission's Order also provided, however, that the interim factors were subject to refund at 10 percent annual interest dependent upon subsequent Commission rulings in this docket.

The Commission was informed in January 1990 that North Carolina Power and the Public Staff had reached an agreement on the terms of a voluntary resolution of this proceeding, subject to Commission approval. Those two parties entered into a Joint Stipulation incorporating the terms of the agreement and thereafter made a presentation concerning this stipulation to the other parties. North Carolina Power and the Public Staff filed the Joint Stipulation on February 13, 1990. On February 21, 1990, the Attorney General joined in the agreement with the Public Staff and North Carolina Power and a modified Joint Stipulation between these three parties was filed.

North Carolina Power gave notice on February 21, 1990, that it intended to submit the testimony of its witnesses by affidavit pursuant to N.C.G.S. § 62-68. North Carolina Power also informed the parties that witness Cartwright might be unavailable if called to testify but that the testimony would be adopted by an appropriate substitute witness if necessary. Intervenor CUCA filed a letter with the Commission on March 8, 1990, requesting that witness Cartwright (or a replacement witness) be made available for cross-examination at the hearing.

This matter came on for hearing as scheduled on Tuesday, March 13, 1990. North Carolina Power, the Public Staff, the Attorney General, and the Carolina Utility Customers Association (CUCA) were present and represented by counsel.

The testimony of North Carolina Power witnesses Ellis, Keller, and Evans was received by affidavit and copied into the record and their exhibits were admitted into evidence. Mr. William L. Stewart, Senior Vice President - Nuclear for North Carolina Power, appeared at the hearing and adopted the

pre-filed testimony of Company witness Cartwright. All parties except CUCA waived cross-examination of Company witness Stewart.

Based upon the foregoing, the oral testimony of Company witness Stewart, and the entire record, the Commission makes the following:

FINDINGS OF FACT

1. North Carolina Power is duly organized as a public utility operating under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. The Company is engaged in the business of developing, generating, transmitting, distributing, and selling electric power to the public in northeastern North Carolina. The Company has its principal offices and place of business in Richmond, Virginia.

2. The test period for purposes of this proceeding is the twelve months ended June 30, 1989.

3. The Company's fuel and power purchasing practices during the test period were reasonable and prudent.

4. The Company's actual test period jurisdictional fuel expenses were $32,281,709. Actual current period jurisdictional fuel revenues were $29,000,269, which was $3,281,440 less than actual fuel expenses for the test period. The Company's test period jurisdictional sales were 2,300,258,000 kWh.

5. It is just and reasonable to establish a primary fuel component in this proceeding of 1.186¢/kWh (excluding gross receipts tax) based on the terms of the Joint Stipulation resulting in a decrement of .355¢/kWh (excluding gross receipts tax) from the 1.541¢/kWh (excluding gross receipts tax) base fuel component approved in general rate case Docket No. E-22, Sub 273.

6. It is just and reasonable to establish an experience modification factor (EMF) rider of .077¢/kWh (excluding gross receipts tax) based on the stipulated recovery of $1,781,440 of North Carolina Power's jurisdictional under-recovery of $3,281,440 of actual fuel expenses during the test period.

7. It is just and reasonable to continue Rider E of .068¢/kWh (excluding gross receipts tax) as established in Docket No. E-22, Sub 304, to enable the Company to continue to collect the expenses associated with cogeneration and small power production purchases that were erroneously included in the base fuel component instead of non-fuel base rates in Docket No. E-22, Sub 273.

8. It is just and reasonable to eliminate the Westinghouse Credit Rider of (.050)¢/kWh (excluding gross receipts tax) adopted by the Commission by Order dated December 21, 1988, in Docket No. E-22, Sub 304.

9. It is just and reasonable to require North Carolina Power to make a jurisdictional refund of the difference between the total fuel level of 1.346¢/kWh (excluding gross receipts tax) implemented with the January 1990 billing month and the total fuel cost level of 1.263¢/kWh adopted herein.

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

N.C.G.S. § 62-133.2(c) sets out the verified, annualized information which each electric utility is required to furnish to the Commission in an annual fuel charge adjustment proceeding for an historical 12-month test period. In NCUC Rule R8-55(b), the Commission has prescribed the 12 months ending June 30 as the test period for North Carolina Power. The Company's filing on October 5, 1989, was based on the 12 months ended June 30, 1989.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

NCUC Rule R8-52(b) requires each electric utility to file a Fuel Procurement Practices Report at least once every ten years, plus each time the utility's fuel procurement practices change. Procedures related to North Carolina Power's procurement of fossil and nuclear fuels were filed in Docket No. E-100, Sub 47, on June 29, 1984, and revised on June 6, 1985. In addition, the Company files monthly reports of its fuel costs pursuant to NCUC Rule R8-52(a).

No party offered direct testimony contesting the Company's fuel procurement and power purchasing practices. In the absence of any direct testimony to the contrary, the Commission concludes these practices were reasonable and prudent during the test period.

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

Company witnesses Ellis, Keller, and Evans testified with regard to the actual and normalized test year fuel expenses and the actual test year revenues and sales. In addition, this information was contained in the exhibits and workpapers filed by North Carolina Power pursuant to Commission Rule R8-55(d). The testimony and other data reveal that on sales of 2,300,258,000 kWh of energy, the Company incurred actual jurisdictional expenses of $32,281,709 and collected current period jurisdictional revenues of $29,000,269.

The jurisdictional under-recovery of actual fuel expenses during the test period of approximately $3.3 million resulted in part from increased fuel costs incurred due to extended outages at the Company's two-unit Surry Nuclear Station. Surry Unit 2 was removed from service on September 10, 1988, for scheduled refueling and was out of service for the remainder of the test period. Unit 1 was removed from service on September 14, 1988, due to emergency diesel generator issues, and this unplanned outage also continued through the end of the test period.

Given the outages at Surry, the Company's system nuclear capacity factor for the test year was 43 percent. This was substantially below the Company's system performance levels of recent years. Under Commission Rule R8-55(i), test year fuel expenses are presumed to be imprudently incurred if the system nuclear capacity factor fails to equal the nuclear capacity factor used in

determining rates in effect during the test year. The nuclear capacity factor used in Docket No. E-22, Sub 304, for setting test year rates was 68.4 percent.

Test year fuel expenses are also presumed imprudent under Rule R8-55(i) if a simple two-year average nuclear capacity factor (for the current and previous test years) fails to equal the nuclear capacity factor used in determining test year rates. North Carolina Power's simple two-year average of 55.7 percent was below the 68.4 percent capacity factor used in setting rates. Because the capacity factor used in setting test year rates was not met through either standard, Rule R8-55 raises a rebuttable presumption that the increase in fuel expenses associated with the reduction in nuclear capacity factors was imprudently incurred.

The Company responded to this burden by filing on October 5, 1989, the testimony of William R. Cartwright, its Vice President - Nuclear Operations. (Mr. Cartwright's testimony was subsequently adopted by William L. Stewart, North Carolina Power's Senior Vice President - Nuclear. For purposes of convenience and clarity, that testimony will be attributed to Mr. Stewart). In this testimony, Company witness Stewart explained the causes of the outages, the various reasons they were extended, and the Company's actions in resolving the outages. Witness Stewart concluded that, although certain parts of the outages could have been handled more aggressively, the outages were beyond the Company's control and the Company had responded prudently to them.

Prior to the filing of the Company's application, the Public Staff had begun an investigation into the Surry outages. This investigation included extensive data gathering by the Public Staff, which requested and reviewed thousands of documents, asked numerous interrogatories, interviewed knowledgeable Company personnel and toured the Surry facility.

On October 26, 1989, the Public Staff requested by Motion for Continuance that the hearing in this matter be postponed from December 7, 1989, to March 6, 1990, so that it would have additional time to complete its investigation into the Surry outages. In its motion, the Public Staff described the broad inquiry it was making into the outages and also stated its intention to meet with the Company after the data-gathering and initial analysis were completed. The stated purpose of this meeting was to discuss remaining issues with the Company and attempt to resolve them. The Company indicated in its response to the Motion that it was agreeable to meeting with the Public Staff to discuss and attempt to resolve issues at the appropriate time.

After the Public Staff had finished gathering and analyzing most of the data related to the Surry outages, representatives of the Public Staff and Company personnel met on several occasions to discuss the issues. As a result of these discussions regarding Surry's performance during the July 1988 - June 1989 test period, the Public Staff and the Company agreed to a voluntary resolution of this proceeding subject to Commission approval.

Having reached agreement on the terms of a voluntary resolution, the Public Staff and North Carolina Power made a presentation to all intervenors in this proceeding explaining the agreement and the basis for it. North Carolina Power and the Public Staff also offered such intervenors an opportunity to join in this Stipulation. The Attorney General, who had also conducted an investigation into the Surry outages, agreed to join the Public Staff and the

Company in a voluntary resolution of this proceeding. The only other party, CUCA, declined to join in the agreement.

The Public Staff, the Attorney General, and the Company entered into a Joint Stipulation and filed it with the Commission on February 21, 1990. By entering into the Stipulation, North Carolina Power expressly did not admit to having acted imprudently in any way regarding the July 1, 1988 - June 30, 1989, test year Surry outages. Under the Stipulation, the signing parties have requested that this proceeding be resolved pursuant to the following terms, in pertinent part:

> (a) North Carolina Power will forego recovery of $1.5 million of the unrecovered fuel expenses from the test year ended June 30, 1989. This change will reduce the EMF increment (Rider B) from the .147¢/kWh proposed by the Company in its Application to .077¢/kWh (excluding gross receipts tax).
>
> (b) In its Application the Company based its proposed normalized fuel cost rider (Rider A) on a system average nuclear capacity factor of 63.2 percent. North Carolina Power agrees to implement Rider A based on a 68 percent capacity factor. This will change Rider A from the (.348)¢/kWh proposed by the Company in its Application to (.355)¢/kWh (excluding gross receipts tax).
>
> (c) As a result of these changes in Riders A and B the proposed net fuel component will be set at 1.263¢/kWh (excluding gross receipts tax).
>
> (d) North Carolina Power also agrees that if it does not achieve a system average nuclear capacity factor of 68 percent during the current test year (July 1, 1989 - June 30, 1990), it will forego recovery of the first $500,000 in North Carolina jurisdictional fuel costs incurred as a result of a system average nuclear capacity factor below 68 percent. Fuel costs, beyond the first $500,000, incurred as a result of a system average nuclear capacity factor below 68 percent will be fully recovered subject to the provisions of N.C.G.S. §§ 62-133.2 and NCUC Rule R8-55.

Because of their participation in the Joint Stipulation, neither the Public Staff nor the Attorney General presented evidence in this case. CUCA did not present any witnesses of its own, but it conducted cross-examination of a Company witness. CUCA urges that North Carolina Power be allowed no recovery at all of the under-recovered fuel expense. CUCA's assertion is based solely on its cross-examination of Company witness Stewart. In its proposed Order, CUCA argues that simple review of Stewart's testimony plainly shows that the Company did not maintain the Surry units properly and that this "uncontroverted evidence . . . rebuts any evidence that the Company has been reasonable and prudent." CUCA's argument confuses the evidence. Both Stewart and Company witness Ellis testified that the Company had acted prudently with respect to the outages, which were caused by factors beyond the Company's control. CUCA provided no direct testimony to rebut this evidence of prudence and its cross-examination did not effectively challenge it.

The primary question before the Commission is whether the provision in the Joint Stipulation calling for partial recovery should be adopted. Given the record before it, the Commission concludes that it should.

The Joint Stipulation is the product of an extensive investigation conducted by the Public Staff. It was concurred in by the Attorney General, who had also conducted an investigation into the Surry outages. The investigation and subsequent participation in the Joint Stipulation by these parties, with interests adverse to the Company's in this matter, gives the Commission confidence in the appropriateness of the Stipulation.

Further, the Company--while presenting evidence of its prudence and while admitting to no imprudence--also concurred in the Joint Stipulation which provides for less than the full recovery the Company proposed.

Finally, the Joint Stipulation provides significant immediate benefits to the Company's customers by the Company's foregoing $1.5 million in unrecovered fuel expenses and calculating Rider A based on a 68 percent capacity factor. The Joint Stipulation also contains an incentive clause for the Company to achieve a 68 percent system nuclear capacity factor during the test year or else automatically forego up to the first $500,000 in fuel costs incurred due to operation at a lesser level. The parties to the Joint Stipulation have recognized that the Company's nuclear plants have generally performed well for the eight years prior to the test year covered by this proceeding. The incentive clause provides North Carolina Power with strong encouragement to attempt to return its nuclear units to their prior level of performance.

NCUC Rule R8-55(c)(1) provides that capacity factors for nuclear production facilities will be normalized assuming that the Commission finds that an abnormality having a probable impact on the utility's revenues and expenses existed during the test period. The Rule further provides that the cost of fuel will be generally based on end-of-period unit fuel prices.

Both the Joint Stipulation and the Company's testimony demonstrate that there were abnormalities during the test period. Accordingly, the Commission concludes that the primary fuel factor in this proceeding should be based on the terms of the Joint Stipulation and the parts of the Company's application not covered by the Stipulation. This translates into a primary fuel factor of (.355)¢/kWh (excluding gross receipts tax).

N.C.G.S. § 62-133.2(d) provides that in fixing an increment or decrement rider the Commission shall

> incorporate in its fuel cost determination . . . the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period.

By adopting the Joint Stipulation the Commission has found and concluded that North Carolina Power's recoverable fuel cost under-recovery during the test period was $1,781,440. Under the Joint Stipulation, this results in an EMF of .077¢/kWh (excluding gross receipts tax).

The Commission therefore concludes that a total EMF of .077¢/kWh (excluding gross receipts tax) is just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

In its Order of December 21, 1988, in Docket No. E-22, Sub 304, the Commission established a Rider E-Cogeneration and Small Power Production Factor. This rider was established to remove from fuel factor expenses certain costs associated with payments to cogenerators and small power producers. These expenses originally had been included erroneously in the base fuel component instead of nonfuel base rates in Docket No. E-22, Sub 273.

Company witness Evans testified that North Carolina Power proposed to continue Rider E. He explained that the Company also proposed to modify Rider E by extending its coverage to Rate Schedules 6TS and 10, which were recently approved by the Commission.

The Commission finds it just and reasonable to continue Rider E at .068¢/kWh (excluding gross receipts tax) and to extend its application to Rate Schedules 6TS and 10.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witnesses Evans and Keller testified with regard to North Carolina Power's 1979 Settlement Agreement with Westinghouse. The proceeds of this settlement (less litigation expenses) that were not attributable to specific fuel batches have been treated as fuel related by North Carolina Power. These proceeds have been flowed through to customers in the form of a credit during prior years; in its Order of December 21, 1988, in Docket No. E-22, Sub 304, the Commission adopted a Westinghouse Credit Rider (Rider C) of (.050)¢/kWh (excluding gross receipts tax). Company witnesses Evans and Keller testified that the Westinghouse settlement credits have now been fully refunded and thus Rider C should be eliminated. Customers will continue to receive all other Westinghouse settlement credits through reduced fuel expenses, as previously approved by the Commission.

The Commission concludes that elimination of this Rider is just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

As noted previously, the Commission permitted North Carolina Power to implement interim rates with its January 1990 billing cycle. Those interim rates, which were based on the Company's proposed net fuel component of 1.346¢/kWh (excluding gross receipts tax), were subject to refund at a 10 percent annual interest factor pending subsequent decisions by the Commission. By adopting the Joint Stipulation, the Commission has concluded that the appropriate net fuel component for North Carolina Power is 1.263¢/kWh (excluding gross receipts tax). The Company accordingly must refund (with interest) to its customers the difference between the interim component and final net fuel component for all billing months in which the interim component was used.

IT IS, THEREFORE, ORDERED as follows:

1. That effective beginning with service rendered during the next regularly scheduled billing cycle, North Carolina Power shall adjust the base

fuel component in its North Carolina retail rates approved in Docket No. E-22, Sub 273, by a decrement of .355¢/kWh to reflect a new primary fuel component of 1.186¢/kWh (excluding gross receipts tax).

2. That a Rider E of .068¢/kWh (excluding gross receipts tax) remain in effect until further ordered and shall also be applicable to rate schedules 6TS and 10.

3. That an EMF Rider of .077¢/kWh (excluding gross receipts tax) be instituted and remain in effect from January 1 - December 31, 1990.

4. That the Westinghouse Credit Rider (Rider C) of (.050)¢/kWh (excluding gross receipts tax) adopted in Docket No. E-22, Sub 304, be eliminated.

5. That within 20 days North Carolina Power shall file a refund plan for the difference between the total fuel level of 1.346¢/kWh (excluding gross receipts tax) implemented with the January 1990 billing month and the total fuel cost level of 1.263¢/kWh adopted herein. Comments from other parties on the proposed refund plan shall be filed within 20 days of the Company's filing.

6. That North Carolina Power notify its North Carolina retail customers of the rate adjustments approved in this proceeding by including the "Notice to Customers of Rate Reduction" attached to this Order as Appendix A as a bill insert with customer bills rendered during the next regularly scheduled billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of April 1990.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A

DOCKET NO. E-22, SUB 308

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of North Carolina Power<br>Pursuant to G.S. 62-133.2 and NCUC<br>Rule R8-55 Relating to Fuel Charge<br>Adjustments for Electric Utilities | )<br>)<br>)<br>)<br>) | NOTICE TO CUSTOMERS<br>OF RATE REDUCTION |

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order in this docket on April 20, 1990, after public hearings, approving a $1,978,222 reduction in the annual rates and charges paid by the retail customers of North Carolina Power (Vepco) in North Carolina. This reduction is from the level of interim rates which the Commission permitted North Carolina Power to charge beginning January 1990. The rate reduction will be effective beginning with service rendered during the next regularly scheduled billing cycle. The net rate reduction was ordered by the Commission after a review of North Carolina Power's fuel expenses during the 12-month test period ended June 30, 1989.

For a typical residential customer using 1,000 kWh per month, the Commission's Order will result in a net rate reduction of approximately $.86 from the interim rates.

The Commission permitted North Carolina Power to implement interim rates, which were based on the Company's proposed net fuel component of 1.346¢/kWh (excluding gross receipts tax), beginning with its January 1990 billing cycle. These interim rates were permitted subject to refund plus interest at an annual rate of 10 percent. By its Order of April 20, 1990, the Commission concluded that the appropriate net fuel component is 1.263¢/kWh (excluding gross receipts tax). The Commission will require North Carolina Power to refund with interest the difference between the interim rates and the approved rates for each billing month in which the interim rates were in effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of April 1990.

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

DOCKET NO. E-22, SUB 319

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Carolina Power )
Pursuant to N.C.G.S. § 62-133.2 and ) ORDER APPROVING FUEL
NCUC Rule R8-55 Relating to Fuel Charge ) CHARGE ADJUSTMENT
Adjustments for Electric Utilities )

HEARD: Wednesday, November 7, 1990, at 7:00 p.m., Council Chambers, Town Hall, 201 West Main Street, Ahoskie, North Carolina

Wednesday, November 7, 1990, at 7:00 p.m., Courtroom B, Pasquotank County Courthouse, Elizabeth City, North Carolina

Thursday, November 8, 1990, at 7:00 p.m., Assembly Room, City Hall, Main Street, Williamston, North Carolina

Thursday, November 8, 1990, at 7:00 p.m., Banquet Hall, Roanoke Rapids Community Center, 1100 Hamilton Street, Roanoke Rapids, North Carolina

Thursday, November 15, 1990, at 7:00 p.m., in the Main Courtroom, Dare County Courthouse, 300 Queen Elizabeth Avenue, Manteo, North Carolina

Tuesday, November 27, 1990, at 9:30 a.m. through Friday, November 30, 1990, and Tuesday, December 4, 1990, through Thursday, December 6, 1990, in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chairman William W. Redman, Presiding; Commissioners Robert O. Wells, Julius A. Wright, Sarah Lindsay Tate, Ruth E. Cook, Charles H. Hughes and Laurence A. Cobb

APPEARANCES:

For North Carolina Power:

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

and

James S. Copenhaver, North Carolina Power, Post Office Box 26666, Richmond, Virginia 23261

For the Public Staff:

Paul L. Lassiter, James D. Little, 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

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

For Carolina Industrial Group for Fair Utility Rates (CIGFUR-I):

Ralph McDonald and Carson Carmichael, III, Bailey and Dixon, Attorneys at Law, P. O. Box 12865, Raleigh, North Carolina 27605-2865

For Carolina Utility Customers Association, Inc. (CUCA):

Samuel J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon, Ervin and Sanders, P.A., P. O. Drawer 1269, 301 East Meeting Street, One Northsquare Building, Morganton, North Carolina 28655

BY THE COMMISSION: N.C.G.S. § 62-133.2 requires the North Carolina Utilities Commission to hold a hearing for each electric utility engaged in the generation and production of electric power by fossil or nuclear fuel within 12 months after the last general rate case order for each utility for the purpose of determining whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel component of purchased power over or under the base fuel component established in the last general rate case. The statute further requires that additional hearings be held on an annual basis, but only one hearing for each utility may be held within 12 months of the last general rate case. In addition to the increment or decrement to reflect changes in the cost of fuel and the fuel component of purchased power, the Commission is required to incorporate in its fuel cost

determination the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test year. The last general rate case order for North Carolina Power (or "the Company") was issued by the Commission on December 5, 1983, in Docket No. E-22, Sub 273. The last order approving a fuel charge adjustment for the Company became final on April 20, 1990, in Docket No. E-22, Sub 308.

On May 31, 1990, North Carolina Power filed an application for a general rate increase in Docket No. E-22, Sub 314. On August 2, 1990, the Commission issued an Order consolidating the hearing in this docket with the hearing scheduled in Docket No. E-22, Sub 314. In that Order, the Commission provided that it would rule on the Experience Modification Factor (EMF) related issues in this annual fuel charge adjustment proceeding in order to allow for an effective date of the billing month of January 1991. However, the Commission indicated that it would defer ruling on the other issues in the annual fuel charge adjustment proceeding until the issuance of the general rate case order. That order also established a procedural schedule for this docket and set a hearing date of November 27, 1990.

North Carolina Power filed testimony and exhibits in accordance with NCUC Rule R8-55 and N.C.G.S. § 62-133.2 on September 21, 1990. North Carolina Power filed testimony and exhibits for the following witnesses: Henry W. Zimmerman - Manager, Planning; M. Stuart Bolton, Jr. - Manager, Regulatory Accounting; and Andrew J. Evans - Director, Rate Design. The Company also filed information and workpapers required by NCUC Rule R8-55(d).

On September 26, 1990, the Commission issued an Order requiring North Carolina Power to publish a consolidated notice of this proceeding and the general rate case proceeding.

On November 7, 1990, the Public Staff filed the testimony and exhibits of Benjamin R. Turner-Electric Engineer, Electric Division and Thomas S. Lam-Electric Engineer, Electric Division.

On November 8, 1990, the Attorney General filed a Notice of Intervention. A prehearing conference was held on November 19, 1990, at which time the Commission granted the oral motions to intervene of the Carolina Industrial Group for Fair Utility Rates (CIGFUR-I) and the Carolina Utility Customers Association, Inc. (CUCA).

The matter came on for hearing as scheduled on Tuesday, November 27, 1990. The prefiled testimony of all witnesses was copied into the record and their exhibits were admitted into evidence.

Based upon the foregoing, the oral testimony of Company witnesses Zimmerman, Bolton and Evans and Public Staff witnesses Turner and Lam, and the entire record, the Commission makes the following:

## FINDINGS OF FACT

1. North Carolina Power is duly organized as a public utility operating under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. The Company is engaged in the business of developing, generating, transmitting, distributing,

and selling electric power to the public in northeastern North Carolina. The Company has its principal offices and place of business in Richmond, Virginia.

2. The test period for purposes of this proceeding is the twelve months ended June 30, 1990.

3. The Company's fuel and power purchasing practices during the test period were reasonable and prudent.

4. North Carolina Power has a general rate case currently pending before the Commission in Docket No. E-22, Sub 314. That proceeding will result in (a) the establishment of a new base fuel component which will replace the current primary fuel component and (b) the elimination of the currently effective Rider E which relates to the collection of expenses associated with cogeneration and small power production purchases.

5. The Company's currently effective primary fuel component is 1.186¢/kWh (excluding gross receipts tax) based on the terms of the Joint Stipulation approved in Docket No. E-22, Sub 308, resulting in a decrement of .355¢/kWh (excluding gross receipts tax) from the 1.541¢/kWh (excluding gross receipts tax) base fuel component approved in the Company's last general rate case, Docket No. E-22, Sub 273.

6. The Commission issued its Order Consolidating Hearings on August 2, 1990, consolidating the hearing in the Company's 1990 annual fuel charge adjustment proceeding with the Company's pending general rate case and providing that "the Commission will rule on the EMF-related issues in the annual fuel charge adjustment proceeding in order to allow an effective date of January 1, 1991, but will defer ruling on the other issues in the annual fuel charge adjustment proceeding until issuance of the general rate case order." The primary fuel factor established in Docket No. E-22, Sub 308, will remain in effect until issuance of the general rate case order.

7. The Commission established a Rider E of .068¢/kWh (excluding gross receipts tax) in Docket No. E-22, Sub 304, to enable the Company to collect certain expenses associated with cogeneration and small power production purchases. The Commission's Order in Docket No. E-22, Sub 304, provided for the continuation of that Rider until the implementation of rates pursuant to the Company's next general rate case.

8. The Company's actual test period jurisdictional fuel expenses were $25,544,357. The Company's actual current period jurisdictional fuel revenues were $29,047,640 which was $3,503,283 more than actual fuel expenses for the test period. The Company's test period jurisdictional sales were 2,381,789 MWH.

9. The Company's adjusted jurisdictional test year retail sales of 2,461,059 MWH results from an additional 20,808 MWH of customer growth, 32,211 MWH of additional customer usage and an additional 26,251 MWH associated with weather normalization. These adjustments to normalize for weather and customer growth and usage are reasonable and appropriate for purposes of adjusting test period jurisdictional retail sales in this proceeding.

10. Interest expenses associated with the over-collection of test period fuel revenues amount to $525,492.

11. The Company's Experience Modification Factor (EMF) includes a decrement of .142¢/kWh (excluding gross receipts tax) associated with overcollected fuel revenues and a decrement of .021¢/kWh (excluding gross receipts tax) associated with interest on the overcollection, for a total EMF decrement of .163¢/kWh (excluding gross receipts tax).

12. The Company achieved a nuclear capacity factor of 85.9% during the test year ended June 30, 1990, and will be permitted to recover its reasonable and prudent fuel expenses incurred during the test year.

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

N.C.G.S. § 62-133.2(c) sets out the verified, annualized information which each electric utility is required to furnish to the Commission in an annual fuel charge adjustment proceeding for an historical 12-month test period. In NCUC Rule R8-55(b), the Commission has prescribed the 12 months ending June 30 as the test period for North Carolina Power. The Company's filing on September 21, 1990, was based on the 12 months ended June 30, 1990.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

NCUC Rule R8-52(b) requires each utility to file a Fuel Procurement Practices Report at least once every ten years, plus each time the utility's fuel procurement practices change. Procedures related to North Carolina Power's procurement of fossil and nuclear fuels were filed in Docket No. E-100, Sub 47, on June 29, 1984, and revised on June 6, 1985. In addition, the Company files monthly reports of its fuel costs pursuant to NCUC Rule R8-52(a).

No party offered direct testimony contesting the Company's fuel procurement and power purchasing practices. In the absence of any direct testimony to the contrary, the Commission concludes these practices were reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

A new base fuel component will be established on the basis of this data and appropriate normalizations presented to the Commission in the Company's pending general rate case, Docket No. E-22, Sub 314. The new base fuel component will replace the current primary fuel component and Rider E, which was established in Docket No. E-22, Sub 304, and extended in Docket No. E-22, Sub 308. The Commission concludes that this is reasonable and appropriate for this proceeding.

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

The Company's most recent fuel factor proceeding, Docket No. E-22, Sub 308, was resolved in accordance with the terms and conditions of a Joint Stipulation between the Public Staff, the Attorney General and the Company. As a result of the Commission's adoption of the Joint Stipulation, the Company implemented a primary fuel factor (Rider A) which was calculated on the basis of a normalized 68% system average nuclear capacity factor. The currently effective primary fuel component, based upon the terms of the Joint Stipulation in Docket No. E-22, Sub 308, is 1.186¢/kWh (excluding gross receipts tax) which results in a decrement of .355¢/kWh (excluding gross receipts tax) from the 1.541¢/kWh (excluding gross receipts tax) base fuel component approved in the Company's last general rate case, Docket No. E-22, Sub 273.

The Commission issued an Order consolidating the hearings in this docket with the Company's general rate case hearing, Docket No. E-22, Sub 314, on August 2, 1990. In that Order, the Commission determined that it would rule on the EMF - related issues in this annual fuel charge adjustment proceeding in order to allow an effective date of January 1, 1991, and would "defer ruling on the other issues in the annual fuel charge adjustment proceeding until issuance of the general rate case order" in Docket No. E-22, Sub 314. This procedure will result in the currently effective primary fuel factor remaining in effect for the period January 1, 1991, until the implementation of a new base fuel component in the Company's pending general rate case. There was no evidence presented at the hearing that this procedure is unreasonable. The Commission will be issuing the general rate case order in the near future, and fuel-related revenues will be subject to true-up in the Company's 1991 fuel charge adjustment proceeding. The Commission concludes that the procedure provided for in our August 2, 1990, Order is reasonable and should be followed. The Attorney General made a filing on December 17, 1990, recommending that the Commission change the primary fuel factor now, instead of waiting for the general rate case order. This recommendation is counter to the procedure set forth in our August 2, 1990, Order. That procedure was reiterated, without objection, at the prehearing conference and was incorporated in the Commission's Prehearing Order of November 20, 1990. The Commission concludes that the established procedure should be followed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

In its Order of December 21, 1988, in Docket No. E-22, Sub 304, the Commission established a Rider E - Cogeneration and Small Power Production Factor. The rider was established to remove from fuel factor expenses certain costs associated with payments to cogenerators and small power producers. These expenses originally had been included erroneously in the base fuel component instead of the non-fuel base rates in Docket No. E-22, Sub 273. The Commission also determined that Rider E should remain effective until the implementation of a new base fuel component pursuant to the Company's next general rate case. Rates will not be implemented as a result of the Company's pending general rate case, Docket No. E-22, Sub 314, until at least February 1, 1991. Rider E was also extended to cover Rate Schedules 6TS and 10 pursuant to the Commission's April 20, 1990, Order in Docket No. E-22, Sub 308.

The Commission concludes that it is just and reasonable to continue Rider E at .068¢/kWh (excluding gross receipts tax) until the implementation of a new base fuel component in the Company's pending general rate case, Docket No. E-22, Sub 314.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witnesses Zimmerman, Bolton, and Evans testified with regard to the actual and normalized test year fuel expenses and the actual test year revenues and sales. In addition, this information was contained in the exhibits and workpapers filed by North Carolina Power pursuant to Commission Rule R8-55(d). The testimony and other data reveal that on sales of 2,381,789 MWH of energy, the Company incurred actual jurisdictional expenses of $25,544,357 and collected current period jurisdictional revenues of $29,047,640. The Company's test period fuel revenues exceeded test period fuel expenses by $3,503,283. These test period levels of sales, expenses, revenues and over-collections are accepted by Public Staff witnesses Lam and Turner.

No party offered testimony or evidence challenging any of the evidence relating to the Company's test period level of sales, expenses, revenues and over-collections. The Commission, therefore, concludes that the use of North Carolina jurisdictional test period levels of retail sales, fuel revenues, fuel expenses and over-collections are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact is found in the testimonies of the North Carolina Power's witness Andrew J. Evans, Director of Rate Design, and the testimony of Public Staff witness Benjamin R. Turner, Jr., Electric Engineer in the Public Staff's Electric Division.

Witness Evans testified that consistent with Commission Rule R8-55(d)(2) the Company's system sales data for the twelve-month period ending June 30, 1990, was adjusted by jurisdiction for weather normalization, customer growth and increased usage. Witness Evans adjusted North Carolina jurisdictional retail sales by 87,530 MWH. The adjustment is the sum of adjustments for weather normalization, customer growth and increased usage of 26,251 MWH, 24,133 MWH and 37,146 MWH, respectively.

Witness Turner presented an adjustment to per book kWh sales for the twelve-month period ended June 30, 1990, due to weather normalization, customer growth and increased usage of 26,251 MWH, 20,808 MWH and 32,211 MWH, respectively. The normal weather adjustment provided by the Company was reviewed and accepted by the Public Staff.

The growth adjustment provided by witness Turner was calculated by multiplying the monthly change in customers by average kWh per bill and summing the result over the 12-month test period when the changes in customers is the difference between the end-of-period value and actual customers. Increased usage was calculated by taking the difference between test year average usage and the average usage of the preceding year multiplied by one-half the end-of-period level of customers.

As stated by witness Turner, the end-of-period level for each rate schedule is computed by using an equation based on a trended analysis or regression of actual billings for a 36-month period ended July 1990. In most cases the equation selected as representative of customer growth was either a polynomial or an exponential. The basis for curve selection was an equation based on the most recent 36 months of actual data which best fit the data as determined by the value of its R-square. Witness Turner's adjustments for customer growth and increased usage were reviewed and accepted by the Company.

Based on the foregoing evidence, the Commission concludes that the adjustment for a weather normalization of 26,251 MWH for the North Carolina retail jurisdiction as filed by the Company and reviewed and accepted by the Public Staff is reasonable and appropriate for use in this proceeding. The Commission also concludes that the adjustments due to customer growth and increased usage for the North Carolina retail jurisdiction of 20,808 MWH and 32,211 MWH, respectively, as presented by the Public Staff and reviewed and accepted by the Company, are reasonable and appropriate adjustments for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

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...." Further, amended Rule R8-55(c)(5) provides: "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."

Company witness Evans and Public Staff witness Lam both testified that the amount of EMF interest (resulting from the over-collection of $3,503,283) due to the ratepayers is $525,492, pursuant to the Commission's Order of June 24, 1988, in Docket No. E-100, Sub 55, adopting the method for calculating such interest. The Commission concludes that the level of EMF interest of $525,492 achieved during this test period is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is found in the direct testimonies of Company witness Evans and Public Staff witness Lam.

The $3,503,283 of over-recovered fuel expense is divided by the test period adjusted North Carolina retail sales of 2,461,059 MWH to obtain an EMF decrement of .142¢/kWh, excluding gross receipts tax. The $525,492 of EMF interest is divided by the test period adjusted North Carolina retail sales of 2,461,059 MWH to obtain an EMF interest decrement of .021¢/kWh, excluding gross receipts tax.

The Commission concludes that the EMF decrement of .142¢/kWh and the EMF interest decrement of .021¢/kWh, both excluding gross receipts tax, experienced during the period July 1, 1989, through June 30, 1990, is appropriate for use in this proceeding and that the total decrement of .163¢/kWh, excluding gross receipts tax, shall remain in effect for a fixed 12-month period beginning January 1, 1991.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The Company agreed, in the Joint Stipulation entered into with the Public Staff and the Attorney General in Docket No. E-22, Sub 308, that it would "forego the recovery of the first $500,000 in North Carolina jurisdictional fuel costs incurred as a result of a system average nuclear capacity factor below 68 percent" for the July 1, 1989 to June 30, 1990 test year. Company witness Zimmerman, testified that the Company experienced an 85.9% system average nuclear capacity factor during the test period. Upon cross-examination, Public Staff witness Lam verified this figure.

The Commission finds and concludes that the Company achieved an 85.9 percent nuclear capacity factor during the test year and that the Company shall be permitted to recover all of its reasonably and prudently incurred fuel expenses during that period.

IT IS, THEREFORE, ORDERED, as follows:

1. That effective beginning with the next regularly scheduled billing cycle, North Carolina Power shall adjust the base fuel component in its North Carolina retail rates approved in Docket No. E-22, Sub 273, by a decrement of .355¢/kWh to reflect a continuation of the primary fuel component of 1.186¢/kWh (excluding gross receipts tax).

2. That a Rider E of .068¢/kWh (excluding gross receipts tax) remain in effect until further ordered.

3. That an EMF Rider decrement of .163¢/kWh (excluding gross receipts tax) be instituted and remain in effect for all billing months in 1991.

4. That North Carolina Power notify its North Carolina retail customers of the rate adjustments approved in this proceeding by including the "Notice to Customers of Rate Reduction" attached to this Order as Appendix A as a bill insert with customer bills rendered during the next regularly scheduled billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of December 1990.

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

APPENDIX A

DOCKET NO. E-22, SUB 319

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application of North Carolina Power | ) | |
| Pursuant to N.C.G.S. § 62-133.2 and | ) | NOTICE TO CUSTOMERS |
| NCUC Rule R8-55 Relating to Fuel Charge | ) | OF RATE REDUCTION |
| Adjustments for Electric Utilities | ) | |

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order in this docket on December 21, 1990, after public hearings, approving a $6.1 million reduction in the annual rates and charges paid by the retail customers of North Carolina Power in North Carolina. The rate reduction will be effective beginning with the next regularly scheduled monthly billing cycle. The rate reduction was ordered by the Commission after a review of North Carolina Power's fuel expenses during the 12-month test period ended June 30, 1990, and represents actual changes experienced by the Company with respect to its reasonable costs of fuel and the fuel component of purchased power during the test period.

For a typical residential customer using 1,000 kWh per month, the Commission's Order will result in a net rate reduction of approximately $2.48 from the previous effective rates.

The Commission currently has pending a general rate case proceeding filed by North Carolina Power and a decision on that matter will be issued in the near future.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of December 1990.

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

DOCKET NO. G-9, SUB 289
DOCKET NO. G-9, SUB 291
DOCKET NO. G-9, SUB 296

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. G-9, Sub 289

In the Matter of
Application of Piedmont Natural Gas Company, Inc., for an Adjustment of its Rates and Charges to Track Changes in Supplier Rates

Docket No. G-9, Sub 291

In the Matter of
Application of Piedmont Natural Gas Company, Inc., for an Approval of an Amendment of "Spot Savings Program"

Docket No. G-9, Sub 296

In the Matter of
Application of Piedmont Natural Gas Company, Inc., for an Adjustment of Its Rates and Charges to Track Changes in Supplier Rates

ORDER APPROVING PIEDMONT NATURAL GAS COMPANY'S NORTH CAROLINA PURCHASED GAS ADJUSTMENT CLAUSE

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 12, 1989

BEFORE: Chairman William W. Redman, Jr., and Commissioners Sarah Lindsay Tate, Ruth E. Cook, J. A. Wright, Robert O. Wells, Charles H. Hughes and Laurence A. Cobb

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:

Antoinette R. Wike and David T. Drooz, Staff Attorneys, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, North Carolina Attorney General's Office, 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 involves several different filings by Piedmont Natural Gas Company, Inc. (Piedmont). The first filing occurred on January 6, 1989, when Piedmont filed an application pursuant to G.S. 62-133(f) in Docket No. G-9, Sub 289 for authority to adjust its rates and charges to recover its increased cost of gas. On February 9, 1989, the Commission issued an Order setting procedures to be followed to resolve certain issues involving (a) the appropriate method for calculating the inventory appreciation/depreciation realized by Piedmont as a result of changes in the wholesale cost of gas, (b) the inclusion of carrying charges on gas in inventory, (c) the inclusion of uncollectibles in the inventory appreciation calculation and (d) use of "Schedule C."

The second filing occurred on April 20, 1989, when Piedmont filed an application requesting the Commission to approve an amendment to the "Spot Savings Program" as last approved in Docket No. G-9, Sub 278. On May 3, 1989, the Commission issued an order permitting Piedmont to place certain modifications to the Spot Savings Program into effect on an interim basis pending hearing. The Commission also consolidated Docket No. G-9, Sub 289 and Docket No. G-9, Sub 291 for hearing.

The third filing occurred on October 4, 1989, when Piedmont filed an application in Docket No. G-9, Sub 296 to reduce its rates by $.25 per dekatherm, to capture increased costs associated with a new contract with the Cabot Corporation for additional peaking services, and to reflect the change in services brought about as a result of the settlement between Transcontinental Gas Pipeline Corporation (Transco) and its customers in Federal Energy Regulatory (FERC) Docket No. RP88-68, et al. By Order dated October 31, 1989, the Commission approved the requested reduction in rates but provided that issues relating to the increase in demand charges payable to Cabot Corporation and the inventory appreciation/depreciation issue be reserved for hearing in the consolidated Docket Nos. G-9, Sub 289 and Sub 291 proceeding.

At a prehearing conference held before the Chairman of the Commission in the consolidated docket on December 5, 1989, Piedmont and the Public Staff advised the Chairman that they had agreed to a resolution of all of the outstanding issues in Docket No. G-9, Sub 289, Docket No. G-9, Sub 291, and Docket No. G-9, Sub 296, and that the resolutions had been set forth in Stipulations which would be filed with the Commission. The Attorney General of North Carolina and Carolina Utility Customers Association (CUCA) advised the Chairman that they were not parties to the Stipulations. All parties agreed, however, that the prefiled testimony of all witnesses could be introduced into evidence and that, except as hereinafter stated, cross-examination of the witnesses would be waived. Piedmont agreed to provide one witness to explain the Stipulations and to be available for cross-examination. The Public Staff agreed to provide one witness for cross-examination.

The Stipulations were filed with the Commission on December 6, 1989.

At the hearing held on December 12, 1989, the prefiled testimony and exhibits of John H. Maxheim, Ware F. Schiefer and Ann H. Boggs, for Piedmont, and the testimony of Eugene H. Curtis and William W. Winters, for the Public Staff, were made a part of the record of these dockets. Oral testimony was offered by Ware F. Schiefer, for Piedmont, and by Eugene H. Curtis, Jr., for the Public Staff, and all parties were given an opportunity for cross-examination of the witnesses.

Based upon the verified applications in Docket Nos. G-9, Sub 289, Sub 291, and Sub 296, the testimony and exhibits received into evidence at the hearing, the Stipulations and the record as a whole, the Commission makes the following:

## FINDINGS OF FACT

1. Piedmont is a public utility under the laws of this State, and its North Carolina public utility operations are subject to the jurisdiction of this Commission.

2. The Commission has previously granted Piedmont a Certificate of Public Convenience and Necessity authorizing it to acquire certain gas franchises and properties in the State of North Carolina.

3. Piedmont now holds franchises and is furnishing natural gas to customers in 42 cities and towns located in 14 counties in North Carolina.

4. On February 8, 1989, the Commission issued its Order in Docket No. G-9, Sub 278, which was a general rate case under the provisions of G.S. 62-137. Among other things, that Order approved procedures by which Piedmont would account for the differences in the cost of gas included in the rates approved in that docket and Piedmont's actual cost of gas.

5. The Commission's February 8, 1989 Order in Docket No. G-9, Sub 278, is a final order and is not subject to appeal.

6. Docket No. G-9, Sub 289 is a proceeding under G.S. 62-133(f) and the Commission's Rule R1-17(g).

7. The Commission's May 3, 1989 Order in Docket No. G-9, Sub 289, is a final order and is not subject to appeal insofar as it approves a $0.4086 per dekatherm increase in Piedmont's rates.

8. In Docket No. G-9, Sub 291, Piedmont filed to amend the "Spot Savings Program" originally approved by the Commission in Docket No. G-9, Sub 257 and continued by approval of the Commission in Docket No. G-9, Sub 278.

9. The Commission's May 3, 1989 Order in Docket Nos. G-9, Sub 291 and G-9, Sub 289, is a final order and not subject to appeal; provided, however, that the procedures authorized in paragraph 5 of that Order were approved on an interim basis, pending hearing and final decision and subject to adjustment retroactive to May 3, 1989, and subject to the right of Piedmont to recover its actual prudent gas costs during the interim period.

10. In Docket No. G-9, Sub 296, Piedmont filed to amend its rates to reflect certain changes in its cost of gas, including changes resulting from

the FERC's approval of Transco's settlement agreement filed in FERC Docket No. RP88-68, et al.

11. The Commission's October 31, 1989 Order in Docket No. G-9, Sub 296, is a final order and not subject to appeal; provided, however, that the increase in demand charges payable to the Cabot Corporation associated with additional capacity along with any excess cost above the benchmark commodity price for volumes above the Cabot volume approved in the last general rate case was allowed on an interim basis subject to hearing in this consolidated docket.

12. Piedmont's rates as approved in Docket No. G-9, Sub 289, include a commodity cost of gas of $3.4909 per dekatherm (including Producer Settlement Payments (PSP) fixed charges), which is based on a Transco CD-2 commodity cost of gas of $3.4524 per dekatherm. The $3.4909 per dekatherm includes $3.0823 per dekatherm (including PSP fixed charges) approved by the Commission by Order dated February 8, 1989, in Docket No. G-9, Sub 278, and $0.4086 approved by the Commission by Order dated May 3, 1989, in Docket No. G-9, Sub 289.

13. Piedmont's present rates include fixed costs (exclusive of PSP fixed charges) of $22,716,534 comprised of $20,798,234 approved in Docket No. G-9, Sub 278, and $1,918,300 approved in Docket No. G-9, Sub 296. Included in the $1,918,300 approved in Docket No. G-9, Sub 296 is $39,000 of demand charges payble to the Cabot Corporation (in addition to the Cabot demand charges approved in Docket No. G-9, Sub 278) which was allowed on an interim basis subject to hearing in this consolidated docket.

14. Piedmont's present rates include a Transco PSP Commodity Charge and a PSP Fixed Charge which Piedmont is entitled to recover under the provisions of the Commission's Order of May 10, 1988, in Docket No. G-9, Sub 277, which Order is a final order and not subject to appeal.

15. Both Piedmont and its ratepayers can benefit from certain changes to the Spot Savings Program last approved in Docket No. G-9, Sub 278; those changes are set forth in Appendix A to this Order.

16. The procedures set forth in Appendix A to this Order are just and reasonable and non-discriminatory and should be used by Piedmont to adjust its rates from time to time to reflect changes in its wholesale cost of gas.

17. Adjustments to fixed gas costs should apply to all customers.

18. The denominator in the demand formula in Appendix A to this Order should include all sales and transportation volumes.

19. The Commission will review Piedmont's gas cost recovery procedures in the Company's next rate case, unless there is a complaint filing that requires an earlier review.

EVIDENCE AND CONCLUSIONS FOR FINDINGS NOS. 1, 2 AND 3

The evidence supporting these findings of fact is contained in the verified application filed in Docket No. G-9, Sub 291 and is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 4

The evidence supporting this finding of fact is contained in the verified petition filed in Docket No. G-9, Sub 291, the testimony of Ware F. Schiefer, the Commission's February 8, 1989 Order in Docket No. G-9, Sub 278, and the Stipulations, and this finding is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 5

The evidence supporting this finding is contained in the Stipulations and the records on file in the Commission's office which show that no notice of appeal was given within the time permitted by law with respect to the Commission's February 8, 1989 Order in Docket No. G-9, Sub 278, and this finding is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 6

The evidence supporting this finding is contained in the verified application filed in Docket No. G-9, Sub 289, the testimony of Ware F. Schiefer, the Commission's Order of February 9, 1989, in Docket No. G-9, Sub 291, and the Stipulations, and this finding is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 7

The evidence supporting this finding is contained in the Stipulations and the records on file in the Commission's office which show that no notice of appeal was given within the time permitted by law with respect to the Commission's May 3, 1989 Order in Docket No. G-9, Sub 289, and this finding is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 8

The evidence supporting this finding is contained in the verified petition filed in Docket No. G-9, Sub 291, the testimony of Ware F. Schiefer and Ann H. Boggs, the Commission's February 8, 1989 Order in Docket No. G-9, Sub 278, and the Stipulations, and this finding is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT. NO. 9

The evidence supporting this finding is contained in the testimony of Ware F. Schiefer and Ann H. Boggs, the Commission's May 3, 1989 Order in Docket Nos. G-9, Sub 291 and Sub 289, the Stipulations, and the records in the Commission's files which show that no notice of appeal was given with respect to the May 3, 1989 Order, and this finding is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 10

The evidence supporting this finding is contained in the verified petition in Docket No. G-9, Sub 296, the testimony of Ware F. Schiefer and the Stipulations, and this finding is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 11

The evidence supporting this finding is contained in the testimony of Ware F. Schiefer, the Commission's Order of October 31, 1989, in Docket No. G-9, Sub 296, the Stipulations and the records in the Commission's files which show that no notice of appeal was given with respect to the October 31, 1989 Order, and this finding is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 12

The evidence supporting this finding is contained in the testimony of Ware F. Schiefer, the Commission's Order of May 3, 1989, in Docket No. G-9, Sub 289, the Commission's Order of February 9, 1989, in Docket No. G-9, Sub 278, and in the Stipulations, and this finding is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 13

The evidence supporting this finding is contained in the testimony of Ware F. Schiefer, the Commission's Order of February 9, 1989, in Docket No. G-9, Sub 278, the Commission's Order of May 3, 1989, in Docket No. G-9, Sub 289, the Commission's Order of October 31, 1989, in Docket No. G-9, Sub 289, and in the Stipulations, and this finding is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING NO. 14

The evidence supporting this finding is contained in the Commission's Order of May 10, 1988, in Docket No. G-9, Sub 277, the Stipulations and the records in the Commission's files which show that no notice of appeal was given with respect to the May 10, 1988 Order, and this finding is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING NOS. 15 AND 16

The evidence supporting this finding is contained in the testimony of John H. Maxheim, Ware F. Schiefer and Ann H. Boggs, for Piedmont, and Eugene H. Curtis and William W. Winters, for the Public Staff and in the various Orders of the Commission in Docket Nos. G-9, Sub 278, Sub 289, Sub 291, and Sub 296, referred to above.

Historically, Piedmont purchased substantially all of its gas supplies from Transcontinental Gas Pipe Line Corporation (Transco) or from South Carolina Pipeline Company (SCPL). Transco's rates are set by the Federal Energy Regulatory Commission (FERC) and SCPL's rates are set by the Southern Carolina Public Service Commission. When Piedmont's suppliers changed their rates to Piedmont, Piedmont passed those changes on to its customers either in general rate case proceedings or in proceedings filed under G.S. 62-133(f).

After passage of the Natural Gas Policy Act of 1978 (NGPA), the wellhead prices of gas accelerated at a rapid rate. These accelerating wellhead prices were passed on to Piedmont by Transco and SCPL. In turn, these increased prices were passed on by Piedmont to its customers. As a result, the price of gas to Piedmont's industrial customers soon became non-competitive. The loss

of these industrial customers not only reduced Piedmont's sales, it also reduced Transco's sales and threatened to produce even higher gas prices as both Piedmont's and Transco's fixed costs had to be absorbed by fewer and fewer customers.

In an effort to stem this loss of industrial load, Transco filed a special marketing program (SMP) which it called the Industrial Sales Program (ISP). Under the ISP, Piedmont could purchase lower-priced gas provided Piedmont could furnish Transco with an affidavit that Piedmont needed the lower-priced gas to avoid the loss of industrial sales. Of course, Piedmont could not provide such an affidavit unless it could pass on the savings from this lower-priced gas to its industrial customers.

Since the then existing PGA procedures did not provide a specific mechanism for the pass-through of these gas costs savings to industrial customers, Piedmont filed procedures in Docket No. G-9, Sub 257, to permit it to pass through these savings to its industrial customers, at least to the extent needed to retain these customers. In general, these procedures provided that certain "savings" resulting from the purchase of spot gas by Piedmont were to be placed in a deferred account for subsequent dissemination to Piedmont's customers to the extent not used to offset margin losses resulting from negotiations under Piedmont's Rate Schedule 108. "Savings" as used in these procedures is defined to mean the difference between (a) Transco's CD-2 commodity cost of gas and (b) the average cost at Piedmont's city gate of all other system gas transported to Piedmont at its city gate.

The various SMPs adopted by Transco and other pipelines were subsequently determined to be illegal by the D.C. Circuit Court of Appeals. As a result, the FERC issued its Order No. 436 which provided procedures by which local distribution companies (LDCs), such as Piedmont, could purchase gas directly from the spot market. Order No. 436 and the procedures pursuant to which Piedmont could purchase spot gas have changed on several occasions, and the Spot Savings Program has been amended on several occasions by this Commission to accommodate those changes. Most recently the Spot Savings Program was continued by approval of the Commission in Piedmont's last general rate case, Docket No. G-9, Sub 278.

On September 29, 1989, the FERC issued its Order approving a Revised Stipulation and Agreement which significantly modified the way Transco sells gas to its customers. Under the terms of that Order, Piedmont will purchase limited quantities of gas from Transco under a FERC-approved rate schedule; however, Piedmont will not purchase any gas from Transco under the CD-2 Rate Schedule which was previously used as the benchmark for determining the amount of spot gas savings.

Mr. Schiefer and Ms. Boggs testified that Piedmont is no longer purchasing gas from Transco under Transco's CD-2 Rate Schedule; thus, Piedmont would prefer that the cost of gas component in rates include an adjustable "Benchmark Commodity Cost of Gas" based on Piedmont's estimate of its commodity cost of gas for long-term supplies rather than the obsolete CD-2 rate. Likewise, Mr. Schiefer testified that since the effective date of the FERC's September 29, 1989 Order, Piedmont has purchased approximately 77% of its gas for resale in North Carolina at prices which are not regulated by FERC. The fact that Piedmont has accrued about $22.7 million in its deferred account, much of which

is gas cost savings, indicates that the use of the CD-2 rate for commodity cost of gas, as established in the Spot Savings Program, billed to customers has not caused the Company to experience any revenue shortfall. However, use of an adjustable Benchmark Commodity Cost of Gas in lieu of the CD-2 rate should make it easier for the Company to keep the deferred account at a reasonable level.

Mr. Schiefer also testified that Piedmont has agreed to cancel its contract for the purchase of gas from SCPL and to replace it with the purchase of less expensive gas from another supplier, and that Piedmont has contracted for capacity to replace more expensive gas presently being purchased from Cabot. The stipulations and settlement between the Public Staff and Piedmont will benefit Piedmont because the Company gets immediate assurance that it will recover 25/30 the demand costs in the gas supply contract with Columbia. Piedmont can enter this contract without fear of regulatory lag and uncertainty surrounding the recovery of costs it will incur. This in turn benefits ratepayers because the anticipated costs of the Columbia contract are less than the SCPL contract it will be replacing. In the absence of this settlement Piedmont could recover the higher SCPL costs most quickly and easily (through a G.S. 62-133(f) proceeding) than it could recover the lower Columbia costs (through a general rate case). Piedmont also benefits, in the Public Staff's view, by not having to reflect in rates the effect of additional sales revenues that may be generated by the added capacity available from Columbia. At the same time, ratepayers benefit from having all the Columbia capacity available to serve their needs, but not having to pay the demand costs on 5/30 that capacity until Piedmont's next general rate case.

Similarly, according to the Public Staff, the settlement benefits Piedmont with respect to the contract for Southern Expansion by allowing recovery of 50% of the costs of that pipeline capacity (with an adjustment relating to replacement of the Cabot contract) without reflecting the effect on rates of any additional sales revenues arising out of it. Also, Piedmont receives immediate assurance of recovering 50% of the Southern Expansion costs without going through a general rate case. Ratepayers benefit by having all the Southern Expansion capacity available to serve their needs, but having only to pay 50% of the costs until Piedmont's next rate case. Since Southern Expansion is not expected to be available until November 1990 at the earliest, the benefits to the ratepayers are premised on the expectation that Piedmont will not file a general rate case in time to begin recovering such costs until 1991.

Piedmont's present established rates contain a wholesale commodity cost of gas of $3.4909 per dekatherm as approved in Docket No. G-9, Sub 278, (a general rate proceeding) and as amended in Docket No. G-9, Sub 289, (a proceeding under G.S. 62-133(f)). Under the procedures approved in this Order, Piedmont can increase and/or decrease its rates to reflect increases and decreases in its actual wholesale cost of gas; provided, however, that Piedmont may not increase its rates to reflect an increase in the wholesale commodity cost of gas above the established rate of $3.4909 per dekatherm.

Piedmont's present established rates also include $22,716,534 of Demand Charges and Storage Charges (exclusive of PSP fixed charges). This amount includes $20,798,234 approved in Docket No. G-9, Sub 278, and $1,918,300, approved in Docket No. G-9, Sub 296. Under the procedures approved in this Order, Piedmont's right to adjust its rates for changes in wholesale Demand

Charges and Storage Charges is dependent upon whether the changes relate to existing pipeline capacity or to additional pipeline capacity.

With respect to existing pipeline capacity, Piedmont may file to adjust its rates to reflect changes in its wholesale Demand Charges and Storage Charges provided that such changes do not result in Piedmont's recovering such costs in excess of the sum of (a) $22,716,534 (exclusive of PSP Fixed Charges), as subsequently adjusted in a lawful proceeding and (b) any reductions in wholesale commodity charges below the level approved in G-9, Sub 289, ($3.4909 per dekatherm). In addition, Piedmont may file to recover additional Demand Charges and Storage Charges in a general rate proceeding or under any other statute which may permit Piedmont to recover such costs.

With respect to additional pipeline capacity, Piedmont will not file under its PGA Clause to recover changes in Demand Charges and Storage Charges in connection with additional pipeline capacity except that Piedmont may file under the PGA Clause to recover North Carolina's portion of (a) the demand charges on the first 10,833 dekatherms per day of gas purchased from Columbia Gas Transmission Corporation (Columbia) under Columbia's Rate Schedule CDS (or successor rate schedule) and the demand charges on the first 14,167 dekatherms per day of gas purchased from Columbia under Columbia's WS Rate Schedule (or successor) (which CDS and WS gas was purchased to replace Piedmont's contract with SCPL) and (b) one-half of any charges payable to Transco in connection with the "Southern Expansion" project (which under a modified-fixed-variable type of rate design would be more properly assigned to the commodity component of the rate). When the volumes of gas provided by the Cabot contract are replaced, Piedmont will recover 50% of the additional demand charges for the new supplies (or in the case of the Southern Expansion project 50% of all Transco charges) after deducting the replaced Cabot demand charges. If the volumes of gas provided by the Cabot contract are not replaced by November 1, 1990, Piedmont will stop recovering $585,000 (the demand approved in Docket No. G-9, Sub 278) on January 1, 1991, and will stop recovering $39,000 (the demand increase included in Docket No. G-9, Sub 296) on November 1, 1990.

For all these reasons, the Commission concludes that the existing procedures should be modified as set forth in this Order. The Commission further concludes that the Stipulations and the Purchased Gas Adjustment Clause attached hereto as Appendix A are just and reasonable, are likely to result in more secure gas supplies, and are likely to generate dollar savings for ratepayers up to the time of Piedmont's next general rate case. Our conclusions are based upon the circumstances of this case and are limited to this case.

We now turn to an examination of individual elements of the Purchased Gas Adjustment Clause and other issues in these dockets.

1. The title of procedures adopted by this Order.

The Commission finds and concludes that the title of the procedures adopted by this Order should be "Piedmont Natural Gas Company - North Carolina Purchased Gas Adjustment Clause." The evidence supporting this finding is contained in the testimony of Ann H. Boggs, for Piedmont, and Eugene H. Curtis, for the Public Staff, and in the Stipulations. The title adopted by the

Commission is a compromise agreed to by Piedmont and the Public Staff and is set forth in the Stipulations.

2. The initital Benchmark Commodity Cost of Gas.

The Commission finds and concludes that the initial Benchmark Commodity Cost of Gas should be $2.5291 per dekatherm. The evidence supporting this finding is contained in the testimony of Ann H. Boggs, for Piedmont, and Eugene H. Curtis, for the Public Staff, the various Orders in Docket Nos. G-9, Sub 278, Sub 289, Sub 291, and Sub 296, referred to above and the Stipulations.

The Benchmark Commodity Cost of Gas is Piedmont's estimate of the City Gate Delivered Cost of Gas for long-term gas supplies, excluding Demand Charges and Storage Charges. Under the procedures approved in this Order, Piedmont may increase or decrease its rates when its estimate of actual commodity gas costs will vary from this benchmark. Any differences in the actual commodity cost of gas and the Benchmark Commodity Cost of Gas are placed in a deferred account where they will first be used to offset any margin losses with any remaining funds being used to reduce future rates to Piedmont's customers.

The initial Benchmark Commodity Cost of Gas was established by the Commission in its Order of May 3, 1989, in Docket Nos. G-9, Sub 291 and Sub 289, at $2.5291. That number represents Piedmont's best current estimate of its actual commodity cost of gas. No other party has offered any testimony to support a different initial Benchmark Commodity Cost of Gas.

3. The Benchmark Commodity Cost of Gas ceiling.

The Commission finds and concludes that the $3.4909 ceiling and the limitations on any change in this ceiling are appropriate. The evidence supporting this finding is contained in the testimony of John H. Maxheim, Ware F. Schiefer and Ann H. Boggs, for Piedmont, and Eugene H. Curtis, for the Public Staff, the various Orders in Docket Nos. G-9, Sub 278, Sub 289, Sub 291 and Sub 296, referred to above and the Stipulations.

Piedmont has agreed that the Benchmark Commodity Cost of Gas will not be set above $3.4909 without a Commission Order issued in a general rate proceeding under G.S. 62-137 or in a proceeding under G.S. 62-133(f); provided, however, that Piedmont may file for an increase in the Benchmark Commodity Cost of Gas in any manner authorized by law.

Mr. Schiefer testified that Piedmont's presently established rates include a wholesale Commodity Cost of Gas of $3.4909 per dekatherm as approved in Docket No. G-9, Sub 278 (Piedmont's last general rate case) and as amended in Docket No. G-9, Sub 289 (a proceeding under G.S. 62-133(f)). For the reasons previously discussed, we find that it would not be appropriate for the maximum Benchmark Commodity Cost of Gas to exceed the amount included in Piedmont's established rates.

4. Definition of "City Gate Delivered Cost of Gas."

The Commission finds and concludes that the following definition as set forth in the Stipulations is appropriate:

> "City Gate Delivered Cost of Gas" will be defined to mean "the total delivered cost of gas to Piedmont at its city gate."

In adopting this definition, the Commission notes that Piedmont and the Public Staff have agreed in the Stipulations that "total cost of gas to Piedmont at its city gate shall include the total delivered cost of gas to Piedmont at its city gate, including, but not limited to all commodity charges, demand charges, capacity charges, customer charges, standby charges, gas inventory charges, minimum bill charges, minimum take charges, take-or-pay charges, take-and-pay charges, storage charges, service fees and transportation charges and any other charges of any kind whatsoever which are incurred by Piedmont in connection with the purchase, storage or transportation of volumes of gas by Piedmont." The Commission finds and concludes that this agreement reflects a proper definition of "City Gate Delivered Cost of Gas."

The evidence supporting these findings is contained in the testimony of Ann H. Boggs, for Piedmont, and Eugene H. Curtis, for the Public Staff, and the Stipulations. Piedmont and the Public Staff proposed different definitions for "City Gate Delivered Cost of Gas"; however, they agreed on the definition adopted by the Commission. No other party offered any evidence on this issue.

5. Definition of "Demand Charges and Storage Charges."

The Commission finds and concludes that the following definition as set forth in the Stipulations is appropriate:

> "Demand Charges and Storage Charges" will be defined to mean "all charges for the purchase of gas or transportation of system gas which are not based on the volume of gas actually purchased or transported by the Company."

In adopting this definition, the Commission notes that Piedmont and the Public Staff have agreed in the Stipulations that (1) the above definition shall include, but not be limited to, all charges based on Piedmont's right to demand gas on a peak (daily, monthly or annual) basis and gas charges designated by the seller or transporter of gas as demand charges, capacity charges, customer charges, standby charges, gas investory charges, minimum bill charges, minimum take charges and reservation charges and (2) that the allocation of Demand Charges and Storage Charges shall remain at 78.00% until changed in a general rate proceeding under G.S. 62-137.

The evidence supporting this finding is contained in the testimony of Ann H. Boggs, for Piedmont, and Eugene H. Curtis, for the Public Staff, and the Stipulations. No party offered any evidence in opposition to this definition. The 78.00% allocation percentage was adopted by the Commission in Piedmont's last general rate case, and the Commission finds that it is appropriate to retain this allocation percentage until it is changed in a future general rate proceeding.

6. Definition of "PGA Clause."

The Commission finds and concludes that the following definition as set forth in the Stipulations is appropriate:

> "PGA Clause" will be defined to mean "this Purchased Gas Adjustment Clause."

The evidence supporting this finding is contained in the testimony of Ann H. Boggs, for Piedmont, and Eugene H. Curtis, for the Public Staff, and the Stipulations. No party offered any evidence in opposition to this definition.

7. Section II A of the PGA Clause.

The Commission finds and concludes that the following language should be added to Section II A of the PGA Clause filed by Piedmont:

> The Benchmark Commodity Cost of Gas will not be set above $3.4909 without a Commission order issued in a general rate proceeding under G.S. 62-137 or in a proceeding under G.S. 62-133(f); provided, however, that Piedmont may file for an increase in the Benchmark Commodity Cost of Gas in any manner authorized by law.

The evidence supporting this finding is contained in the testimony of John H. Maxheim, Ware F. Schiefer and Ann H. Boggs, for Piedmont, and Eugene H. Curtis, for the Public Staff, the various Orders in Docket Nos. G-9, Sub 278, Sub 289, Sub 291 and Sub 296, referred to above and the Stipulations. The reasons which support our adoption of this language are set forth above.

8. Section II B

The Commission has added language to the first paragraph of Section II B and to the introductory language of Sections II B 1 and II B 2 in order to clarify that sales rate changes shall be made only following 14 days notice to the Commission, during which time the Commission may suspend the proposed rate changes and schedule a hearing. Although this language was not in the Stipulations, the Commission finds and concludes that such language is appropriate, just and reasonable, and consistent with the intent of the Purchased Gas Adjustment Clause.

9. Transportation Volumes in Commodity Formula.

The Commission finds and concludes that transportation volumes should be excluded from both the numerator and the denominator of the formula for computing the per-dekatherm increase or decrease for changes in Commodity and Other Charges. The evidence supporting this finding is contained in the testimony of Ann H. Boggs, for Piedmont, and Eugene H. Curtis, for the Public Staff, and the Stipulations.

10. Section II D.

The Commission finds and concludes that Section II D of Piedmont's proposed PGA Clause should be amended to substitute the phrase "any interested person may propose" for the phrase "the Company may use." The evidence

supporting this finding is contained in the testimony of Ann H. Boggs, for Piedmont, and Eugene H. Curtis, for the Public Staff, and the Stipulations. No party opposed this amendment, and the amendment will permit any interested person to propose a different method for Piedmont to reflect its actual cost of gas in its rates. Any such proposed method will be subject to approval of the Commission and will apply prospectively.

11. Section III.

The Commission finds and concludes that the following language should be added to Section III of Piedmont's PGA Clause:

> If Piedmont should negotiate rates for any purpose other than for the purpose of meeting competition from alternate fuel, Piedmont shall file a report with the Commission stating the reason for any such negotiation. Such reports shall be filed within 30 days after the month in which the negotiation took place.

In addition, the Commission finds and concludes that Piedmont should file revised tariffs within five days of the date of this Order to provide for any such negotiations.

The evidence supporting this finding is contained in the testimony of Eugene H. Curtis, for the Public Staff, and the Stipulations. The addition of this language will provide the Commission with information to enable it to monitor any such negotiations.

12. Additional Pipeline Capacity.

The Commission finds and concludes that Piedmont should not file under the PGA Clause to recover changes in Demand Charges and Storage Charges in connection with additional pipeline capacity except that Piedmont may file under the PGA Clause to recover North Carolina's portion of (a) the demand charges on the first 10,833 dekatherms per day of gas purchased from Columbia under Columbia's Rate Schedule CDS (or successor rate schedule) and the demand charges on the first 14,167 dekatherms per day of gas purchased from Columbia under Columbia's WS Rate Schedule (or successor) and (b) one-half of any charges payable to Transco in connection with the "Southern Expansion" project. When the volumes of gas provided by the Cabot contract are replaced, Piedmont may recover 50% of the additional demand charges for the new supplies (or, in the case of the Southern Expansion project, 50% of all Transco charges) after deducting the replaced Cabot demand. If the volumes of gas provided by the Cabot contract are not replaced by November 1, 1990, Piedmont will stop recovering $585,000 (the Cabot demand approved in Docket No. G-9, Sub 278) on January 1, 1991, and will stop recovering $39,000 (the Cabot demand increase included in Docket No. G-9, Sub 296) on November 1, 1990.

Piedmont may file under the PGA Clause to reflect changes in Demand Charges and Storage Charges in connection with existing pipeline capacity provided that such changes do not result in Piedmont recovering Demand Charges and Storage Charges in excess of the sum of (a) $22,716,534 (exclusive of PSP Fixed Charges), as subsequently adjusted under the foregoing paragraph or as otherwise adjusted in a lawful proceeding, and (b) any reductions in Commodity and Other Charges below the level approved in Docket No. G-9, Sub 289.

Piedmont may, however, file to recover additional Demand Charges and Storage Charges (whether or not relating to additional pipeline capacity) in a general rate proceeding under G.S. 62-137 or under any other statute which may permit Piedmont to seek the recovery of such additional Demand Charges and Storage Charges.

The evidence supporting this finding is contained in the testimony of Ware F. Schiefer, for Piedmont, the testimony of Eugene H. Curtis, for the Public Staff, and the Stipulations. The Commission's reasons for adopting this finding are set forth above.

13. Section V, First Sentence.

The Commission finds and concludes that the first sentence of the Section V of Piedmont's PGA Clause titled "Other" should be changed to read as follows:

> Cost of gas changes not tracked concurrently shall be recorded in the Company's Deferred Account No. 253.

The evidence supporting this finding is contained in the testimony of Ann H. Boggs, for Piedmont, the testimony of Eugene H. Curtis, for the Public Staff, and the Stipulations. This change is simply for clarification.

14. Section V, Last Paragraph

The Commission finds and concludes that the last paragraph of the PGA Clause shall read as follows:

> The Company shall file with the Commission (with a copy to the Public Staff) a complete monthly accounting of computations under this PGA Clause, including all supporting workpapers, journal entries, etc. All such computations shall be deemed to be in compliance with this PGA Clause unless within 60 days of such filing the Commission or the Public Staff notifies the Company that the computations may not be in compliance; provided, however, that if the Commission or the Public Staff requests additional information reasonably required to evaluate such filing, the running of the 60 day period will be suspended for the number of days taken by Piedmont to provide the additional information.

The evidence supporting this finding is contained in the testimony of Ann H. Boggs, for Piedmont, the testimony of Eugene H. Curtis and William W. Winters, for the Public Staff, and the Stipulations. The purpose of this provision is to provide the Commission and the Public Staff with the information to monitor the operations of the procedures approved herein, to provide the Commission and the Public Staff sufficient time to evaluate such information and to provide Piedmont with certainty as to the appropriateness of its rates.

15. Additional Decrement in Rates.

The Commission finds and concludes that it is appropriate for Piedmont to increase the decrement in its present billed rates by $.25 per dekatherm

beginning with the date of this Order. The evidence supporting this finding is contained in the testimony of Ware F. Schiefer, for Piedmont, the testimony of Eugene H. Curtis and William W. Winters, for the Public Staff, and the Stipulations. The evidence reflects that at the time of the hearing Piedmont had in excess of $20 million in its deferred account. The Commission finds that it is appropriate to increase the current decrement in Piedmont's rates to reduce this balance.

16. Section V, Second Paragraph.

The Commission finds and concludes that the entire second paragraph of the section entitled "Other" of Piedmont's proposed PGA clause should be deleted. The evidence supporting this finding is contained in the testimony of John H. Maxheim and Ware F. Schiefer, for Piedmont, the testimony of Eugene H. Curtis and William W. Winters, for the Public Staff, and the Stipulations. The language which is to be deleted simply sets forth the original intent of Piedmont as to the PGA Clause and does not add anything to its meaning. No party opposed the deletion of this paragraph.

17. Definition of "Margin".

The Commission finds and concludes that, as used in the PGA Clause, "Margin" should be defined to mean:

> the filed tariff 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.

The evidence supporting this finding is contained in the testimony of Ann H. Boggs, for Piedmont, the testimony of Eugene H. Curtis, for the Public Staff, and the Stipulations.

18. Refund of Commodity Savings.

The Commission finds and concludes that commodity savings in the deferred account shall be refunded only to sales customers. The evidence supporting this finding is contained in the testimony of Ann H. Boggs, for Piedmont, the testimony of Eugene H. Curtis, for the Public Staff, and the Stipulations. Commodity savings result from the purchase of gas for sales customers; therefore, the Commission finds that it is appropriate to refund these savings to the customers who paid the charges.

19. Deferred Account Accounting.

The Commission finds and concludes that Piedmont should separately account in its deferred account for (a) Demand and Storage Charges and (b) Commodity Charges. The evidence supporting this finding is contained in the testimony of Ann H. Boggs, for Piedmont, the testimony of Eugene H. Curtis, for the Public Staff, and the Stipulations. The Commission finds that the accounting procedures approved herein will make it easier to identify separately these charges.

20. Inventory Appreciation/Depreciation

The Commission finds and concludes that Piedmont has made the appropriate entries to the deferred account to record the necessary adjustments relating to inventory for the period of November 1, 1988, through April 30, 1989. The evidence supporting this finding is found in the testimony of William W. Winters. Piedmont agreed to withdraw its request for the inclusion of carrying charges on gas in inventory and the inclusion of uncollectibles in the inventory appreciation calculation; therefore, it is unnecessary for the Commission to make any findings on these two issues.

21. Schedule "C".

The Commission finds and concludes that the use of "Schedule C" is no longer required as a result of the procedures approved herein. The evidence supporting this finding is contained in the testimony of Ann H. Boggs. Schedule C was used to account for differences in the wholesale cost of gas between Transco and SCPL. Under the procedures approved herein, Piedmont will compare its actual cost of gas against a single benchmark cost of gas rather than against Transco's CD-2 rate, thereby eliminating the need to account for differences in the mix of gas purchased by Piedmont from Transco and SCPL.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Piedmont has agreed to remain neutral on the issue of whether adjustments to fixed costs should apply to all customers or just firm customers (Rates 101, 102, and 103). CUCA has argued that such adjustments should apply just to firm customers, although they did not present a witness or any evidence on this issue. Public Staff witness Curtis recommended that such adjustments be recovered over all volumes for the following reasons:

1. The fixed charges for Interim Firm Service (IFS) and Firm Transportation (FT) -- which replace Transco's D-1 and D-2 service -- are costs associated with getting cheaper gas to all of Piedmont's customers (including transportation customers). In other words, Piedmont incurs these costs to serve industrial customers as well as high priority customers, so they should share in paying them.

2. The Commission's Order in Piedmont's last Purchased Gas Adjustment (PGA) filing in G-9, Sub 296, allocated the fixed charges over all customers. This Order allocated the new IFS and FT fixed charges and excluded the D-1 and D-2 demand charges.

3. Negotiations have diminished, so it is more feasible to pass increases on to the industrial market.

4. Other LDCs in the state are passing these fixed charges on to all customers. The treatment of such costs in the same manner for Piedmont would result in consistent treatment among the LCDs.

The Commission adopts the recommendation of the Public Staff on this issue for the reasons stated by witness Curtis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

This finding of fact flows logically from the Commission's Finding of Fact No. 17 and the Evidence and Conclusions for Finding of Fact No. 17, as agreed to by witnesses for the Public Staff and Piedmont.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

This finding simply states the Commission's authority to review gas cost recovery procedures for public utilities.

IT IS, THEREFORE, ORDERED as follows:

1. That the "Piedmont Natural Gas Company - North Carolina Purchased Gas Adjustment Clause" attached to this Order be, and hereby is, approved.

2. That Piedmont shall file appropriate tariffs in accordance with the provisions of this Order within 5 days from the effective date of this Order.

3. That the interim procedures approved by the Commission Order dated May 3, 1989, in Docket Nos. G-9, Sub 289 and 291, are approved for the period beginning April 1, 1989, and ending on the effective date of this Order, at which time the procedures approved herein shall become effective.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of February 1990.

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

Commissioners Tate and Hughes dissent.

APPENDIX A

PIEDMONT NATURAL GAS COMPANY
NORTH CAROLINA PURCHASED GAS ADJUSTMENT CLAUSE

I. Definitions.

As used herein,

"Benchmark Commodity Cost of Gas" shall mean the Company's estimate of the City Gate Delivered Cost of Gas for long-term gas supplies, excluding Demand Charges and Storage Charges. Subject to the limitations contained in Section II A, the Benchmark Commodity Cost of Gas (initially $2.5291) may be amended from time to time as provided in Section II B.

"City Gate Delivered Cost of Gas" shall mean the total delivered cost of gas to Piedmont at its city gate.

"Commodity and Other Charges" shall mean all charges for the purchase of gas or for the transportation of gas other than Demand Charges and Storage Charges.

"Demand Charges and Storage Charges" shall mean all charges for the purchase of gas or the transportation of system gas which are not based on the volume of gas actually purchased or transported by the Company.

"Established Rates" shall have the meaning assigned to said term by G.S. 62-132 and the decision of the North Carolina Supreme Court in Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E.2d 651 (1976).

"Margin" shall mean the filed tariff 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.

"PGA Clause" shall mean this Purchased Gas Adjustment Clause.

II. Rate Adjustments Under PGA Clause.

A. Established Rates.

Any rate changes pursuant to this PGA Clause shall be implemented through either an increment or a decrement in the Company's Established Rates or through an adjustment of any such increment or decrement. The Company's Established Rates shall not change as a result of any such increments or decrements. The rates paid by the Company's customers shall be the Established Rates plus all such increments and less all such decrements.

The Benchmark Commodity Cost of Gas will not be set above $3.4909 without a Commission Order issued in a general rate proceeding under G.S. 62-137 or in a proceeding under G.S. 62-133(f); provided, however, that Piedmont may file for an increase in the Benchmark Commodity Cost of Gas in any manner authorized by law.

B. Sales Rates.

In the event the Company anticipates a change in its "City Gate Delivered Cost of Gas," the Company may file revised tariffs in order to increase or decrease its rates to its customers as hereinafter provided. Such revised tariffs shall become effective no sooner than 14 days after their being filed with the Commission, and the Commission may, at any time before the revised tariffs become effective, suspend the operation thereof and enter upon a hearing.

1. Demand Charges and Storage Charges.

Whenever the Company anticipates a change in the "Demand Charges" paid by the Company in connection with the purchase of gas or in connection with the transportation of gas purchased by the Company for its

system sales or in the "Storage Charges," the Company may (as hereinabove provided) change its rates to customers under all Rate Schedules by an amount computed as follows:

$$\frac{\text{(Total Anticipated Demand Charges and Storage Charges - Prior Demand Charges and Storage Charges) + Gross Receipts Taxes X NC Portion*}}{\text{All Sales and Transportation Volumes*}} = \text{Increase (Decrease) Per Unit}$$

*Established by the Commission in the last general rate case

Piedmont will not file under the PGA Clause to recover changes in Demand Charges and Storage Charges in connection with additional pipeline capacity except that Piedmont may file under the PGA Clause to recover North Carolina's portion of (a) the demand charges on the first 10,833 dekatherms per day of gas purchased from Columbia Gas Transmission Corporation (Columbia) under Columbia's Rate Schedule CDS (or successor rate schedule) and the demand charges on the first 14,167 dekatherms per day of gas purchased from Columbia under Columbia's WS Rate Schedule (or successor) (which CDS and WS gas was purchased to replace Piedmont's contract with South Carolina Pipeline Corporation) and (b) one-half of any charges payable to Transco in connection with the "Southern Expansion" project (which under a modified-fixed-variable type of rate design would be more properly assigned to the commodity component of the rate). When the volumes of gas provided by the Cabot contract are replaced, Piedmont will recover 50% of the total demand charges for the new supplies (or in the case of the Southern Expansion project 50% of all Transco charges) after deducting the replaced Cabot demand. If the volumes of gas provided by the Cabot contract are not replaced by November 1, 1990, Piedmont will stop recovering $585,000 (the demand approved in Docket No. G-9, Sub 278) on January 1, 1991, and will stop recovering $39,000 (the demand increase included in Docket No. G-9, Sub 296) on November 1, 1990. Piedmont may file under the PGA Clause to reflect changes in Demand Charges and Storage Charges in connection with existing pipeline capacity provided that such changes do not result in Piedmont recovering Demand Charges and Storage Charges in excess of the sum of (a) $22,716,534 (exclusive of PSP Fixed Charges), as subsequently adjusted under the foregoing sentence or as otherwise adjusted in a lawful proceeding, and (b) any reductions in Commodity and Other Charges below the level approved in Docket No. G-9, Sub 289. Piedmont may, however, file to recover additional Demand Charges and Storage Charges (whether or not relating to additional pipeline capacity) in a general rate proceeding under G.S. 62-137 or under any other statute which may permit Piedmont to seek the recovery of such additional Demand Charges and Storage Charges.

2. Commodity and Other Charges.

Whenever the Benchmark Commodity Cost of Gas is changed, the Company may (as hereinabove provided) change the rates to its customers purchasing gas under all of its sales rate schedules by an amount computed as follows:

$$\frac{\text{Volumes of gas purchased} \times (\text{New Benchmark Commodity Cost of Gas} - \text{Old Benchmark Commodity Cost of Gas}) + \text{Gross Receipts Taxes} \times \text{NC Portion*}}{\text{Volumes of gas purchased (less Company Use* and Unaccounted For*)} \times \text{NC Portion*}} = \text{Increase (Decrease) Per Unit}$$

*Established by the Commission in the last general rate case

C. Transportation Rate.

The firm and/or interruptible transportation rate shall be computed on a per unit basis by subtracting the per unit "Commodity and Other Charges" and applicable gross receipts taxes included in the applicable firm or interruptible sales rate schedule from the applicable firm or interruptible rate schedule. Deferred account increments or decrements shall not apply to transportation rates unless the Commission specifically directs otherwise.

D. Other Changes in Purchased Gas Costs.

The purpose of this Purchased Gas Adjustment provision is to permit the Company to reflect the Company's actual cost of gas in its rates to customers. If, at any time, it should appear that the computations required under this provision do not accomplish that purpose, any interested person may propose a different method to compute changes in its rates; however, any such changes shall require approval by the Commission.

III. Industrial Sales Program.

The Company is permitted to negotiate rates to certain industrial customers when necessary or appropriate to meet the prices of competitive fuels or otherwise to avoid the loss of sales to these customers. To permit the Company to make sales to these customers without suffering a loss of margin, the Company shall record the sales and transportation negotiated losses in the deferred account. If Piedmont should negotiate rates for any purpose other than for the purpose of meeting competition from alternate fuel, Piedmont shall file a report with the Commission stating the reason for any such negotiation. Such reports shall be filed within 30 days after the month in which the negotiation took place.

IV. True-up of Gas Costs.

A. Demand Charges and Storage Charges.

On a monthly basis, the Company shall determine the difference between (a) the aggregate monthly portion of annual Demand Charges and Storage Charges included in the Company's most recently approved PGA and (b) the Company's actual monthly portion of annual Demand Charges and Storage Charges. This difference shall be recorded in the Company's Deferred Account No. 253. The percentage allocation to North Carolina will be the percentage established in the Company's last rate case.

B. Commodity and Other Charges.

On a monthly basis, the Company shall determine with respect to gas sold during the month the per unit difference between (a) the Commodity Cost of Gas included in the Company's most recently approved PGA (currently $3.4524) and (b) the actual Commodity and Other Charges. This difference shall be recorded in the Company's Deferred Account No. 253.

C. Supplier Refunds and Direct Bills.

In the event the Company receives supplier refunds or direct bills with respect to gas previously purchased, the amounts of such supplier refunds or direct bills will be recorded in Deferred Account No. 253.

V. Other

Cost of gas changes not tracked concurrently shall be recorded in the Company's Deferred Account No. 253.

Gas inventories shall be recorded at actual cost and the difference in that cost and the costs last approved under Section II B 2 above shall be recorded in the deferred account when the gas is withdrawn from inventory. Capitalized fixed costs shall be separately identified and shall not be subject to adjustment for rate changes ocurring between the time capitalized and expensed.

The Company shall file with the Commission (with a copy to the Public Staff) a complete monthly accounting of computations under this PGA Clause, including all supporting workpapers, journal entries, etc. All such computations shall be deemed to be in compliance with this PGA Clause unless within 60 days of such filing the Commission or the Public Staff notifies the Company that the computations may not be in compliance; provided, however, that if the Commission or the Public Staff requests additional information reasonably required to evaluate such filing, the running of the 60 day period will be suspended for the number of days taken by Piedmont to provide the additional information.

COMMISSIONERS CHARLES H. HUGHES AND SARAH LINDSAY TATE, DISSENTING. We respectfully dissent from the decision of the Majority to approve the Stipulations filed in these dockets by Piedmont Natural Gas Company, Inc., and the Public Staff. Approval of the Stipulations is in excess of the

Commission's statutory authority as set forth in Chapter 62 of the North Carolina General Statutes. We specifically object to those portions of Piedmont's proposal which would authorize the Company to recover fluctuating demand and storage charges, including a true-up of such charges, outside of a general rate case or a G.S. 62-133(f) proceeding. The Majority Order, which consists of 22 pages, fails to even mention, much less address, the merits of the legal issues raised in this dissent. In our opinion, the Majority Order is fatally defective and utterly devoid of legal justification.

Piedmont has petitioned in Docket No. G-9, Sub 291, for an amendment to its "Spot Savings Program." The "Spot Savings Program" was initially approved in Docket No. G-9, Sub 257, on October 29, 1985, to allocate the benefits of gas purchases at prices below Transco's CD-2 rate among Piedmont's customers. The intent of the Order was to allow Piedmont to offset negotiated sales losses with gas cost savings while preserving the remaining savings for refund to customers. Those procedures were subsequently incorporated in and continued by the Commission's Order in Piedmont's last general rate case in Docket No. G-9, Sub 278.

The amended procedures now being proposed by Piedmont would set up a new way of tracking gas costs. Piedmont calls the new method its "North Carolina Purchased Gas Adjustment Clause." The term "purchased gas adjustment" (PGA) has been used in the past to refer to the procedures under G.S. 62-133(f) and NCUC Rule R1-17(g) for rolling natural gas wholesale price increases or decreases into retail rates. Although Piedmont's current proposal has the same name of "purchased gas adjustment," it is a new procedure that is different from--and not authorized by--G.S. 62-133(f) and Rule R1-17(g).

G.S. (62-133 provides that natural gas utility rates may be fixed through either a general rate case or a PGA. In addition, the North Carolina Supreme Court recently held that the Commission possesses the necessary statutory authority to change rates for public utilities in rulemaking proceedings in special circumstances. State ex. rel. Utilities Commission v. Nantahala Power and Light Company, ___ N.C. ___ (No. 93PA89, filed February 7, 1990). No other provision in the statutes allows a change that affects a broad part of a utility's rate structure. Any change in gas costs obviously affects a broad part of the rate structure. Since this is not a rulemaking proceeding authorized by the Supreme Court opinion in the Nantahala case, changes of the nature proposed by Piedmont may only be implemented either by means of a G.S. 62-133 general rate case or a G.S. 62-133(f) PGA.

New costs which cannot be recovered through a G.S. 62-133(f) procedure can only be added to rates through a general rate case. The case of State ex rel. Utilities Commission v. CF Industries, Inc., 39 N.C. App. 477, cert. denied, 297 N.C. 180 (1979), held that increased costs attributable to NCNG's increase in its storage service under a contract with Washington Storage Service could not be recovered through a G.S. 62-133(f) PGA. The North Carolina Court of Appeals stated that:

> The purpose of G.S. 62-133(f) is to allow the retailer to automatically pass on to the consumer changes in the wholesale cost of the natural gas, over which neither the retailer nor the Utilities Commission has control . . . . NCNG argues that the storage service charge is a "wholesale cost" that it "must incur in

> order to obtain supplies of gas that are adequate to fill the needs of its customers." [I]t is clear that the decision to increase storage capacity represents a discretionary determination on the part of NCNG and is not a change in the wholesale cost of the gas supplies beyond the retailer's control. Any increase in the retail rates attributable to charges by a wholesale of natural gas for storage capacity must be apportioned in a general rate case pursuant to G.S. § 62-133(a) through (e).
>
> We hold that the Utilities Commission acted in excess of its statutory authority when it permitted NCNG to pass on additional costs resulting solely from an increase in storage capacity without complying with the statutory procedures required for a general rate case.

Id. at 479 (emphasis added). Where a new cost of service cannot be recovered through a G.S. 62-133(f) proceeding, the CF Industries case indicates that such cost can be included in rates only by "complying with the statutory procedures required for a general rate case."

The same is true of a formula or mechanism for tracking changes in costs. The case of State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327 (1976), affirmed the legality of a mechanism for tracking CP&L's fossil fuel costs. The fossil fuel adjustment clause was approved in conjunction with a general rate case and upheld on appeal on that basis. The Supreme Court held, "The clause itself when approved becomes part of the published schedule." Id. at 340. Thus, it was a part of the Company's "established" rates. Furthermore, the Court stated that:

> While the clause does indeed isolate for special treatment only one element of the utility's cost, it was here approved only as an adjunct, or rider, to the utility's other general rate schedules which the Commission had simultaneously under consideration. The Commission approved the clause not as an isolated event but as a rider to general rate schedules in which all elements of cost were duly considered. . .

Id. (emphasis in original). The Court noted that approval of a fossil fuel adjustment clause was appropriate "under the circumstances of this case"--which was a general rate case pursuant to G.S. 62-133(a) through (e), and that, "In performing its duty the Commission must follow General Statute 62-133 upon which this Court has expounded many times." Id. at 345.

Piedmont's petition in G-9, Sub 291, to amend its "Spot Savings Program" is not a G.S. 62-133(f) purchased gas adjustment proceeding, a general rate case, or a rulemaking. For that reason, the changes proposed by Piedmont cannot lawfully be made in this proceeding to the extent they significantly change the "Sport Savings Program" formula established as a part of Piedmont's rate structure in its last general rate case. This case clearly illustrates the need for legislative changes, particularly to G.S. 62-133(f), in order to reflect the realities of today's natural gas policies, practices, and procedures as they affect the recovery and ratemaking treatment of natural gas costs, including commodity, demand, and storage charges.

For all of the reasons set forth above, we dissent from the Order entered by the Majority which approves, in toto, the Stipulations filed by Piedmont and the Public Staff.

Charles H. Hughes, Commissioner
Sarah Lindsay Tate, Commissioner

DOCKET NO. G-9, SUB 295

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Piedmont Natural Gas Company, Inc., for Approval of Tariffs ) ORDER APPROVING TARIFFS

HEARD IN: Commission Hearing Room 2115, Dobbs Building, Raleigh, North Carolina, on Tuesday, February 6, 1990

BEFORE: Commissioner Ruth E. Cook, Presiding; and Commissioners Sarah Lindsay Tate and J. A. Wright

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:

Antoinette R. Wike, Chief Counsel, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For Carolina Utility Customers Association, Inc.:

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

BY THE COMMISSION: This matter comes before the Commission upon application of Piedmont Natural Gas Company, Inc. (Piedmont) wherein Piedmont seeks to revise certain language in its tariffs. The revised tariffs were originally filed on February 10, 1989, to comply with the Commission's Final Order in Docket No. G-9, Sub 278, issued February 8, 1989. On March 22, 1989, the Commission found that certain portions of the modified tariff language were not specifically authorized by the February 8, 1989 Order. Therefore, the Commission rejected those modifications without prejudice to Piedmont's right to refile the proposed language modifications in a separate docket.

Piedmont refiled the revised tariffs in this docket on September 28, 1989. At the Regular Commission Staff Conference held on October 23, 1989, the Public Staff recommended approval of all of the modified tariff language; however, the Public Staff objected to one sentence on the back of each of Piedmont's tariffs which has been in those tariffs for many years. In addition, the Carolina Utility Customers Association (CUCA) stated that it did not understand all of the tariff changes and requested that the Commission set the matter for hearing.

On November 8, 1989, the Commission issued an Order setting this matter for hearing on February 6, 1990. In that Order, the Commission required

Piedmont to file testimony on or before December 20, 1989, and permitted all other parties to file testimony on or before January 12, 1990. Testimony was thereafter filed by Piedmont and the Public Staff. The Public Staff subsequently advised the Commission that Piedmont had agreed to withdraw the tariff language which the Public Staff had objected to and that the Public Staff was withdrawing its testimony. CUCA did not file any testimony or exhibits.

At the hearing held on February 6, 1990, Ware F. Schiefer presented testimony on behalf of Piedmont. No other party offered testimony.

Proposed Amendments to All Rate Schedules

Piedmont proposes to amend all of its tariffs as follows:

1. Piedmont proposes to change the docket number, the issuance date and the effective date of each tariff to reflect the action taken by the Commission in this docket.

2. In paragraph 1 on the back page of each tariff, Piedmont proposes to change the word "rates" to "rules" to change a typographical error that appears in the current tariffs.

3. Piedmont has eliminated paragraph 4 from each of the tariffs (except Rate Schedule 113 which did not contained this paragraph). Paragraph 4 was inserted in the tariffs at a time when Piedmont had to restrict the addition of new customers, due to the curtailment of gas supplies. Those restrictions no long apply.

No party opposed these changes, and the Commission finds that they are appropriate and should be approved to reflect the proper docket number and date, to correct a typographical error and to remove restrictions which no longer apply.

Proposed Deletion of Rate Schedule 102A

Piedmont proposes to delete Rate Schedule 102A. This rate schedule was adopted to comply with the incremental pricing provisions of the Natural Gas Policy Act, and those provisions have been repealed.

No party opposed the deletion of this rate schedule, and the Commission finds that Rate Schedule 102A no longer serves any useful purpose in view of the repeal of the incremental pricing provisions of the Natural Gas Policy Act.

Proposed Amendments to Rate Schedules 102, 102B and 102C

Piedmont is proposing several changes in Rate Schedules 102, 102B and 102C. Piedmont proposes to amend the "Applicability and Character of Service" paragraph of these rate schedules to change the maximum usage from less than 50 dekatherms per day to not more than 1,500 dekatherms per month. Mr. Schiefer testified that meters are read on a monthly (and not on a daily basis); and therefore, this change will reflect the way this requirement is actually applied. On cross-examination, Mr. Schiefer testified that this change would not affect any customer. No evidence was offered to the contrary. Therefore,

the Commission finds that the tariff language should be amended as requested to conform to the way Piedmont actually applies the tariffs.

Piedmont also proposes to make a minor wording change in the paragraph entitled "Unauthorized Gas" to make it clearer, to change the title of Rate Schedule 102B to 102A and to change the title of Rate Schedule 102C to Rate Schedule 102B. No party opposed these changes to Rate Schedules 102, 102B and 102C, and the Commission finds that they are proper and should be approved to make the "Unauthorized Gas" paragraph clearer and to reflect the deletion of former Rate Schedule 102A.

Proposed Amendments to Rate Schedule 103

Piedmont proposes the following changes and amendments to Rate Schedule 103:

1. Piedmont proposes to change the title from "Process Gas Service" to "Large General Service."

2. Piedmont proposes to amend the "Applicability and Character of Service" paragraph to change the minimum usage from in excess of 50 dekatherms per day to in excess of 1,500 dekatherms per month. Piedmont has also deleted the reference to "industrial" customers in this paragraph since the schedule is applicable to all customers who meet the minimum usage requirement.

3. Piedmont made the same change in the "Unauthorized Gas" paragraph described with reference to Rate Schedule 102.

The Commission finds that the proposed changes to Rate Schedule 103 are appropriate and should be approved. The new title of Rate Schedule 103 is a better description of the schedule since the schedule is not limited to process gas users. As explained in reference to Rate Schedule 102, Piedmont reads meters on a monthly basis (and not on a daily basis), and the proposed change in the minimum usage requirement from 50 dekatherms per day to 1,500 dekatherms per month will reflect the way this requirement is actually applied. As explained in reference to Rate Schedule 102, the change to the "Unauthorized Gas" paragraph will make it clearer.

Proposed Amendments to Rate Schedule 104

Piedmont proposes the following changes and amendments to Rate Schedule 104:

1. Piedmont proposes to change the title from "Large General Service" to "Interruptible Service."

2. Piedmont proposes to amend the "Applicability and Character of Service" paragraph (a) to change the minimum usage from in excess of 50 dekatherms per day to in excess of 1,500 dekatherms per month, (b) to delete the reference to "non-residential" customers in this paragraph, (c) to add language to state that the 1,500 dekatherms per month minimum will be adjusted for curtailment and cycle length, and (d) to delete the

language which gives customers the automatic right to switch to Rate Schedule 103.

3. Piedmont has rewritten the "Standby Fuel Capability" paragraph to provide that customers must have in place an operational standby system with sufficient alternative fuel to replace gas service for a reasonable period of interruption.

4. Piedmont made the same change in the "Unauthorized Gas" paragraph described with reference to Rate Schedule 102.

The Commission finds that all of the proposed changes are appropriate and should be approved.

The change to the title was not opposed and will more accurately reflect the interruptible nature of the service rendered under this rate schedule.

As explained in reference to Rate Schedule 102, the proposed change in the minimum usage requirement from 50 dekatherms per day to 1,500 dekatherms per month will reflect the way this requirement is actually applied.

It is appropriate to delete the reference to "non-residential" customers since the schedule is applicable to all customers who meet the minimum usage requirement.

The addition of language to state that the 1,500 per month minimum will be adjusted for curtailment and cycle length merely states Piedmont's current practice of not penalizing customers for using less than the minimum amount due to curtailment or a less than 30-day billing cycle.

The deletion of the language which gives customers the automatic right to switch to Rate Schedule 103 is appropriate because the ability of Piedmont to serve a large interruptible customer on a firm rate schedule depends upon the amount of firm gas supplies available to Piedmont at the time. Therefore, Piedmont cannot give such customers the unfettered right to switch.

The requirement that customers must have in place an operational standby system with sufficient alternative fuel to replace gas service for a reasonable period of interruption is also appropriate. Mr. Schiefer testified that Piedmont has found that some customers would elect to purchase under this schedule but would provide unusable standby equipment or an inadequate supply of alternate fuel. As a result, when Piedmont would notify them that they were going to curtailed, they would claim undue hardship.

As explained in reference to Rate Schedule 102, the change to the "Unauthorized Gas" paragraph will make it clearer.

Proposed Amendments to Rate Schedule 106

Rate Schedule 106 currently provides for "off-peak" and "on-peak" emergency service. Piedmont proposes to combine the two services into a single service. In addition, Piedmont is proposing to add an "Unauthorized Gas" section identical to the section contained in its other tariffs.

No party opposed the elimination of the distinction between "off-peak" and "on-peak," and the Commission finds that it is appropriate. As explained in reference to Rate Schedule 102, the change to the "Unauthorized Gas" paragraph will make it clearer.

Proposed Amendments to Rate Schedule 107

Piedmont proposed the following amendments to Rate Schedule 107:

1. Piedmont proposes to change the rate schedule number from 107 to 114 and to add the word "Interruptible" to the title.

2. Piedmont proposes to reword the "Availability" section to specifically state that the service being offered is transportation service and to remove certain redundant language of the tariff.

3. Piedmont proposes to delete the first and third paragraphs of the "Applicability and Character of Service" section since these two paragraphs are redundant.

4. Piedmont proposes to add an "Unauthorized Gas" section identical to the section contained in its other tariffs.

5. Piedmont proposes to add a section on the back of the tariff labeled "Service Agreement."

The Commission finds that all of the proposed changes are appropriate and should be approved.

This rate schedule is available only to customers who purchase gas under Rate Schedule 104, and the change in the rate schedule number to 114 will help Piedmont match the two rate schedules. The inclusion of the word "Interruptible" in the title will identify the character of the service.

No party is affected by the deletion of the redundant language in the "Availability" and "Applicability and Character of Service" sections of the tariff.

As explained in reference to Rate Schedule 102, the change to the "Unauthorized Gas" paragraph will make it clearer.

The only change proposed to this tariff which was questioned by any party was the provision which gives Piedmont the option of requiring a written service agreement under appropriate circumstances. The Commission finds that this provision is appropriate and should be approved. On cross-examination, Mr. Schiefer testified that this Commission would either approve a generic contract or individual contracts before any such contracts were used. If any party has any objection to any provision of any such contract, he or she may raise it when the contract is submitted for Commission approval.

Proposed Amendments to Rate Schedule 108

Rate Schedule 108 is currently available only to customers who purchase gas under Rate Schedules 103 and 104. Piedmont proposes to make the tariff

also available for customers who purchase gas under Rate Schedule 102. This addition requires changes in the language of the "Applicability and Character of Service" section and in the "Rate" section of the tariff. Piedmont also proposes to make the same change in the "Unauthorized Gas" section discussed above.

The Commission finds that the proposed changes are appropriate and should be approved. No party opposed these changes. It is in the public interest to make this tariff available to customers who purchase gas under Rate Schedule 102. As explained in reference to Rate Schedule 102, the change to the "Unauthorized Gas" paragraph will make it clearer.

Proposed Amendments to Rate Schedule 113

Piedmont proposes to amend the language of the "Availability" section to make it clear that any customer who purchased gas under Rate Schedule 103 is eligible to subscribe to service under the conditions set forth in this tariff. Piedmont also proposes to amend the "Applicability and Character of Service" section to remove a redundant word. Finally, Piedmont proposes to add a "Curtailment of Gas Service" section which is identical to the curtailment section contained in its other tariffs.

No party opposed these changes, and the Commission finds that they are appropriate and should be approved.

Proposed Amendment to Government and Company Regulations

At the hearing, Piedmont agreed to delete one sentence contained in the "Government and Company Regulations" section on the back of each of Piedmont's tariffs which was objected to by the Public Staff. This sentence reads as follows: "In addition, service under this rate schedule is subject to such reasonable rules and regulations as the Company may prescribe for the protection of itself and its customers." No party objected to the deletion, and the Commission finds that the deletion is appropriate and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That, except as provided in the following decretal paragraph, the revised tariffs filed by Piedmont on September 28, 1989, are approved to be effective the date of this Order.

2. That the revised tariffs shall be amended to delete the sentence contained in the "Government and Company Regulations" section on the back of each of Piedmont's tariffs which reads as follows: "In addition, service under this rate schedule is subject to such reasonable rules and regulations as the Company may prescribe for the protection of itself and its customers."

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of May 1990.

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

DOCKET NO. G-21, SUB 279

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Carolina Natural Gas Corporation for Declaratory Ruling ) DECLARATORY RULING

BY THE COMMISSION: On October 23, 1989, North Carolina Natural Gas Corporation (NCNG) filed a verified Application for Declaratory Ruling in this docket. NCNG alleged that it operates as a public utility providing natural gas service within its service territory pursuant to a certificate of public convenience and necessity issued by this Commission on December 7, 1955; that the City of Monroe (City) operates a municipal natural gas distribution system, supplied with natural gas at wholesale by NCNG, providing service to its citizens pursuant to a certificate of public convenience and necessity issued to the City on July 15, 1957; that the City lies within the service territory delineated in NCNG's certificate; that the City had received a proposal from Piedmont Natural Gas Company (Piedmont) to purchase the City's natural gas distribution system and the City had invited NCNG to make its own purchase proposal; that neither the City nor any other part of Union County lies within Piedmont's service territory; and that a controversy existed between NCNG and Piedmont with respect to Piedmont's right to purchase the City's natural gas distribution system and provide service to the present customers of the City. NCNG asked the Commission to issue a declaratory ruling and, in the interim, to order Piedmont not to enter into any agreement or engage in any further negotiations with the City.

Both Piedmont and the City petitioned to intervene in this docket and their interventions were allowed.

On November 14, 1989, the City filed a Motion to Dismiss Or, in the Alternative, for Denial of NCNG's Request for Preliminary Injunctive Relief. On November 15, 1989, Piedmont filed a Motion to Dismiss. By these filings, the City and Piedmont asked the Commission to dismiss the Application of NCNG and, alternatively, to deny preliminary injunctive relief. NCNG filed a Response to these filings on November 22, 1989.

The Commission scheduled an oral argument which was held on December 6, 1989, to consider the motions to dismiss and the request for preliminary injunctive relief. At that oral argument, several additional filings were made. Piedmont filed a Rely and a Brief. The City filed a Reply to which was attached the affidavit of consultant Fred R. Saffer. NCNG submitted a map of its pipeline system in Union County and an affidavit of Senior Vice President Gerald A. Teele. Oral argument was presented by NCNG, Piedmont, the City, and the Public Staff.

On December 14, 1989, the Commission issued its Order Denying Motions to Dismiss and Issuing Preliminary Injunction. The Commission concluded that it has the authority to issue declaratory rulings as to matters within the scope of its jurisdiction and that the Application of NCNG concerns a matter within the jurisdiction of the Commission. The Commission further concluded that the Application disclosed a real and justiciable controversy between NCNG and Piedmont. The Commission therefore denied the motions to dismiss. The

Commission went on to issue a preliminary injunction enjoining Piedmont from entering into any agreement with the City for the purchase of the City's natural gas distribution system until a final determination of the issues.

On December 27, 1989, Piedmont filed its Response and Motion. Piedmont asserted that it had withdrawn its offer to purchase the system from the City and that it no longer had any interest in this docket. Piedmont asked to withdraw as a party and to have the preliminary injunction dissolved. The Commission issued an Order on February 7, 1990, allowing Piedmont to withdraw and dissolving the preliminary injunction without prejudice to NCNG's right to seek further relief.

On January 17, 1990, the City filed a Response of Monroe to NCNG's Application for Declaratory Ruling and a Motion for Summary Disposition. By these filings, the City asserts that no significant factual matters are in dispute, but that the City disagrees with NCNG's interpretation of the facts and legal conclusions. The City asks the Commission to issue a declaratory ruling to the effect that the City is entitled to receive bids from and contract to sell its system to any utility or other person it chooses, subject to the Commission's subsequent determination of whether the proposed purchaser should be issued a certificate of public convenience and necessity pursuant to G.S. 62-110.

On February 19, 1990, NCNG filed its Response of NCNG to Recent Filings and Actions. NCNG argues that the Commission's Order of December 14, 1989, found a real and justiciable controversy between NCNG and Piedmont, that this controversy no longer exists since Piedmont has withdrawn its offer to purchase the City's system, and that it is therefore no longer necessary for the Commission to issue a declaratory ruling. Alternatively, if the Commission issues a declaratory ruling, NCNG urges the Commission to rule that NCNG's service territory includes the City to the extent the City ceases operating its municipal system and to declare that no one without a certificate for a given territory has the right to purchase a municipal system within the territory.

Finally, on March 5, 1990, the City filed a Response of Monroe to NCNG's Response to Recent Filings and Actions. The City argues that a real and justiciable controversy still exists and that the Commission should issue a declaratory ruling in its favor.

An oral argument was held on April 17, 1990, at which NCNG, the City, the Public Staff, and the Attorney General appeared and presented argument. NCNG filed one final exhibit with the Commission on April 19, 1990.

Neither NCNG nor the City desires an evidentiary hearing. The City asserts in its motion for summary disposition that "no material issues of fact are in dispute and no evidentiary hearing is necessary." In its February 19, 1990 Response, NCNG "agrees that a full evidentiary hearing on NCNG's Application is not necessary as the central facts are not in dispute. . . " The Commission finds that there is no genuine issue as to any material fact and that the case can be decided as a matter of law. Two issues must be decided.

ACTUAL EXISTING CONTROVERSY

As the Commission noted in its Order of December 14, 1989, the Declaratory Judgment Act provides a forum for interpreting statutes and franchises and determining rights thereunder provided there is an actual controversy between the parties. Any action for a declaratory judgment requires an actual existing controversy between parties having adverse interests in the matter in dispute. Lide v. Mears, 231 N.C. 111, 56 S.E.2d, 404 (1949). The Commission's December 14, 1989 Order concluded that a real and justiciable controversy existed between NCNG and Piedmont. The Commission did not consider whether such a controversy existed between NCNG and the City because that was not relevant to the preliminary injunctive relief being considered. Piedmont has now withdrawn. The Commission must now decide whether a real and justiciable controversy exists between NCNG and the City in order to support a declaratory ruling. We conclude that it does.

The City's attorney stated at the April 17, 1990 oral argument that the City "wants to find out what its system is worth and be able to negotiate with those parties who may be interested." The City argues that it cannot determine the value of its system because the Commission's preliminary injunction of December 14, 1989, even though now dissolved, is still having a "chilling effect" on those who might otherwise be interested in negotiating to purchase the system.[1] The City argues that "in light of the chilling effect of the Commission's Order, there is a controversy that merits resolution." The City also argues that issuing a declaratory ruling now will serve the interests of judicial economy. Both the Public Staff and the Attorney General agree. They stated at oral argument that the Commission should issue a declaratory ruling since the matter will likely arise again if it is not ruled on now.

The Commission concludes that the filings and arguments herein reveal a real and justiciable controversy between NCNG and the City. The City is exploring the sale of its municipal natural gas distribution system, and it wishes to negotiate with potential buyers. NCNG contends that, as a matter of law, it is the only one entitled to purchase the system at this time since its utility franchise includes the City. The City contends that others should be able to contract for the system subject to the Commission's subsequent determination of whether the contract serves the public convenience and necessity. This is an actual existing controversy between the parties. Furthermore, the City asserts that it "does not believe that any other potential purchaser of its system would be willing to talk to [it], and it is clear that if somebody did that North Carolina Natural would be back in here

1 In the alternative, if the Commission finds no justiciable controversy, the City asks that the Commission not only dissolve the preliminary injunction, but actually vacate the reasoning expressed therein. The City asserts that it "reasonably believes that Piedmont might renew its interest in Monroe's system if the Commission's Order is vacated." The City also asserts, "Indeed, other natural gas public utilities might express interest in purchasing Monroe's system once the Commission's Order is vacated." The Commission finds no reason to renounce its preliminary injunction.

asking for a preliminary injunction. . . " The Commission can appreciate that the preliminary injunction of December 14, 1989, discourages potential buyers from investing their time and money in negotiations with the City, and this contributes to our finding of an actual existing controversy. The Commission therefore concludes that this proceeding is an appropriate one for a declaratory ruling, and we turn to the merits.

## DECLARATORY RULING

NCNG's primary argument is that the City was included within the service territory of NCNG's 1955 certificate of public convenience and necessity issued by this Commission and that the subsequent issuance of a certificate to the City in 1957 did not take the City out of NCNG's service territory. NCNG therefore argues that it has the exclusive right to own and operate a natural gas distribution system in Monroe if the City decides to cease operating the system itself. NCNG recognizes that municipalities within a gas utility's service territory are entitled by statute to operate their own municipal natural gas distribution systems, but NCNG denies that a municipality can transfer such a system to any entity other than the gas utility franchised in the area. NCNG argues that the only way a gas utility can lose part of its service territory is pursuant to G. S. 62-112, and the City has not cited or attempted to invoke that statute in this proceeding. NCNG makes a number of other arguments as well. NCNG argues that to the extent the statute allowing a municipality to divest itself of a public enterprise conflicts with the statutes giving the Utilities Commission power to regulate public utilities within cities, the latter statute controls. NCNG argues that since Monroe's certificate was issued pursuant to the Revenue Bond Act in order to support the issuance of bonds, it is not a territorial certificate or franchise at all and it cannot be transferred. Finally, NCNG argues that if gas utilities cannot rely upon the integrity of the service territory described in their certificates, the push for expansion of natural gas service into unserved areas of the State will be undermined.

The City seeks a ruling that NCNG does not have the exclusive right to purchase and operate the City's system. The City's basic argument is that G.S. 160A-321 gives it the right to sell its natural gas distribution system to any person subject to that person's applying to the Utilities Commission for a certificate of public convenience and necessity after the City has contracted to sell and the voters have approved the sale. Monroe argues that "determination should be made in the first instance by the City and then come before the Commission. . . " The Commission would decide whether to issue a certificate for the transfer not on the basis of abstract rights, but rather on the evidence presented, such as the benefits to the City's citizens, the purchaser's supply arrangements, etc. The City makes several additional points. It argues that its 1957 certificate nullified any rights NCNG might have had to serve the City under NCNG's 1955 certificate and that therefore even NCNG would have to get a new certificate from this Commission before purchasing and operating the City's system. The City concedes that its certificate was granted under the Revenue Bond Act, but it argues that the certificate "reads just like a [utility] certificate," was based on the same standards, and can be transferred. Finally, Monroe argues that it is entitled to get the best price for its system and that the system will not be worth as much if there is only one potential buyer.

We begin our analysis by examining the certificates of NCNG and the City. The Commission issued an Order on December 7, 1955, in Docket No. G-21, granting a certificate of public convenience and necessity to NCNG

> for the construction and operation of a natural gas pipeline from a point on the Transcontinental Gas Pipe Line Corporation's line near Mooresville eastward across North Carolina for the purpose of serving and furnishing natural gas to the section of North Carolina lying east of Charlotte and south of Lexington, Sanford and Raleigh (but not to include any territory or parts of any territory heretofore granted to any other company), with the right to extend laterals from the main line to all cities, towns, villages, and communities in the territory and to serve points and industries between cities, towns, and villages . . .

This certificate constitutes NCNG's utility franchise. It was issued pursuant to what is now G.S. 62-110. Subsequently, on July 15, 1957, in Docket No. G-23, the Commission issued a certificate of public convenience and necessity to the City

> for the purpose of constructing, owning and operating: natural gas distributing system, as well as all necessary fixtures and auxiliary installations, to the end that the City of Monore may distribute natural gas to its citizens, businesses, and industries within its corporate limits . . .

The City's certificate was issued pursuant to G.S. 160-421 (now G.S. 159-95), which provides that no municipality may undertake a revenue bond project to finance construction of a gas system unless it first obtains a certificate of public convenience and necessity from the Utilities Commission. NCNG supported the City's request for a certificate, having reached agreement to provide wholesale natural gas service to the City.

Our first and crucial consideration is what effect the City's certificate had on NCNG. The territory described in NCNG's 1955 certificate encompasses the City of Monroe. Two years later, in the course of granting a certificate to the City, the Commission specifically stated that the City is within NCNG's service area. The City's 1957 certificate finds that "the City of Monroe is located within the service area of North Carolina Natural Gas Corporation," and the certificate finds "that considering the feasibility study and survey, as well as the population, businesses, and industries of Monroe, and its location within the service area of the North Carolina Natural Gas Corporation: it is found that there is a public need for natural gas by the citizens, businesses, and industries located within the corporate limits of the City of Monroe . . . " (emphasis added). The City argues that its 1957 certificate effectively took it out of NCNG's service territory, but there is nothing in the language of the certificate to suggest this. In fact, the language indicates otherwise. Nor was there any reason to take the City out of NCNG's territory. The City was entitled by law to construct and operate its own natural gas distribution system within NCNG's territory. NCNG concedes this. Such authority is now set forth in G.S. 160A-312. NCNG reasons that since the City's certificate was issued to support the issuance of revenue bonds, it is not a territorial certificate at all. NCNG's attorney argued, "Monroe has no certificate which it can transfer and sell. They have a certificate which says

that they can issue revenue bonds . . . " It is clear that the City's certificate was issued pursuant to the revenue bond statute, now G.S. 159-95, rather than the utility franchise statute, now G.S. 62-110; however, we need not explore the full ramifications of this distinction. Based upon the language of the certificates and upon the City's authority to construct and operate its system within NCNG's territory, the Commission concludes that the City was included in NCNG's service territory in 1955 and that it was not taken out by the City's 1957 certificate.

NCNG's certificate of public convenience and necessity, its utility franchise, grants it specific rights as to the territory covered.

> [T]he basis for a requirement of a certificate of public convenience and necessity, as a prerequisite to the right to serve, is the adoption, by the General Assembly, of the policy that, nothing else appearing, the public is better served by a regulated monopoly than by competing suppliers of the service. The requirement of such a certificate is not an absolute prohibition of competition between public utilities rendering the same service. (Citations omitted). There is, however, inherent in this requirement the concept that, once a certificate is granted which authorizes the holder to render the proposed service within the geographic area in question, a certificate will not be granted to a competitor in the absence of a showing that the utility already in the field is not rendering and cannot or will not render the specific service in question.

Utilities Commission v. Carolina Telephone and Telegraph Company, 267 N.C. 257, 271, 148 S.E.2d 100 (1966); Accord Utilities Commission v. Southern Bell, 21 N.C. App. 182, 204 S.E.2d 27, cert. denied, 285 N.C. 596, 202 S.E.2d 726 (1974). The City's right to operate its natural gas distribution ~~system within~~ NCNG's territory is a statutory exception to this proposition, but it is an exception for municipalities, and the exception would no longer apply if the City transferred its system to another. The City's natural gas distribution system unless owned by the City is subject to NCNG's territorial monopoly. That being the case, the issue of whether to grant a certificate of public convenience and necessity for the transfer of the City's system to someone other than NCNG becomes an issue of the proof required by G. S. 62-112 or by the Carolina Telephone case, neither of which the City has cited or attempted to invoke in this proceeding. The City's argument concedes that the purchaser selected by the City would have to apply for a certificate of public convenience and necessity from the Commission to complete the transfer. However, the City argues that "the Commission's certificate determination should be based on the specific facts of a proposed transaction, weighing such considerations as the benefits to Monroe and its citizens against facts presented with regard to the impact of the proposed transactions on, for example, NCNG's investment in facilities for service to Monroe and the effect on NCNG's customers and the customers of the purchasing utility." This is not the law. Under the Public Utilities Act, so long as NCNG's franchise includes the City, the Commission could not grant a certificate to someone other than NCNG "in the absence of a showing that the utility already in the field is not rendering and cannot or will not render the specific service in question." Carolina Telephone, 267 N.C. at 271. No such showing has been suggested by the City. To the contrary, NCNG has indicated its willingness to purchase the

City's system and has recently made improvements to its own system in order to improve service to the City.

The City points to G.S. 160A-321 as authority to sell its system to anyone the City Council selects and the voters approve. The statute provides as follows:

> A city is authorized to sell or lease as lessor any enterprise that it may own upon any terms and conditions that the council may deem best. However, except as to transfer to another governmental entity pursuant to G.S. 160A-274, a city-owned enterprise shall not be sold, leased to another, or discontinued unless the proposal to sell, lease, or discontinue is first submitted to a vote of the people and approved by a majority of those who vote thereon.

The City is reading G.S. 160A-321 much too broadly. This statute merely gives a city council general authority to sell or lease a public enterprise subject to voter approval. It does not contradict or overrule other statutes relevant to a particular transaction, such as those statutes creating the territorial monopoly of NCNG. It must be construed in pari materia with the Public Utilities Act. As applicable to this situation, G.S. 160A-321 may give the council authority to sell, but the Public Utilities Act limits the potential purchasers.[2]

The City also cites the policy favoring "public bidding" as supporting its right to sell to anyone. The City's attorney argued that "the reason that the public bidding laws are on the books is that they serve a valid public policy, and Monroe's determination is that that policy would be best served by going to public bidding so Monroe could determine what the value for its system is." Again, the City confuses the relevant statutes. There is absolutely nothing in G.S. 160A-321 which speaks to public bidding in the sale of a public enterprise. The bidding statutes that the City cites are apparently those in G.S., Chapter 143, Article 8, which provides for competitive bidding when a municipality purchases supplies and materials. The City takes the public policy behind one statute and tries to apply it to a different situation. There is an important public policy involved in the present case, but it is not the one cited by the City. The public policy at issue here is the policy, expressed in the Public Utilities Act, against duplication of utility facilities, wastefulness and unwarranted competition. Southern Bell, 21 N.C. App. at 187. As expressed by the Public Staff at oral argument, "[L]etting anyone other than NCNG serve Monroe would cause a duplication of facilities and would be against everything Chapter 62 stands for." The policy behind competitive bidding, valid as it is, does not apply to every situtation, and it does not apply here.

The Commission therefore concludes that NCNG is entitled to a declaratory ruling to the effect that the City of Monroe is included in its service territory and that an application for a certificate of public convenience and

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2 Even if G.S. 160A-321 is seen as conflicting with G.S. 62-110, we believe that the Public Utilities Act must prevail. See Duke Power v. High Point, 22 N.C. App. 91, 100-102, 205 S.E.2d 774 (1974).

necessity for the transfer of the City's municipal natural gas distribution system to someone other than NCNG will not be granted absent the showing required by either G.S. 62-112 or Carolina Telephone, 267 N.C. at 271.

IT IS, THEREFORE, ORDERED that a declaratory ruling as hereinabove provided should be, and hereby is, issued.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of August 1990.

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

DOCKET NO. T-3245

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Len Edward Fletcher, d/b/a ASE Moving Services, 400 Oberlin Road, Suite 120, Raleigh, North Carolina 27605 - Application for Common Carrier Authority | ) | FINAL ORDER RULING ON EXCEPTIONS AND GRANTING APPLICATION IN PART |

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, April 10, 1990, 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, and Charles H. Hughes

APPEARANCES:

For the Applicant:

Mary Beth Johnston, Poyner & Spruill, Attorneys at Law, Post Office Box 10096, Raleigh, North Carolina 27605
FOR: Len Edward Fletcher, d/b/a ASE Moving Services

For the Protestants:

Theodore C. Brown, Attorney at Law, 1042 Washington Street, Raleigh, North Carolina 27605
FOR: Security Storage Company, Inc.; Tru-Pak Moving Systems, Inc.; Lawrence Transportation Systems, Inc.; and Horne Storage Company, Inc.

BY THE COMMISSION: On November 8, 1989, Len Edward Fletcher, d/b/a ASE Moving Services (Applicant), filed an application seeking common carrier authority to transport Group 18, household goods, statewide.

The Commission Calendar of Hearings dated November 15, 1989, set the matter for hearing on December 21, 1989.

A Protest and Petition to Intervene was filed on November 27, 1989, on behalf of Security Storage Company, Inc.; Tru-Pak Moving Systems, Inc.; and Lawrence Transportation Systems, Inc. By Order dated November 30, 1989, the Protestants were allowed to intervene in the proceeding. By Order dated December 4, 1989, the hearing was rescheduled to Wednesday, January 17, 1990, at 9:30 a.m.

Upon call of the matter for hearing at the appointed time and place, the Applicant and the Protestants were present and represented by counsel. Counsel for the Protestants moved to amend the Protest and Petition to Intervene to include Horne Storage Company, Inc. That motion was granted. Applicant then offered the testimony of Len Edward Fletcher, Thomas Michael, One-Way Rental

Manager for Ryder Truck Rental, and Jerry Blake, General Manager for U-Haul. The Protestants offered the testimony of Darryl Horne in opposition to the application.

On February 26, 1990, Hearing Examiner Barbara A. Sharpe entered a Recommended Order in this docket denying the application in its entirety.

On March 13, 1990, the Applicant filed certain exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

By Order dated March 16, 1990, the Commission scheduled an oral argument on exceptions for Tuesday, April 10, 1990, at 9:30 a.m.

Upon call of the matter for oral argument on exceptions, the Applicant and the Protestants were represented by counsel who presented their positions before the full Commission.

Based upon a careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received in evidence and judicially noticed, the oral argument on exceptions and the entire record in this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. The Applicant seeks common carrier authority to transport Group 18, household goods, statewide.

2. The Applicant operates a household goods moving service in the Raleigh area under an exemption certificate from the Division of Motor Vehicles.

3. The Applicant, doing business under the name of ASE Moving Services, has been in business for approximately two years and has handled approximately 200 moves. The Applicant has been involved in the moving and shipping industry for many years. Prior to going into business for himself, the Applicant was employed by Movers World, an interstate moving company, and moved household goods across the United States.

4. The moving services offered by the Applicant include packing, loading, transporting and unloading household goods for customers.

5. The Applicant currently does not own any moving trucks or vans, but utilizes trucks from area rental companies, such as Ryder or U-Haul. The trucks may be rented either directly by the Applicant or the customer. Since many customers do not want the added responsibility of obtaining the moving truck or are apprehensive about a mover who is unable to rent a truck for them, the Applicant desires a certificate in order to offer a statewide moving service, including providing the moving truck for his customers.

6. The population the Applicant serves and intends to serve are low income individuals, individuals seeking assistance with small moves, and individuals who ordinarily would handle the move themselves through a truck rental company, but who are incapable, physically or otherwise, or unwilling to do so.

7. The Applicant's services are an alternative to hiring a larger moving company with its own fleet of trucks and are also an alternative to a customer renting a truck and handling the move personally.

8. Approximately 90% of the Applicant's business is generated from referrals by the truck rental companies who have individuals contact them for assistance with their moves.

9. The Applicant has access to and can provide the packing materials as well as experienced labor for his customers and has access to storage facilities.

10. The Applicant has never failed to finish a move for a customer. No customer complaints have been received concerning the services provided by the Applicant. The Applicant continues to get referrals due to the quality of the services he provides.

11. The Applicant earns his livelihood and supports his family through his moving business and his future plans are to continue in this business.

12. The Applicant is solvent, his assets exceed his liabilities, and his business operates at a profit. The Applicant's financial position enables him to continue to provide complete and adequate moving services for the public, such as renting trucks, obtaining packing materials, and hiring the necessary labor.

13. The Applicant currently carries cargo insurance in order to protect the goods he moves for the public.

14. The Applicant is aware of the Commission's filing, tariff, and leasing requirements. The Applicant anticipates no problems with meeting the Commission's requirements if granted a certificate. Rental truck companies, such as Ryder, provide long-term leasing arrangements. Horne Moving and Storage, Inc., has also utilized leased equipment at times and has been able to obtain a lease and to place its company name on the side of the leased truck by the Commission's rules.

15. Individuals in the shipping and moving industry who are knowledgeable about the needs of the public in Raleigh and elsewhere in North Carolina, indicate that there is a growing demand and market for the hybrid alternative proposed by the Applicant and that this need is not being filled by existing providers.

16. Existing providers see no correlation between the market they serve and the services they offer as larger moving companies and the Applicant's target market and the services proposed by the Applicant.

17. Because this need is not being met by existing providers in the Wake County area, a limited grant of authority to the Applicant will have no negative impact on and will not impair the operations of current providers. Nor will a limited grant of operating authority constitute an unnecessary duplication of services. The public convenience also justifies the services of the Applicant in addition to the existing services from Wake County to points throughout North Carolina.

WHEREUPON, the Commission now reaches the following

CONCLUSIONS

An application for a common carrier certificate is governed by G.S. 62-262(e) which imposes upon the Applicant the burden of proving the following to the satisfaction of this Commission:

1. That the public convenience and necessity require the proposed service in addition to existing authorized transportation services; and

2. That the Applicant is fit, willing, and able to properly perform the proposed service; and

3. That the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

The evidence in this record on the second and third statutory criteria is not conflicting. Applicant has operated for two years as a moving service within the Raleigh area under an exemption certificate, and the application shows assets exceed liabilities.

The Commission concludes that Applicant is fit, willing, and able to properly perform the proposed service and that he is solvent and financially able to furnish adequate service on a continuing basis.

Consideration of the first statutory criterion requires a definition of the term "public convenience and necessity." Utilities Commission v. Queen City Coach Co., 4 N.C. App. 116, 123 - 124, and 166 S.E.2d 441 (1969), defines the phrase as follows:

> "Our Supreme Court has said many times that what constitutes 'public convenience and necessity' is primarily an administrative question with a number of imponderables to be taken into consideration, e.g., whether there is a substantial public need for the service; whether the existing carriers can reasonably meet this need, and whether it would endanger or impair the operations of existing carriers contrary to the public interest. Utilities Commission v. Trucking Co., 223 N.C. 687, 28 S.E.2d 201; Utilities Commission v. Ray, 236 N.C. 692, 73 S.E.2d 870; Utilities Commission v. Coach Co and Utilities Commission v. Grehound Corp., 260 N.C. 43, 132 S.E.2d 249.
>
> "We are not inadvertent to the fact that the factors denominated as imponderables, to wit: whether the existing carriers can reasonably meet the need for the service and whether the granting of the application would endanger or impair the operations of existing carriers contrary to the public interest, are not solely determinative of the right of the Commission to grant the application. Both are directed to the question of public convenience and necessity. Utilities Commission v. Coach Co., 233 N.C. 119, 63 S.E.2d 113. Nevertheless, if the proposed operation under the certificate sought would seriously endanger or impair the operations

of existing carriers contrary to the public interest, the certificate should not be issued. Utilities Commission v. Coach Co., supra."

The Applicant's evidence under the first statutory criterion, public convenience and necessity, does not establish that there is a substantial public need for the transport services proposed by the Applicant on a statewide basis. The evidence does, however, support a grant of limited authority to the Applicant to transport Group 18, household goods, from all points in Wake County to all points in North Carolina. The Applicant currently operates a pack and load moving service in the Raleigh area pursuant to an exemption certificate and receives most of his referrals from Raleigh truck rental companies such as Ryder and U-Haul. The customer hires the Applicant to pack and load and/or unload and unpack his households goods, and on occasion the Applicant rents and provides the truck for the move, or the customer rents the truck with the Applicant providing a driver. Applicant filed this application for common carrier authority in order to be able to provide the total moving service (including vehicle) for the customer to any location in North Carolina. The Commission is of the opinion that the Applicant is proposing to offer a unique service which is supported on a limited basis for traffic originating in Wake County by the public convenience and necessity.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions to the Recommended Order filed in this docket by the Applicant on March 13, 1990, be, and the same are hereby, allowed in part.

2. That the Applicant is hereby granted the common carrier authority set forth in Exhibit B attached to this Order.

3. That, to the extent not already done, the Applicant shall, within 30 days after the date of this Order, file with the North Carolina Division of Motor Vehicles, Motor Carrier Safety Regulation Unit, evidence of the required liability and cargo insurance, a list of equipment and designation of process agent; and shall also file with the Public Staff Transportation Rates Division of the North Carolina Utilities Commission a tariff schedule of rates and charges and otherwise comply with the rules and regulations of the Commission.

4. That unless the Applicant complies with the requirements set forth in decretal paragraph 3 above and begins operating as herein authorized within 30 days after the date of this Order, unless such time is extended by the Commission upon written request for such extension, the operating authority granted herein shall cease.

5. That the Applicant shall maintain his books and records in such a manner that all of the applicable items of information required in the 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.

6. That this Order shall constitute a certificate until a formal certificate has been issued and transmitted to the Applicant authorizing the common carrier transportation described and set forth in Exhibit B attached hereto.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of May 1990.

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

DOCKET NO. T-3245

LEN EDWARD FLETCHER, d/b/a
ASE Moving Services
400 Oberlin Road, Suite 120
Raleigh, North Carolina 27605

IRREGULAR ROUTE COMMON CARRIER AUTHORITY

EXHIBIT B

Transportation of Group 18, household goods, from all points in Wake County to all points in North Carolina.

DOCKET NO. P-214

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|
| In the Matter of<br>Application of NCN Communications, Inc., for a<br>Certificate of Public Convenience and Necessity to<br>Provide Intrastate Telecommunications Services | RECOMMENDED ORDER<br>DENYING APPLICATION |

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 2, 1990

BEFORE: Daniel Long, Hearing Examiner

APPEARANCES:

For the Applicant:

William Anderson, Swank, McDaniel, Holbrook & Anderson, Attorneys at Law, Post Office Box 48186, Raleigh, North Carolina 27658
For: NCN Communications, Inc.

For the Intervenors:

Henry C. Campen, Jr., Parker, Poe, Adams & Bernstein, Attorneys at Law, Box 389, Raleigh, North Carolina 27602
For: Business Telecom, Inc.

Robert F. Page, Crisp, Davis, Schwentker, Page and Currin, Attorneys at Law, Post Office Drawer 30489, Raleigh, North Carolina 27622
For: Phone America of Carolina, Inc.

For the North Carolina Department of Justice:

Karen E. Long, Assistant Attorney General, 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 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

LONG, HEARING EXAMINER: On January 3, 1990, NCN Communications, Inc. (NCN), filed an application for a certificate of public convenience and necessity to provide intrastate telecommunications services.

A salient feature of NCN's marketing approach is a multi-level marketing plan utilizing distribution recruitment seminars to promote the sale of its so-called DPS Training Package, recruitment of independent distributors, and the payment of commissions. This marketing strategy became the subject of an Attorney General investigation for possible violations of G.S. 75-1.1,

prohibiting unfair and deceptive commercial practices, and the promotion of a pyramid in violation of G.S. 14-291.2. As will be noted later, NCN and the Attorney General entered into a Settlement Agreement on May 18, 1990. Among the terms of the agreement was the promise of NCN to offer a full refund to all purchasers of the training packages within a time certain.

NCN filed an amended application on January 31, 1990. The Attorney General filed a Notice of Intervention on January 16, 1990. On February 8, 1990, Phone America of Carolina, Inc. (Phone America), filed a Petition for Leave to Intervene, a Motion to Dismiss, and a Request for a Cease and Desist Order. The intervention motion was granted on February 12, 1990.

On February 19, 1990, the Public Staff filed a Motion for a Cease and Desist Order and for the Commission to request an investigation of NCN by the Attorney General. On February 22, 1990, Business Telecom, Inc. (BTI), filed a Motion to Intervene, which was granted on February 19, 1990.

On May 3, 1990, NCN filed a Response to the Public Staff's Motion, and on June 4, 1990, the Commission issued an Order scheduling a hearing.

On June 29, 1990, the Commission received a letter from NCN's attorney indicating that NCN would resume turning over ballots and billing for interstate service. On July 3, 1990, Phone America renewed its request for a cease and desist order. Both BTI and the Attorney General submitted comments on July 6, 1990. The Commission issued a Cease and Desist Order on July 9, 1990, which stated in part:

> The Commission agrees with the argument of Phone America, the Attorney General, and the Public Staff that NCN's carriage of intrastate traffic before certification is a clear violation of statute and Order, the wrongfulness of which is not cured by NCN's stated intent to forbear from billing for such calls. . . The Commission also agrees. . . that solicitation of customers constitutes a violation of Commission Order and statute. . . The Commission does not believe that it is in the public interest to allow a company which has not been certified to solicit customers for service which may never be legally provided. The potential for fraud, misrepresentation, or misappropriation in such a context is obvious, especially given the disparate economic power and sophistication of the parties to the transaction. (Order of July 9, 1990, pp. 2-3)

On July 16, 1990, the Commission received NCN's prefiled testimony and another addendum to its application.

A hearing was held on this matter on August 2, 1990. The following persons appeared to testify:

1. Kimberly Whitt of Raleigh, who appeared as a public witness, testified that she and her husband had signed-up and paid for distributor materials, had subsequently requested a refund, and had not received it.

2. Karl Kandell, who appeared as a witness for NCN, substituted for the prefiled witness, Michael Batestelli, who was said to be unavailable. Mr. Kandell identified himself as NCN's Regional Director for Georgia and Alabama.

3. Eugene Lenkous, who appeared as a public witness and who identified himself as an NCN distributor, favored the granting of a certificate to NCN.

4. John Garrison, a Public Utilities Engineer with the Public Staff Communications Division, identified several areas of deficiencies in NCN's application which would need to be corrected or resolved. Mr. Garrison stated that the Public Staff could not recommend approval of the NCN application at the time of the hearing.

At the end of the hearing, the Hearing Examiner requested briefs and proposed Orders within 30 days of the mailing of the transcripts. NCN was also required to submit several late-filed exhibits.

On August 16, 1990, the Hearing Examiner issued an Order extending the due date for briefs and proposed Orders to September 24, 1990. By Order dated September 20, 1990, the due date was extended a second time to October 12, 1990.

On September 26, 1990, the Public Staff filed a Petition for Leave to Offer a Late-Filed Exhibit concerning the discontinuation of the business relationship between MCI Telecommunications and NCN. This late-filed exhibit, to which NCN made no response, was allowed under the terms of an Order dated September 28, 1990.

On October 12, 1990, NCN filed a motion asking for further delay and the reopening of the record to file certain additional documents, including an affidavit by corporate counsel explaining the circumstances of the NCN/MCI dispute, the identity of the purchaser of controlling interest of NCN and of the corporate officers and management officials, and an affidavit regarding progress on the refund obligation.

By Order issued October 16, 1990, the Hearing Examiner postponed the due date for briefs and proposed Orders and directed NCN to file the late-filed exhibits referred to in its October 12, 1990, motion within 30 days of this October 16, 1990, Order. He also directed parties to file their comments regarding these late-filed exhibits no later than 40 days from the October 16, 1990, Order, and set a final date for the proposed Orders for 20 days thereafter.

NCN never filed the late-filed exhibits. Instead, NCN filed a document dated November 19, 1990, denominated "Notice," reading in relevant part as follows:

> NCN. . . gives notice that it voluntarily dismisses without prejudice, the application. . . ; said Applicant will refile after a presently pending transfer of control shall have been consummated presently scheduled for December 6, 1990, and when suitable arrangements have been made to justify a refiling.

On October 12, 1990, previous to NCN's "Notice," Phone America filed a Motion to Dismiss, asserting as follows:

1. As noted in its prior Petition for Leave to Intervene and Motion to Dismiss filed with this Commission on February 8, 1990, there are, and remain, a variety of reasons for dismissing the pending application. NCN has failed to provide evidence at the hearings, or subsequently, to refute the existing reasons for dismissal. Some of these reasons, briefly stated, are the following:

a. Necessary portions of NCN's application documents, and amended documents, were neither properly verified by an officer of NCN nor properly filed as required by Rules R1-5(a) and R1-5(d) - the post-hearing affidavit of Jeffrey G. Williams, which was not subject to cross-examination, is insufficient to cure this defect;

b. NCN has no fixed or permanent office or place of doing business in the State of North Carolina;

c. NCN's proposed tariffs were and are deficient in a variety of procedural and substantive aspects;

d. NCN failed to offer substantive evidence of its technical and financial fitness to receive or operate a North Carolina utility franchise;

e. NCN's balance sheets and financial statements fail to show that NCN has sufficient financial assets to transact its proposed business in North Carolina; and

f. NCN's proposed marketing scheme is a "pyramid-type" distribution plan which emphasizes sales of franchises, operating territories and training packages, not the provision of good and reliable telecommunications service in the interest of the using and consuming public.

2. At the hearings conducted in this matter on August 2, 1990, the foregoing deficiencies and difficulties presented by the NCN application were brought out in more detail. NCN's witness, Mr. Kandell, was a representative of NCN for the states of Georgia and Alabama. He had, essentially, no business relationship with NCN in North Carolina, other than the fact that he was asked to testify due to the absence of the North Carolina Regional Director for NCN. The North Carolina Regional Director was, like Mr. Kandall, not even a resident of North Carolina. Additional testimony was elicited at the hearing to indicate that NCN was having certain difficulties in living up to the agreements which it had reached with the North Carolina Attorney General concerning NCN's marketing distribution scheme. Mr. Kandell's testimony further indicated that NCN had experienced a rapid turnover in its executive offices just prior to the hearing - having had three separate Presidents in the preceding two months. The "public" witness, Mrs. Kimberly Whitt, described at great length the difficulties which she and her husband had experienced in attempting to get a refund credit from NCN. None of

the personnel listed as management officers or persons in charge of operations in North Carolina for NCN had ever had any appreciable business experience in the telecommunications industry prior to the formation of NCN. Mr. Kandell was specifically requested to furnish a copy of NCN's service or working Agreement with MCI, its underlying carrier. A Letter of Understanding between MCI and NCN was subsequently tendered with a late-filed affidavit (which Phone America has not had the opportunity to cross-examine); however, in view of NCN's latest filing (of October 12, 1990), in conjunction with the late-filed exhibit of the Public Staff, that Letter of Understanding is, apparently, no longer valid. The evidence of record further showed that NCN had commenced actual commercial operations, by conducting training seminars, signing up customers, and submitting PIC change requests, prior to receiving any authority from this Commission for intrastate operations in North Carolina.

3. Following the conclusion of hearings in this matter, NCN requested two extensions of time for serving briefs and proposed orders. (The Attorney General joined in the second such request.) Thereafter the Public Staff offered a late-filed exhibit tending to indicate that the underlying carrier relationship between NCN and MCI was terminated, by MCI, on September 14, 1990. The reason stated by MCI for discontinuing its business relationship with NCN, as reflected on Exhibit A of the Public Staff's late-filed exhibit, was "financial reasons", indicating that NCN was unable to fulfill its financial obligations to MCI as the underlying carrier. NCN's "financial fitness" is, thus, called into even more serious question.

4. Upon information and belief, on or about October 12, 1990, NCN moved to reopen the record in this matter and also moved for an indefinite stay of all further proceedings herein, including the filing of briefs and proposed orders. In its Motion, NCN concedes the substance of the allegations contained in the Public Staff's late-filed exhibit - that is, NCN concedes that, during September, 1990, there was a cessation of the previously existing business relationship with MCI. Further, NCN asserts that there has been or shortly will be, a transfer of the ownership and control of NCN. Commission approval of such transfer has not heretofore been sought. At the very least, NCN apparently is, or shortly will be, under "new management," with consequences for NCN's proposed services, tariffs and the like which can only be the subject of speculation at the present time. Further, NCN concedes that it has not been fulfilling the terms of its prior agreement with the Attorney General of North Carolina regarding the prompt payment of refund requests.

5. Given the status of the record in this matter to date, it certainly appears that NCN is not now, and may never be, in a position to receive, or to properly operate, a North Carolina certificate of public convenience and necessity. The record compiled as of the conclusion of hearings in this matter certainly would not support the issue of a certificate to NCN. From the standpoint of protecting the interests of the using and consuming public, matters regarding NCN have only degenerated since the conclusion of hearings. For these reasons, Phone America urges that the only appropriate step

for the Commission to take, at this time, is simply to dismiss the pending application.

On October 17, 1990, BTI also filed a Motion to Dismiss. BTI essentially adopted the reasons for dismissal set out by Phone America.

On November 30, 1990, the Attorney General filed a motion requesting that NCN's application be dismissed with prejudice. The Attorney General asserted as follows:

1. By application of January 3, 1990, amended January 31, 1990, NCN Communications, Incorporated ("NCN", or "the Applicant") requested permission to resell long-distance telephone service in North Carolina pursuant to G.S. 62-110. The Attorney General, the Public Staff, Phone America, Incorporated and Business Telecom, Incorporated (BTI) filed for leave to intervene. Phone America and the Public Staff also requested the Commission to order the Applicant to cease and desist from selling instate long distance service in North Carolina before it was certified.

2. Subsequent to NCN's initial filing, the Attorney General, the Public Staff and representatives of the Applicant met on March 2, 1990, in Raleigh. Among the things discussed at this meeting was a candid exchange about the Applicant's multi-level marketing plan over which the Attorney General has jurisdictional authority pursuant to G.S. 14-291.2 and G.S. 75-1.1. Continuing negotiations between the Applicant and the Attorney General led to a Settlement Agreement about the marketing plan signed by both parties on May 18, 1990. The Settlement Agreement has been entered into the record of this docket by stipulation at the August 2, 1990 hearing on this matter.

3. As part of the Settlement Agreement, the Applicant agreed to offer to refund to each of its independent distributors the $230 each had paid to get a training package about the Applicant's telephone service and its multi-level marketing plan. This refund offer was made by letter dated July 6, 1990, which letter was Attorney General Cross Examination Exhibit No. 1 at the August 2, 1990, public hearing in this docket. The letter promised that refunds would be made within 30 days of the return of the training package.

4. The application came on for hearing before the Commission's Hearing Examiner on August 2, 1990. At the public hearing, a Ms. Kimberly Whitt was duly sworn and testified about her dealings with the Applicant. Ms. Whitt testified to a number of problems and stated in response to a question that she did not feel she had been fairly dealt with by the Applicant. She indicated she believed there were problems with the veracity of the Applicant's representations to her about its telephone service.

5. In mid-August, 1990, the Attorney General began getting a number of phone calls and letters complaining about the Applicant's failure to comply with its refund offer. Upon information and belief, the Public Staff and the North Carolina Utilities Commission

also began receiving complaints about the Applicant's failure to refund.

6. By letter dated September 6, 1990, and sent to the Applicant's Raleigh counsel, the Attorney General informed the Applicant of the problem and requested documentation of refunds within ten days. The letter stated, "If [documentation] is not received or if we continue to get complaints that NCN is not abiding by the terms of the Settlement Agreement, we will have to reduce the agreement to a court judgement."

7. By civil summons issued November 16, 1990, at 10:26 a.m. in Wake County Superior Court served by certified mail, the Attorney General initiated a law suit requiring the Applicant to reduce to judgment the Settlement Agreement it had signed in May 1990.

8. By Notice of November 19, 1990, the Applicant offered to take a voluntary dismissal of its application before this Commission.

9. In view of the foregoing the Attorney General asserts that certification of the Applicant is not in the public interest. Indeed, in view of the history of the Applicant's dealings with its North Carolina distributors, the Attorney General asserts that the Applicant should be effectively barred from offering service in North Carolina.

On December 13, 1990, NCN filed a Response to Motion of Attorney General asserting that the motion was untimely, that NCN intended to "refile" after securing a new carrier, and was intending to "resume payment" of refunds.

After careful consideration of the hearing and all the filings in this docket, the Hearing Examiner makes the following

## FINDINGS OF FACT

1. Applicant is an Arizona corporation seeking a certificate to provide intrastate telecommunications services. A hearing on its application was held on August 2, 1990.

2. Applicant has failed to sustain its burden of proof under G.S. 62-110(b).

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

These findings are procedural in nature and are uncontested.

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

The procedural posture of this case is somewhat unusual. In the usual course of events, after a hearing is held, the parties soon submit proposed recommended orders and briefs to the Hearing Examiner. In this case, however, the date for such filings was postponed repeatedly. It should be noted that on the very date which had been designated by the September 20, 1990, Order as the new due date--October 12, 1990--NCN instead filed a motion for further delay

and reopening of the record. Relying on the previous Order, Phone America submitted its Motion to Dismiss on October 12, 1990. NCN did not, however, comply with the 30-day extension granted on October 17, 1990, for filing the late filed exhibits. Instead, NCN filed its "Notice" of dismissal on November 19, 1990. As far as the Hearing Examiner is concerned, NCN's failure to file the required information and its "Notice" render the matter ripe for disposition on the merits. The Hearing Examiner further considers the "Notice" to have no greater effect than a motion, since the Commission, not the parties, is the master of its dockets.

G.S. 62-110(b) states in relevant part as follows:

> (b) The Commission shall be authorized to issue a certificate to any person applying to the Commission to offer long-distance service as a public utility. . . provided that such person is found to be fit, capable, and financially able to render such service, and that such additional service is required to serve the public interest effectively and adequately. . .

In order to receive a certificate to provide intrastate long-distance service, the Applicant must satisfy the criteria set out in this statute. The Hearing Examiner, after careful consideration of the filings and testimony in this docket, finds that Applicant has failed to sustain its burden of proof regarding its fitness or financial ability. Applicant has also failed to prove that its service is in the public interest. The Hearing Examiner so finds for the reasons generally set forth by Phone America and the Attorney General above and as more specifically set out below, any one of which would be sufficient to reject this application.

First, the Hearing Examiner believes that NCN's reliance on multilevel marketing is very questionable regardless of the issue of its legality. As noted by Phone America, the orientation of such a strategy emphasizes the sale of franchises, and operating territories, and not necessarily the provision of quality telephone service. Additionally, there are serious questions as to the legality of NCN's marketing structure, since the Attorney General has re-initiated action against NCN in view of NCN's alleged failure to live up to its part of the Settlement Agreement. NCN's multilevel marketing arrangement is not in the public interest as a mode of operations for a long-distance service provider.

Second, the Hearing Examiner cannot overlook NCN's behavior before and after seeking a certificate. For example, on July 9, 1990, the Commission issued a Cease and Desist Order against NCN for both solicitation and carriage of intrastate traffic without a certificate. Moreover, NCN has been less than zealous in giving refunds to those to whom refunds are due. Mrs. Whitt is but one example. Given NCN's history, one can rightfully be dubious of NCN's eleventh-hour pledge to "resume payment" of refunds although NCN is reminded that the outcome in this docket in no way alters other legal obligations it has to provide refunds. NCN's conduct impinges negatively on the question of its fitness.

Third, NCN's application is incomplete, as noted by Phone America, and its witness lacked competence. The Hearing Examiner has been extremely lenient and patient in the granting of extensions in this docket, usually at NCN's request,

but each time NCN has failed to produce the promised documents, culminating in its failure to provide late-filed exhibits in accordance with the October 12, 1990, Order issued pursuant to its own request. Also, at the hearing NCN offered as its witness neither an officer or employee of the corporation qualified at that time to bind the corporation by his statements. Instead, NCN offered a substitute for its prefiled witness who was identified as the regional director for Georgia and Alabama.

Fourth, there are substantial questions regarding NCN's corporate stability and solvency. For instance, the question arose after the hearing regarding NCN's relationship with its underlying carrier, MCI. It was also asserted that there would be a transfer of ownership and control of NCN. Although, given ample opportunity, NCN has not satisfactorily explained this turbulence, wishing rather to prolong its application indefinitely through the device of "Notice" of dismissal and refiling.

The history of this docket has been an unfortunate catalog disclosing questionable practices, illicit operation, reluctant application, broken promises, and inordinate delay. NCN's filing, long after the hearing, where it gave "notice" that it was voluntarily dismissing the application "without prejudice" was presumptuous, to say the least. It is the Commission's privilege to dispose of its dockets. The Hearing Examiner believes that the time is ripe to dispose of this docket on the merits.

IT IS, THEREFORE, ORDERED that NCN's application for a certificate of public convenience and necessity to provide intrastate long-distance service in North Carolina be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of December 1990.

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

DOCKET NO. P-89, SUB 38

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Southeastern Podiatry Associates, 920 South 17 Street, Wilmington, North Carolina 28401,<br>Complainant | ) | ORDER OVERRULING BAPCO'S MOTION TO DISMISS AND SCHEDULING HEARING ON DECEMBER 7, 1990 |
| v. | ) | |
| Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Corporation,<br>Respondents | ) | |

BY THE COMMISSION: On September 26, 1989, the Commission issued an Order in this docket notifying the above-captioned parties of the filing of the complaint of Southeastern Podiatry Associates with the Commission. In its Order, the Commission noted that there was pending at that time in the Supreme Court of North Carolina the case of State of North Carolina ex rel. Utilities Commission, et al. v. Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Corporation (the "Boulevard Florist" case). The Commission concluded that because of the pendency of the Boulevard Florist case in the Supreme Court affecting the jurisdiction of the Commission to hear yellow pages complaints, the Commission should hold the ~~complaint~~ in abeyance until the Supreme Court determines the issues in the case before it.

On May 10, 1990, the Supreme Court of North Carolina filed its opinion in the Boulevard Florist case, concluding that the Commission could hear and determine yellow pages complaints and reversing the decision of the Court of Appeals which had reversed the Commission's assertion of jurisdiction over BAPCO.

On August 24, 1990, the Commission issued an Order reactivating this docket, serving the complaint of Southeastern Podiatry Associates upon Southern Bell and BAPCO, and requiring that the two Respondents file an Answer to the complaint within 20 days after the receipt of the Order.

On August 30, 1990, the Public Staff filed Notice of Intervention. On September 4, 1990, the Attorney General filed Notice of Intervention.

On September 13, 1990, Southern Bell filed Answer and Motion to Dismiss because the complaint did not "allege an action taken or omitted to be taken by Southern Bell, as required by NCGS §62-73. It is concerned only with the sale of advertising under advertising headings that are established and administered by BellSouth Advertising and Publishing Corporation (BAPCO), a subsidiary of BellSouth Enterprises that sells, compiles and publishes yellow page advertising in Southern Bell exchanges in North Carolina."

On September 14, 1990, BAPCO filed its Motion to Dismiss, asserting as follows:

> "The North Carolina Utilities Commission does not have jurisdiction over the subject matter of the Complaint because the Complaint does not contain even an allegation of an incorrect telephone number listing which is the extent of the Commission's jurisdiction over BAPCO as determined by the North Carolina Supreme Court in its May 10, 1990 opinion in Boulevard Florist."

On September 18, 1990, the Public Staff filed a Response to the Motions of BAPCO and Southern Bell. In its pleading, the Public Staff alleged that the complaint in this docket came within the scope of the Supreme Court's decision in Boulevard Florist. The Response of the Public Staff also stated that, based on Southern Bell's position in earlier yellow pages dockets, including the Nadeau case, a resolution of this complaint requires the presence of Southern Bell as well as BAPCO. On September 25, 1990, Southern Bell filed a Reply to the Response of the Public Staff stating that Southern Bell in the Nadeau case did not state that it controlled the "nature and substance of the headings in the yellow pages."

On September 26, 1990, the Attorney General filed a Response to BAPCO's Motion and to Southern Bell's Answer. In this pleading, the Attorney General stated that the complaint in this docket is within the jurisdiction of the Commission to hear and determine, based upon the decision of the Supreme Court in the Boulevard Florist case. The Attorney General also asserted that Southern Bell should remain a party in this docket.

On October 10, 1990, Southern Bell filed a renewed Motion to Dismiss and attached thereto the affidavit of Alice Dantzler, an Operations Manager-Customer Service for Southern Bell in Atlanta, Georgia. In this pleading, Southern Bell renewed its contention that it should not be a party in this proceeding.

On October 15, 1990, both the Public Staff and the Attorney General responded to Southern Bell's renewed Motion to Dismiss.

By letter of October 9, 1990, BAPCO renewed its request for oral argument.

Upon consideration of the entire record in this docket, including the pleadings and orders set forth above, and the decision of the North Carolina Supreme Court in the Boulevard Florist case, the Commission issues this Order.

BAPCO's Motion to Dismiss

In its Motion to Dismiss, BAPCO asserted that the Commission did not have jurisdiction over the subject matter of the complaint because the complaint does not contain even an allegation of an incorrect telephone number listing, which is the extent of the Commission's jurisdiction over BAPCO as determined by the North Carolina Supreme Court in its May 10, 1990 Opinion in Boulevard Florist. Both the Public Staff and the Attorney General contend that BAPCO has construed too narrowly the opinion of the Supreme Court in Boulevard Florist. The Public Staff asserted that it is clear from the Supreme Court's opinion

"that the distinction the Court is making is between general regulatory jurisdiction over the entire yellow pages operation (i.e., regulating prices charged for advertisements) and jurisdiction over complaints concerning incorrect, confusing or inadequate listings in the yellow pages, not between complaints involving inaccurate telephone numbers and complaints involving incorrect or confusing listings." The Attorney General in its Response suggested that "the gravamen of the Complaint in this docket is that the listings in the yellow page directory are confusing and misleading to the consuming public, and this confusion has harmed the Complainant. Thus, the complaint falls squarely within the language quoted from Boulevard Florist."

In the Boulevard Florist case, the Supreme Court stated:

> "If a utility elects to include yellow pages advertising in the directory which it is required to publish, then clearly proper listings in the advertisements in the yellow pages become a part of the utility's 'function of providng adequate service' to the public. The public is not well served by listings in the yellow pages or the white pages of the directory which are incorrect or confusing to the consuming public." (Emphasis added.)

The Commission is of the opinion, and so concludes, that the Complainants have alleged sufficient facts to bring their complaint within the jurisdiction of the Commission. We agree with the reasons asserted by the Public Staff and the Attorney General that BAPCO's interpretation of the Boulevard Florist case is too narrow. Having also considered that BAPCO's Motion can be decided on the pleadings, the Commission denies the request for oral argument.

The Commission overrules BAPCO's Motion to Dismiss for the lack of subject matter jurisdiction and sets the complaint for hearing at the time and place set forth below.

Southern Bell's Motions to Dismiss

Southern Bell in its Motions to Dismiss and in its Response to the Public Staff asserts that it "has not 'controlled' yellow page headings since the time it transferred its directory operations to BAPCO." Southern Bell further alleges that no practice of Southern Bell has been attacked and that Southern Bell is not a proper party in this proceeding for that reason. In its renewed Motion to Dismiss, Southern Bell provides the affidavit of Alice Dantzler, who is an Operations Manager-Customer Service for Southern Bell in Atlanta. In this affidavit, Ms. Dantzler states that BAPCO, not Southern Bell, creates yellow pages headings for use in the yellow pages published by BAPCO; that BAPCO provides Southern Bell with the headings for the limited purpose of allowing Southern Bell's business customers to choose a free listing under heading that is most appropriate for that customer; and that when Southern Bell transmits the white page listing for customers, including the heading, to BAPCO for publication in the directory, the heading is no longer a part of Southern Bell's records.

The Commission is of the opinion, and so concludes, that Southern Bell's Motion to Dismiss and renewed Motion to Dismiss should be set for hearing at the time and place scheduled below. Southern Bell is asserting factual

arguments in support of its contention that it is not a party to this proceeding. The Commission is of the opinion that Southern Bell's Motion to Dismiss should be considered within the context of the hearing, where Southern Bell can present evidence in support of its position and make its witness available for cross-examination. Southern Bell, of course, may renew its Motion to Dismiss at the hearing at an appropriate time.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motion to Dismiss of BAPCO in this docket be denied.

2. That the Motion to Dismiss of Southern Bell and the renewed Motion to Dismiss is set for hearing and consideration at the hearing scheduled below.

3. That a hearing is scheduled in this docket at the following time and place:

Friday, December 7, 1990, at at 10:00 a.m.,
Commission Hearing Room, Dobbs Building,
430 North Salisbury Street, Raleigh, N.C.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of November 1990.

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

DOCKET NO. P-128, SUB 25

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Louis Kirchhoff, 4 Recton Road, Weaverville, North Carolina 28787,<br>Complainant | ) | |
| v. | ) | RECOMMENDED ORDER DENYING COMPLAINT |
| Contel of North Carolina, Inc.,<br>Respondent | ) | |

HEARD IN: Courtroom 906, Buncombe County Courthouse, Courthouse Plaza, 189 College Street, Asheville, North Carolina, on Tuesday, July 24, 1990, at 9:00 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Respondent:

F. Kent Burns, Burns, Day & Presnell, P.A., Box 19867, Raleigh, North Carolina 27605
For: Contel of North Carolina, Inc.

For the Complainant:

Victoria O. Hauser, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27625-0520
For: The Using and Consuming Public

BENNINK, HEARING EXAMINER: On March 1, 1990, Mr. Louis Kirchhoff (Complainant) filed a complaint against Contel of North Carolina, Inc. (Contel), requesting the North Carolina Utilities Commission to require Contel to provide its two-party customers in Buncombe County with the full range of services associated with Enhanced 911 (E911) emergency number service. By Order entered in this docket on March 8, 1990, the Commission served the complaint on Contel and required the Company to either satisfy the complaint or file an answer within 20 days. Contel filed its response to the complaint on April 2, 1990. Contel's answer was served upon the Complainant by Order dated April 25, 1990. The matter was subsequently scheduled for hearing by Commission Orders entered in this docket on May 18, 1990, and July 5, 1990.

Upon call of the matter for hearing at the appointed time and place, the Complainant was present and represented by the Public Staff. Contel was also present and represented by counsel. Mr. Kirchhoff testified in support of his complaint and also presented the testimony of Mr. Jerry VeHaun, Director of Emergency Service for Buncombe County. Contel presented the testimony of Mr. Robin Starrs, its Customer Service Manager. The Public Staff presented the testimony of William J. Willis, Jr., an Engineer with the Communications Division of the Public Staff.

Based upon a careful consideration of the entire record in this proceeding, the Hearing Examiner now makes the following

FINDINGS OF FACT

1. Contel of North Carolina, Inc., is a public utility authorized to provide intrastate telecommunications services in North Carolina. Contel is subject to the jurisdiction of the North Carolina Utilities Commission.

2. Enhanced 911 service is an emergency telephone system that provides the user of the public telephone system the ability to reach a public safety answering point (PSAP) by dialing the digits "911" and, in addition, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated and provides the capability for automatic number identification (ANI) and automatic location identification features.

3. Contel does not provide automatic number identification for any multiparty class of service. For that reason, when a party-line customer dials 911, he or she is connected to the public safety answering point, but the caller's telephone number, location and address are not automatically displayed at the PSAP. The party-line caller must verbally provide this information.

4. Buncombe County established its E911 system effective May 1, 1989, and was not aware of the fact that Contel would not provide ANI for multiparty customers until it was so advised by Mr. Kirchhoff in early 1990.

5. Louis Kirchhoff has been a party-line customer of Contel in the Weaverville exchange for approximately 11 years. He currently has two-party service. Contel's approved tariffs now provide that multiparty local service has been designated as an "obsolete" service offering. As an obsolete service, no new customers may subscribe to multiparty service. Mr. Kirchhoff's two-party service has been grandfathered.

6. Contel currently has 59 two-party customers in Buncombe County. Party lines are decreasing by approximately 25% per year. Contel currently has approximately 3,880 multiparty lines in service throughout its service territory in North Carolina and projects that total party lines will decrease to less than 1,100 by the end of 1995.

7. Contel estimates that it would cost approximately $8,924 for additional equipment to provide ANI to all 59 of its two-party access lines in the Weaverville exchange and approximately $733,000 to provide ANI to all 3,880 of its party-line customers throughout the State.

8. A customer subscribing to two-party service in the Weaverville exchange currently pays $16.00 per month for basic local service plus $0.35 per month for E911 service. One-party service is available throughout Contel's service territory in North Carolina. Mr. Kirchhoff has declined to subscribe to one-party service as a solution to his problem with E911 service. One-party service is available in the Weaverville exchange for $17.83, or $1.83 more than the cost of two-party service.

WHEREUPON, the Hearing Examiner reaches the following

## CONCLUSIONS

The Hearing Examiner reluctantly concludes that good cause exists to deny Mr. Kirchhoff's complaint. The total cost to provide ANI service to all 59 of Contel's party-line customers in the Weaverville exchange ($8,924 or more than $151 per customer) is prohibitive and unjustified when compared to the fact that those very same party-line customers today have the ability to subscribe to one-party service for only $1.83 more per month or less than $22.00 per year. Party-line customers such as Mr. Kirchhoff still derive the primary benefits of 911 service by being connected to the PSAP so that they may request assistance during emergency circumstances. While the Hearing Examiner has sympathy for the complaint expressed so well by Mr. Kirchhoff, the position taken by Contel is not unreasonable. Nevertheless, in negotiating future agreements for E911 service with local governments pursuant to Chapter 62A of the North Carolina General Statutes, Contel should (1) advise the local governments of the fact that ANI is not provided on party lines and (2)

encourage the local governments to incorporate the necessary expenses into the applicable monthly 911 charges paid by local telephone subscribers for E911 service in order to provide ANI for party-line subscribers.

IT IS, THEREFORE, ORDERED as follows:

1. That the complaint filed in this docket by Louis Kirchhoff on March 1, 1990, against Contel of North Carolina, Inc., be, and the same is hereby, denied.

2. That in negotiating future agreements for E911 service with local governments pursuant to Chapter 62A of the North Carolina General Statutes, Contel should (1) advise the local governments of the fact that ANI is not provided on party lines and (2) encourage the local governments to incorporate the necessary expenses into the applicable monthly 911 charges paid by local telephone subscribers for E911 service in order to provide ANI for party-line subscribers.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of September 1991.

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

DOCKET NO. P-150, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
George V. Kontos, Post Office Box 6045, Talladega, Alabama 35160, Complainant
vs.
Centel Cellular of North Carolina, Respondent

FINAL ORDER RULING ON EXCEPTIONS

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Salisbury Street, Raleigh, North Carolina, on Friday, August 10, 1990, at 10:00 a.m.

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

APPEARANCES:

For Centel Cellular Company of North Carolina:

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

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 George V. Kontos:

George V. Kontos, 303 Dabney Street, Talladega, Alabama 35160

BY THE COMMISSION: On May 25, 1990, Commission Hearing Examiner Daniel Long entered a Recommended Order in this docket granting, in part, the complaint and relief requested by the Complainant, George V. Kontos, against the Respondent, Centel Cellular of North Carolina. Both the Respondent and the Complainant subsequently filed exceptions to the Recommended Order and requested the Commission to schedule an oral argument to consider those exceptions.

By Order dated July 3, 1990, the Commission scheduled an oral argument on exceptions for Friday, August 10, 1990. Upon call of the matter for oral argument at the appointed time and place, the Complainant, the Respondent, and the Public Staff were present and participated in the oral argument.

Based upon a careful consideration of the entire record in this proceeding, including the Recommended Order, the exceptions filed by the Complainant and the Respondent, and the oral arguments offered by the parties, the Commission finds good cause to deny the exceptions filed by the Respondent and grant in part the Complainant's exceptions. In so deciding, the Commission concludes that the Respondent's tariff regarding usage charges is unambiguous and clear on its face; i.e., usage charges begin only when the called number actually answers the telephone and not after the passage of a certain period of time such as the 30 seconds adopted unilaterally by the Respondent. In this instance, Centel implemented a billing practice which was contrary to the plain language of its approved tariff and, for that reason, the Complainant is entitled to relief. We believe, however, that Mr. Kontos is entitled to relief in addition to that ordered by the Hearing Examiner; i.e., Mr. Kontos should be given a billing credit for all calls, local or long-distance, of 45 seconds duration or less, which do not have long-distance charges associated with them. Like the Hearing Examiner, we recognize that Mr. Kontos may be given credit for certain calls which were in fact completed. Nevertheless, this situation would not have arisen had Centel properly applied its tariff regarding the timing of calls. In effect, the Complainant will now be given credit for all calls, local or long-distance, which do not have long-distance charges associated with them which lasted for as long as 45 seconds. We assume that no reasonable cellular caller would allow a telephone to ring for more than 45 seconds without receiving an answer, except perhaps under the most compelling circumstances. Therefore, good cause exists to adopt the assumption that a call lasting more than 45 seconds encompassed a conversation as part of a completed call. The Complainant, if he in fact allows cellular calls to ring for more than 45 seconds when there is no answer, is seeking relief which is entirely unreasonable.

We further find that the Complainant's position that he should be given credit for all long-distance calls, no matter how long the duration, where there are no accompanying long-distance charges is unreasonable. Centel witness Ramage testified that the Respondent does not bill the long-distance element of certain calls when the billing tapes are of insufficient quality. Furthermore, Centel receives no notice of collect, third-party, operator assisted, and credit card calls placed by its subscribers and for that reason such calls would not have accompanying long-distance charges. Here again, the Complainant's position is unreasonable when compared to the relief ordered by the Commission. For instance, the Complainant's position, if adopted, would require Centel to give him a credit for one long-distance call which lasted for more than 10 minutes simply because his bill does not reflect an accompanying long-distance charge. Such a result would be absurd.

In determining the final billing credit or refund owed to Mr. Kontos, Centel may, if it chooses to do so, delete those calls for which a refund would otherwise be due, if the Company can establish that either (1) answer supervision was in fact provided in the exchange serving the called party or (2) a billing tape of insufficient quality does in fact exist for the long-distance call in question. The Public Staff is hereby requested to verify any adjustments made by Centel pursuant to this provision.

Accordingly we hereby enter this Order as the Final Order of the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That except as modified by this Order, the Recommended Order entered in this docket on May 25, 1990, is hereby affirmed and adopted as the Final Order of the Commission.

2. That the exceptions to the Recommended Order filed by Centel Cellular Company of North Carolina on June 11, 1990, be, and the same are hereby, denied.

3. That to the extent not granted by this Order, the exceptions to the Recommended Order filed by George V. Kontos on June 12, 1990, be, and the same are hereby, denied.

4. That in determining the final billing credit or refund owed to Mr. Kontos, Centel may, if it chooses to do so, delete those calls for which a refund would otherwise be due, if the Company can establish that either (1) answer supervision was in fact provided in the exchange serving the called party or (2) a billing tape of insufficient quality does in fact exist for the long-distance call in question. The Public Staff is hereby requested to verify any adjustments made by Centel pursuant to this provision.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of September 1990.

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

Commissioner Sarah Lindsay Tate dissents. Commissioner Tate voted to affirm the Recommended Order.

DOCKET NO. P-10, SUB 439

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Milton and Yanceyville to Roxboro Extended Area Service | ) ) | ORDER DENYING IMPLEMENTATION OF EXTENDED AREA SERVICE |

BY THE COMMISSION: By Order entered in this docket on September 27, 1989, the Commission authorized Southern Bell to poll its subscribers in the Milton exchange to determine their desire for two-way, nonoptional extended area service (EAS) to Central Telephone Company's Roxboro exchange and authorized Central to poll its subscribers in the Yanceyville and Roxboro exchanges to determine their desire for two-way, nonoptional EAS between those exchanges and to determine Roxboro subscribers' desire for EAS to Milton. The Yanceyville and Milton exchanges already have EAS between them. The following monthly local rate increases were used for polling:

| Exchange | Residence | Business |
|---|---|---|
| Milton | $0.41 | $1.12 |
| Yanceyville | $0.81 | $1.96 |
| Roxboro | $1.01 | $2.21 |

On December 14, 1989, Southern Bell filed the poll results for Milton, and on January 22, 1990, Central filed the poll results for Yanceyville and Roxboro. Those results are as follows:

| | | Milton | Yanceyville | Roxboro | Total |
|---|---|---|---|---|---|
| Number of Ballots Mailed | Res. | 1,057 | 2,105 | 8,886 | 12,048 |
| | Bus. | 45 | 429 | 1,921 | 2,395 |
| | Total | 1,102 | 2,534 | 10,807 | 14,443 |
| Number of Eligible Ballots Returned | Res. | 605 | 550 | 4,242 | 5,397 |
| | Bus. | 6 | 96 | 275 | 377 |
| | Total | 611 | 646 | 4,517 | 5,774 |
| % Eligible Ballots Returned | Res. | 57.2 | 26.1 | 47.7 | 44.8 |
| | Bus. | 13.3 | 22.4 | 14.3 | 15.7 |
| | Total | 55.4 | 25.5 | 41.8 | 40.0 |

| | | Milton | Yanceyville | Roxboro | Total |
|---|---|---|---|---|---|
| Number of Ballots Returned Voting in Favor | Res. | 466 | 339 | 1,084 | 1,889 |
| | Bus. | 6 | 78 | 161 | 245 |
| | Total | 472 | 417 | 1,245 | 2,134 |
| % Ballots Returned Voting in Favor | Res. | 77.0 | 61.6 | 25.6 | 35.0 |
| | Bus. | 100.0 | 81.3 | 58.5 | 65.0 |
| | Total | 77.3 | 64.4 | 27.6 | 37.0 |

As noted from the poll results, the Milton and Yanceyville subscribers supported the proposal, but the Roxboro subscribers did not.

This matter was considered by the Commission during the Regular Commission Staff Conference held on Monday, April 9, 1990. Considering the strong positive votes at Milton and Yanceyville, the Public Staff felt that one-way, nonoptional EAS should be approved from the Milton and Yanceyville exchanges to the Roxboro exchange. Although the Public Staff stated that it does not normally advocate one-way EAS, the positive poll results at Milton and Yanceyville seem to justify the establishment of one-way EAS in this case. While this approach will not provide two-way local calling between the exchanges, the Public Staff stated that it will significantly improve local communications among the communities. Therefore, the Public Staff recommended that the Commission issue an Order approving one-way, nonoptional EAS from Milton and Yanceyville to Roxboro.

Wayne Fleming, a Person County real estate broker, appeared in support of the proposed EAS. Also appearing in favor of the proposal were Harry Stonebreaker, Person County Commission; Tom Pugh, Caswell County Manager; and Gordon Carver, Roxboro Chamber of Commerce.

Jimmy Payne, Local Pricing Manager of Central Telephone Company, appeared in opposition to the EAS and cited calling studies indicating a low community of interest. Mr. Payne noted a possible difficulty in obtaining a waiver to cross LATA boundaries and in reporting the toll pool and suggested that an optional plan may be better suited to this particular situation.

Ed Rankin and Don Hathcock appeared on behalf of Southern Bell in opposition to the EAS and proposed an optional calling plan to be crafted similar to the Circle Calling Plan, but which would still require a waiver to cross LATA boundaries.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission finds good cause to deny the request for both two-way and one-way, nonoptional EAS from Milton and Yanceyville to Roxboro. The total poll results clearly justify disapproval of two-way EAS since only 37% of the

subscribers who returned ballots voted in favor of the EAS. We are also concerned that implementation of one-way EAS will lead to abuses of the telephone system, such as signal calling, which will enable Roxboro subscribers to avoid long distance charges on calls to Milton and Yanceyville to the detriment of the telephone companies and their general body of ratepayers. In reaching this conclusion, we have been influenced by the fact that this EAS matter involves two separate counties and there has been no substantial proof that not approving one-way EAS would inhibit economic development. Furthermore, the calling studies for calls from Yanceyville to Roxboro reflect a low community of interest, with 73% of the subscribers in Yanceyville having made no calls to Roxboro during the study period, while 51% of Southern Bell's Milton subscribers made no calls to Roxboro.

For all of the reasons set forth above, the Commission is of the opinion that the request for both two-way EAS and one-way EAS from the Milton and Yanceyville exchanges to the Roxboro exchange should be denied. However, the Commission urges all interested parties to seek other alternative, more acceptable methods of implementing appropriate calling arrangements, including those discussed during the Commission Staff Conference held on Monday, April 9, 1990.

IT IS, THEREFORE, ORDERED that the requests for both two-way EAS and one-way, nonoptional EAS between the Milton and Yanceyville exchanges and the Roxboro exchange be, and the same are hereby, denied, with the proviso that all interested parties are encouraged to seek other alternative, more acceptable methods of implementing appropriate calling arrangements.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of May 1991.

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

Commissioner Ruth E. Cook dissents. Commissioner Cook voted to approve one-way, nonoptional EAS in this case.

COMMISSIONER RUTH E. COOK, Dissenting. I dissent from the decision of the Majority in this case to deny implementation of one-way EAS between the exchanges of Milton and Yanceyville and the exchange of Roxboro. The Majority's decision denies county-seat calling to approximately 400 subscribers in the Milton exchange who reside in Person County, but cannot utilize or contact their governmental service agencies without incurring long distance charges. Milton subscribers average 4.6 messages per access line to Roxboro each month, which clearly indicates a strong community of interest. In my opinion, those subscribers deserve one-way EAS to Roxboro, their county-seat. The polling results also overwhelmingly support approval of one-way EAS for Yanceyville.

The Majority has chosen to ignore past precedent in which the Full Commission, without dissent, approved one-way nonoptional EAS; i.e., Grifton to Greenville (Order dated November 13, 1986, in Docket No. P-7, Sub 697) and Fountain to Greenville (Order dated August 5, 1988, in Docket No. P-7, Sub 720). Interestingly, the Commission had no hesitance whatsoever in approving one-way EAS in the two prior cases. I see no reason or justification

to now discriminate against Milton and Yanceyville subscribers. We have had no complaints from Carolina Telephone Company that one-way EAS has led to significant abuses of the telephone system to the detriment of that Company and its general body of ratepayers. Silence speaks for itself.

The Majority also chooses to ignore the economic ties of the residents of Milton and Yanceyville to Roxboro. In my opinion, such ties should be encouraged to the maximum extent possible. The Majority's decision discourages economic development between towns in North Carolina and will have the impact of encouraging greater economic closeness to Danville, Virginia rather than Roxboro, North Carolina. This is a mistake which could be corrected by one-way EAS.

Considering the polling results, the residents of the Milton and Yanceyville exchanges should be granted the benefits of one-way EAS. This is, after all, a truly democratic, grass-roots expression of their needs.

Ruth E. Cook

DOCKET NO. P-10, SUB 439

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Milton and Yanceyville to Roxboro Extended Area Service | ) | ORDER APPROVING EXTENDED LOCAL CALLING PLAN AND DIRECTING SOUTHERN BELL TO SEEK WAIVER |

BY THE COMMISSION: On May 8, 1990, the Commission issued an Order in this docket denying the implementation of extended area service (EAS) between Central Telephone Company's (Central) Roxboro exchange and each of Southern Bell Telephone and Telegraph Company's (Southern Bell) Milton and Central's Yanceyville exchanges, but encouraging both companies to develop an alternate calling arrangement between these exchanges. By letter of July 24, 1990, Southern Bell submitted proposed tariffs on behalf of each company to offer an Extended Local Calling (ELC) plan to the subscribers in the three exchanges. This plan would provide seven-digit dial calling at a 50% discount from existing toll rates on all calls placed from the Milton and Yanceyville exchanges to the Roxboro exchange and on all calls placed from the Roxboro exchange to the Milton and Yanceyville exchanges.

Since Milton to Roxboro is an interLATA route, Southern Bell has indicated that upon Commission approval of these tariffs, it would seek a waiver from the modified final judgment (MFJ) to offer the plan over this route. Both companies indicate that it will take from four to five months to implement the plan after all approvals and waivers have been obtained. Even though a waiver of the MFJ is not required to offer the plan over the intraLATA route between Yanceyville and Roxboro, the companies have proposed to offer the plan simultaneously over the two routes to coordinate promotional plans.

This matter came before the Regular Commission Conference on August 20, 1990. The Public Staff stated its concern that the waiver request effort may become a prolonged process based on Southern Bell's experience in its efforts to obtain a waiver to provide its Metro Connection plan approved by the Commission between its Chapel Hill exchange and Mebane exchange, an interLATA route. The Public Staff noted that that waiver request is still outstanding after 28 months. The Public Staff stated its belief that no more than six months should be devoted to obtaining the necessary waiver. If it appears that a decision on the waiver request is not imminent by that time, the Public Staff believes that the Commission should consider other, more timely solutions such as one-way EAS, to provide relief to the affected subscribers. The Public Staff, therefore, recommended that the Commission approval the ELC plan filed by Southern Bell and Central and that Southern Bell immediately begin proceedings to obtain the necessary waiver to implement the plan over an interLATA route and that the Commission should consider other, more timely solutions to provide relief to the affected subscribers if a waiver is not imminent six months from the date of this Order.

Mr. Wayne Fleming of the Milton exchange in Caswell County appeared to speak on this item. He favored the one-way calling option. Cindy Cox of Southern Bell also spoke on this item and stated that a plan in Virginia very similar to the one under discussion here, had been granted a waiver.

After careful consideration of the filings in this docket and the statements made by the various parties at the Regular Commission Conference, the Commission is of the opinion that the proposed ELC plan filed by Southern Bell and Central should be approved and that Southern Bell should immediately begin proceedings to obtain the necessary waiver to implement the plan over an interLATA route. However, the Commission believes that it would be premature to make an active consideration of other solutions to provide relief to the affected subscribers if the waiver is not imminent six months from the date of this Order. However, the Commission believes that Southern Bell should submit a report detailing its progress on obtaining this waiver within six months of the effective date of this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the proposed ELC plan filed by Southern Bell and Central in this docket be approved.

2. That Southern Bell immediately begin proceedings to obtain the necessary waiver to implement the plan over an interLATA route.

3. That Southern Bell report to the Commission within six months of the effective date of this Order its progress in obtaining a waiver to implement the ELC plan over an interLATA route.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of August 1990.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-16, SUB 162

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Concord Telephone Company - New London to Mt. Pleasant Extended Area Service | ) | ORDER DENYING MOTION FOR RECONSIDERATION |

BY THE COMMISSION: On December 5, 1989, the Commission issued an Order Denying Extended Area Service Incremental Cost Study and Authorizing Expansion of Optional Calling Plan in this docket. On April 12, 1990, the Public Staff filed a Motion for Reconsideration. The Public Staff argued that the Commission should not have relied so heavily on calling studies and it set out reasons it believed such studies to be unreliable. On May 1, 1990, Concord Telephone Company (Concord) filed a Response. Concord noted that its optional calling plan for the area was underway and that no complaints had been lodged against the plan. Concord stated its belief that the Commission's Order "sufficiently outlined the substantive basis for its conclusion."

The Commission has carefully considered the filings in this docket and is of the opinion that the Public Staff's motion for reconsideration should be denied.

First, as noted in the Order, Rule R9-7(c)(1) provides that the Commission "retains the flexibility to determine whether the demonstrated support is sufficient to justify further pursuit of the request for EAS." It was the Commission's judgment that there was not sufficient support.

Second, the Commission noted that New London was in Stanly County and Mt. Pleasant was in Cabarrus County. Thus, there was not the community of interest which normally stems from two exchanges being in a single county. This contributed to the Commission's judgment that the community of interest was insufficient.

Third, the Commission cited calling studies indicating, for example, that only 12% to 14% of subscribers in either exchange made any calls at all between the two exchanges, and that nonoptional EAS would tend to raise costs to the 86% to 88% of subscribers who do not make toll calls between the exchanges. The Public Staff in its response noted the limitations of calling studies. It pointed out that such studies include only message toll calls, do not take into consideration various means of bypass, and do not reflect suppressed demand caused by the toll charges. The Public Staff cited letters setting out various reasons which may account for low calling studies.

The Commission is, of course, aware of the limitations of calling studies. In its Order, the Commission simply noted that the extent of toll calling between these two exchanges is "one measure of the community of interest between them." (Order, p.3; emphasis added). This is in accord with Rule R9-7(d) which provides that the results of toll calling studies are to be used "as general indications of interest and not as rigid standards." Such studies are seen either as a "supplemental demonstration of support" or to

"help initially to limit or narrow an EAS request." The Commission has here utilized the cost studies as one element among several for narrowing or limiting the EAS request by denying the request for studies and authorizing an optional plan.

Lastly, as noted above, the Commission did not simply deny the EAS request but took the positive step of authorizing expansion of an optional calling plan. This plan is already being implemented. It would be costly confusing, and not in the public interest to stop this process at this time in favor of reconsideration of the flat rate EAS proposal.

IT IS, THEREFORE, ORDERED that the Public Staff's Motion for Reconsideration be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of May 1991.

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

DOCKET NO. P-16, SUB 162

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Concord Telephone Company - New London to<br>Mt. Pleasant Extended Area Service | )<br>)<br>)<br>)<br>) | ORDER DENYING EXTENDED<br>AREA SERVICE INCREMENTAL<br>COST STUDY AND AUTHORIZING<br>EXPANSION OF OPTIONAL<br>CALLING PLAN |

BY THE COMMISSION: On October 19, 1989, the Public Staff received a letter from Mrs. Gertie Lowder submitting support for two-way, non-optional extended area service (EAS) between Concord Telephone Company's (Concord's) New London and Mt. Pleasant exchanges. Concord's New London exchange is in Stanly County and its Mt. Pleasant exchange is Cabarrus County. The support consisted of letters from the Mayors of the Towns of New London, Mt. Pleasant, and Richfield; from the Stanly County Commissioners; from the Bethel United Church of Christ, and from other individuals; and from petitions signed by 1,250 New London subscribers and 675 Mt. Pleasant subscribers.

This matter came before the Commission at its Regular Commission Conference on November 27, 1989. The Public Staff argued that the support for EAS noted above demonstrated sufficient interest and need to justify requiring Concord to make a cost study to determine the incremental equipment costs and resulting local rate increases to establish two-way, non-optional EAS between the New London and Mt. Pleasant exchanges.

The following persons appeared to speak on behalf of the proposed EAS: Mayor Mattie Kelly of New London; Barbara Reese, a New London subscriber; and Lester Moose, a farmer in Stanly County.

Mike Coltrane, President of Concord, appeared before the Commission in order to oppose the Public Staff's recommendation. He argued that there was insufficient community of interest between the two exchanges to justify proceeding further with the EAS proposal. Mr. Coltrane cited data regarding calling between the two exchanges. This data was comprehensively set out in a letter dated November 27, 1989, to Mr. Hugh Gerringer of the Public Staff:

| | Mt. Pleasant to New London | New London to Mt. Pleasant |
|---|---|---|
| Total accounts billed | 1,948 | 2,071 |
| Accounts with toll | 275 | 264 |
| Percent of accounts with toll | 14.1% | 12.7% |
| Percent of accounts without toll | 85.9% | 87.3% |
| Accounts with: | | |
| 7 or more toll calls | 44 - 2.2% | 37 - 1.8% |
| 4 - 6 toll calls | 41 - 2.1% | 37 - 1.8% |
| 1 - 3 toll calls | 190 - 9.8% | 190 - 9.2% |
| 0 toll calls | 1,673 - 85.1% | 1,807 - 87.3% |
| Residential toll revenue | $ 551.91 | $443.10 |
| Business toll revenue | $ 57.14 | $ 48.66 |
| Total toll revenue | $ 609.05 | $491.76 |
| Average toll per user | $ 2.21 | $ 1.86 |
| Average toll per local account | $ .31 | $ .24 |

Mr. Coltrane also noted that Mt. Pleasant subscribers already enjoy flat rate local calling to Albemarle, Concord, Harrisburg, Kannopolis, and Oakboro at a one party residential rate of $6.81 per month. Similarly, New London enjoys flat rate EAS calling to Albermarle, Badin, Oakboro, Locust, and Norwood at a one party residential rate of $6.95 per month.

While opposing flat rate EAS, Mr. Coltrane stated that, if the Commission felt that toll relief in some form is in order between Mt. Pleasant and New London, an expansion of the existing optional calling plan would be appropriate. From Mt. Pleasant, this plan, which became effective on July 15, 1989, offers discount calling to Charlotte, Granite Quarry-Rockwell, and Locust, while from New London, discount calling is offered to Charlotte, Concord, and Grante Quarry-Rockwell.

After careful consideration of the filings in this docket and the statements at the Regular Commission Conference, the Commission is of the opinion that the Public Staff's recommendation that a cost study be conducted for EAS between Mt. Pleasant and New London should be denied and that Concord should be authorized to expand its current optional calling plan to include calling between the two exchanges.

Rule R9-7(c)(1) states as follows:

> Any entity or group requesting the Commission to open a formal docket to investigate the need for EAS in a particular area shall be required to demonstrate to the initial satisfaction of the Public

Staff and subsequently to the Commission that the subscribers in each affected exchange have demonstrated broad-based support for the requested EAS. . . The Commission retains the flexibility to determine whether the demonstrated support is sufficient to justify further pursuit of the request for EAS.

The Public Staff argues that the letters from public bodies and officials, the petitions, and the appearances of the witnesses justify proceeding with this request. The Commission does not wish to derogate the importance or probative value of such evidence. However, in this particular instance, the Commission is constrained to note two factors which it has considered which militate against proceeding further.

First, New London is in Stanly County and Mt. Pleasant is in Cabarrus County. There is therefore not the community of interest which normally stems from two exchanges being in a single county.

Second, the actual degree of toll calling between the exchanges can be at least one objective measurement of the need for and interest in EAS. The Concord figures indicate that only 12% to 14% of subscribers in either exchange make any toll calls at all between the two exchanges. Non-optional EAS would arguably save money for those subscribers, but the service would cost more to the 86% to 88% of subscribers who do not make toll calls between the exchanges. The extent of toll calling between these two exchanges is one measure of the community of interest between them.

There is a precedent for an optional plan in an analogous situation. In 1988 the Commission received a request in Docket No. P-55, Sub 902, for non-optional EAS among Concord's China Grove exchange, Southern Bell's Cleveland exchange, and ALLTEL's Mooresville exchange. During a study period for that docket, 16.5% of the 7,500 China Grove residents had calls to Mooresville and 8.5% had calls to Cleveland. In the end, the Commission approved an optional plan instead of non-optional EAS. In the instant case, the Commission believes a superior alternative would be an optional plan whereby those who have an interest in making such calls can do so at a discount and the rates of those not wishing to do so would remain the same.

IT IS, THEREFORE, ORDERED as follows:

1. That the Public Staff's recommendation that the Commission issue an Order requiring Concord to make a study to determine the incremental equipment costs and resulting local rate increases necessary to provide EAS between the New London and Mt. Pleasant exchanges be denied.

2. That Concord be authorized to extend its optional calling plan to long-distance calls between these two exchanges.

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

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

DOCKET NO. P-55, SUB 888

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Investigation into Request of the<br>Triangle J Council of Governments for<br>Toll-Free Calling in the Triangle J<br>Region | )<br>)<br>)<br>)<br>) | ORDER DENYING PUBLIC<br>STAFF PROPOSAL |

BY THE COMMISSION: The origins of this docket reach back to September 2, 1987, when the Triangle J Council of Governments (TJCOG) filed a resolution with the Commission requesting it "to implement a unified metropolitan local telephone service for Durham, Wake, and Orange Counties" and to explore means by which surrounding communities may join this network. By Order dated September 4, 1987, the Commission scheduled this matter for public hearing on December 1, 1987. The Commission held hearings during the period December 7-11, 1987, and received extensive testimony from TJCOG, the involved local exchange companies (LECs), residents, civic and business leaders of the region, and the Public Staff.

In its Order of April 7, 1988, the Commission found that sufficient public interest had been demonstrated to justify (1) cost studies of and proposed rates for flat rate, two-way, non-optional EAS in the Triangle area and (2) the implementation of experimental optional calling plans.

With respect to the flat rate, Triangle-wide studies, Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), GTE South (GTE), Mebane Home Telephone Company (Mebane), and Southern Bell Telephone and Telegraph Company (Southern Bell) were directed to submit studies covering the following exchanges: Apex, Cary, Chapel Hill, Creedmoor, Durham (including Research Triangle Park), Fuquay Varina, Hillsborough, Knightdale, Mebane (Orange County service area only), Raleigh, Wake Forest, Wendell, and Zebulon. The companies were allowed to present data showing net toll revenue loss associated with establishing EAS. These studies were submitted to the Commission in early 1989. Southern Bell filed a revision to its 1989 study on February 28, 1990.

The Commission also sought implementation of experimental plans on the following basis:

1. Southern Bell

| Originating | Terminating |
|---|---|
| Raleigh | Chapel Hill, Durham |
| Cary | Chapel Hill, Durham |
| Chapel Hill | Cary, Durham, Hillsborough, Raleigh, Mebane, (Orange County service area only) |

2. GTE

| Originating | Terminating |
|---|---|
| Durham | Cary, Chapel Hill, Hillsborough, Raleigh |

3. Central

| | |
|---|---|
| Hillsborough | Chapel Hill, Durham, Mebane (Orange County service area only) |

The experimental plans were to operate for 18 months and then terminate automatically. The Commission also intended that Mebane offer an optional calling plan. However, since Mebane is in the Greensboro LATA and a waiver is required to cross LATA boundaries and has not been obtained, Mebane has been unable to offer such a plan. The optional plan formulated by the companies were GTE's Tri-Wide Service, Central's Expanded Area Calling Plan, and Southern Bell's Metroconnecton Plan. These optional plans came into effect in April 1989, and are still underway.

On April 28, 1988, TJCOG filed a motion with the Commission to reconsider and amend the April 7, 1988, Order. By Order dated June 13, 1988, the Commission acceded to requests that the Clayton and Pittsboro exchanges in Johnston and Chatham Counties, respectively, be included in the flat rate EAS study and extended the due date for the studies.

At the August 1, 1988, Regular Commission Staff Conference, a representative of TJCOG criticized the experimental plans to be offered by Southern Bell, Central, and GTE. By motion dated September 13, 1988, TJCOG sought to have the experimental plans deferred. The Attorney General and Public Staff supported this approach. By Order dated November 22, 1988, the Commission rejected the deferral request but required that certain of the plans be modified.

The next major procedural event occurred at the February 12, 1990, Regular Commission Staff Conference, at which the Public Staff brought forth its Triangle proposals as an item for Commission consideration. The Public Staff stated that it had reviewed and discussed at length the studies submitted by the companies with the TJCOG Telephone Committee. The item stated:

> After much deliberation, the Committee concluded that the magnitude of the rate increases applicable to the Durham exchange subscribers under the full regional plan would not be acceptable to those subscribers. Consequently, the Triangle J Committee concluded that a new configuration involving the same fifteen exchanges which were included in the original proposal should be studied and should be recommended to the Commission as an alternative to the original regional plan.

The modified proposal dropped EAS between Durham and Raleigh and instead divided the proposed flat rate EAS into two groups as follows:

Group 1 - Apex, Cary, Chapel Hill, Clayton, Fuquay Varina, Hillsborough, Knightdale, Mebane (Orange County portion only), Raleigh, Wake Forest, Wendell, Zebulon

Group 2 - Chapel Hill, Creedmoor, Durham, Hillsborough, Mebane (Orange County portion only), Pittsboro

The Public Staff also presented monthly local rate increases which it believed were appropriate for the modified proposal. These rates, the Public Staff maintained, reflect all incremental costs associated with establishing the modified EAS and include a portion of the net toll revenue loss at the projected EAS cutover date, as well as the intraLATA toll pool impact of the proposal for directly affected LECs. Since Mebane is in the Greensboro LATA and Pittsboro is in the Fayetteville LATA, waivers would need to be obtained from the federal courts for these exchanges.

The Public Staff characterized their areas of disagreement with the LECs as follows:

1. Growth of Toll Revenue Beyond EAS Cutover. The Public Staff proposed that the methodology used should reflect the level of toll revenues at the projected cutover date, while the LECs maintain ~~that~~ the effect of growing toll revenues over a ten-year period should be included in the rates. The Public Staff argued that the actual toll revenues lost are those at cutover. The LECs cannot lose something that will never actually exist, the Public Staff argued.

2. Amount of Toll Revenue Loss Excluded. In developing the local rate increases for the respective LECs, the Public Staff excluded 50% of the net toll revenue loss for Central, Mebane, and Southern Bell, and 61% for GTE. The Public Staff argued that the exclusion of this amount of toll revenue loss would not cause serious financial distress to the LECs and that it appropriately balanced the interests of the ratepayers and LECs. The Public Staff stated that the 61% exclusion of GTE toll loss was "to limit the increase in residence rates at Durham and Creedmoor as much as reasonably possible." The Public Staff excluded the following amounts of net toll revenue loss when it computed its proposed EAS rate increases:

| | |
|---|---|
| Central | $779,794; |
| GTE South | $3,680,000 |
| Mebane Home | $231,066 |
| Southern Bell | $5,461,491. |

3. Local Rate Design. This is a disagreement between Southern Bell and the Public Staff regarding rates for Wake County exchanges. Southern Bell proposed exchange-specific rates, while the Public Staff argued that, since the Wake exchanges' calling scopes are substantially the same, the same final rates should apply. The higher rate for Chapel Hill reflects a greater calling scope for that exchange.

Concluding its direct presentation, the Public Staff made no recommendation regarding polling but rather argued that the Commission hold extensive public hearings in Durham, Hillsborough, and Raleigh.

The following persons appeared to speak on behalf of the Public Staff proposal: Becky Heron, Chair of TJCOG and Vice Chair of the Durham County Board of Commissioners; Gloria Williams, Executive Director of the Joint Orange Chatham Community Action, Inc.; and Herb Stout, Wake County Commissioner and TJCOG delegate.

Ms. Heron articulated TJCOG's position as being one of "full and strong and strong and enthusiastic endorsement" for the modified plan. However, a letter dated March 1, 1990, signed by Ms. Heron with a resolution attached dated February 28, 1990, which was filed with the Commission on March 7, 1990, indicated a preference for the full Triangle plan utilizing the rates proposed by the Public Staff.

Various representatives of the affected LECs and associated public witnesses appeared to oppose the plan: Terry Desmond, GTE; Frank Smiley, Durham Chamber of Commerce; Joe Foster, GTE Legal Staff; Marc Jordan, Raleigh Chamber of Commerce; Rhonda Ramm, Knightdale Chamber of Commerce; Joe Stanley, Bell South Services; Jimmy Payne, Local Pricing Manager for Central; Dwight Allen of Carolina; and Kent Burns, representing Mebane.

The main arguments posed by the opponents of the proposal were that there was no genuine community of interest sufficient to justify even the modified approach, that the modified approach was flawed and arbitrary; that the optional plans were working well; and that superior alternative plans were under development. Specifically, Mr. Stanley of Bell South Services mentioned an approach being discussed with citizens in Pender County and elsewhere that would offer seven-digit dialing, combined white pages, a 50% toll discount, a thrifty caller option, and an inward calling option. Many opponents to the modified plan maintained that polling was essential and that evidentiary hearings were necessary. The LECs scored the treatment of lost toll revenue and maintained that non-Triangle customers were the ones who would ultimately be harmed.

WHEREUPON, the Commission reaches the following

## CONCLUSIONS

1. Regional EAS proposals present unique challenges to Commission decisionmaking and should be decided according to reasonable criteria on a case-by-case basis.

The Triangle EAS proposal, both in the original and the modified form set forth by the Public Staff, represents both a qualitative and quantitative change. Traditionally, EAS proposals have had rather limited scope: An outlying exchange wishes to be able to call its county seat; a small rural exchange wishes to be able to call a large urban exchange; a small group of exchanges wishes to be able to call among themselves. These are some of the variations. The common thread is that these proposals involve comparatively small numbers of subscribers, a limited number of exchanges, clearer or at least simpler communities of interest, and a less serious financial impact on subscribers in the form of higher rates or on the telephone companies in the form of lost toll and other expenses related to the construction of the EAS facilities.

By contrast, this proposal involves five counties (Chatham, Orange, Durham, Wake, and Johnston), centering on three (Wake, Durham, and Orange). The area includes two major cities (Durham and Raleigh) and one smaller city (Chapel Hill). The Research Triangle Park and Raleigh Durham Airport, which already have special calling arrangements, are set in the region's geographic center. Wake, Durham, and Orange Counties cover 1,552 square miles and have a combined population of approximately 648,469 as of July 1988. The region is served by five telephone companies (Southern Bell, Carolina, Central, GTE South, and Mebane). Each company has its own unique customer base, financial structure, and service area.

Adding to the complexity of the proposals was the myriad of routes to be analyzed. For example, Southern Bell alone submitted calling studies relating to 49 routes. The number and variety of routes complicated the task of arriving at any uniform picture of community of interest.

Different socio-economic classes and interests, of course, exist within any community and are affected differently by any EAS proposal. The impact is magnified when the EAS proposal is as large as this one. Some persons, notably businesses that rely heavily on the telephone, stand to gain from flat-rate EAS, while others, notably low-volume residential customers, would end up paying more. For some classes of society, an added charge on the phone bill every month is a matter of indifference or at least outweighed by the probable benefits, while, for others, such as the poor, the extra outlay is a question of desperate significance.

The Commission is statutorily charged with closely examining the merits and drawbacks of the proposals before it and making a decision which in its opinion best serves the public interest. This process often involves a careful balancing of interests. There are many, often opposed, interests involved here--company and subscriber, residential and business, higher income and lower income, urban and rural, to name a few. This implies that the Commission must be willing to make difficult decisions in balancing these interests.

The Commission adopted Rule R9-7 on October 28, 1987, concerning procedures regarding requests for EAS. This rule was written in the context of traditional EAS and at some points specifically refers to likely traditional EAS scenarios. It may not be appropriate for determining a regional EAS proposal. On the other hand, the rule does embody some sound and equitable principles for assessing EAS proposals. The Commission believes that the regional EAS proposals present unique challenges to its decisionmaking and should be decided according to reasonable criteria on a case-by-case basis. Such criteria include, but are not limited to: nature and extent of proposal; positions of parties; community of interest, including the results of calling studies; financial impact on telephone companies, including amount of toll loss; proposed rates, including toll loss as deemed appropriate, and amount of rate increase; likely impact on subscribers including subgroups of subscribers; and such other factors as the Commission deems appropriate.

2. The most appropriate cost figure for this regional EAS proposal is one which incorporates 100% lost toll revenue at time of cut-over.

Perhaps the most central question involved in an EAS proposal is that of cost. The unsophisticated may think of EAS as "free calling," but most people

recognize that there is indeed a cost--sometimes a quite substantial cost which recurs every month indefinitely. After having received the data back from the telephone companies and the recommendations of the parties, the Commission's task is to decide the standard by which cost figures will be formulated and actually to formulate these figures.

The controversy over appropriate rates usually centers around the amount of lost toll revenue the telephone companies will lose as of what time period as a result of the implementation of EAS. Generally speaking, in most traditional EAS cases, the Commission will not consider lost toll as a component of rates absent a showing that failure to consider lost toll revenues will result in serious financial distress to the LECs and consequent harm to the local customers.

This regional EAS proposal has been considered different from traditional EAS cases from the beginning. In its April 7, 1988, Order, the Commission stated its willingness to consider toll loss "both as an informational item in the cost study and as an element in rate design." (at p. 7). The Commission clearly recognized that the size and scope of this proposal had significant financial implications to the LECs when it further stated:

> The Commission concludes that it has been demonstrated that failure to consider toll loss may result in serious financial hardships to the LECs, considering the size of the EAS proposal. Large toll increases should not be ignored either as to their potential impact on the local ratepayers or their possible ultimate impact on ratepayers statewide. (Id.)

The Public Staff has explicitly recognized the force of this point since the rates it has proposed are based on 50% toll loss at time of cut-over. The LECs, by contrast, have asked for toll loss calculated over a 10-year period. If total toll loss at time of cut-over were not taken into consideration, the financial impact on the LECs would be approximately $18,977,489. The magnitude of this figure is an important reason that the Commission has chosen to take into consideration 100% of lost toll revenue at time of cut-over.

The Commission believes this represents an appropriate and intermediate position between that of the Public Staff and the LECs. The 50% toll loss (61% in the case of GTE) suggested by the Public Staff is too small while the figure suggested by the LECs is too extravagant. The Commission therefore concludes that the most appropriate cost figure for this regional EAS proposal is one which incorporates 100% of lost toll revenue at the time of cut-over.

Applying this principle to the original areawide EAS yields the following rates:

| Company and Exchanges | Current Rate | EAS Additive With 100% Toll Loss | New Basic Rate |
|---|---|---|---|
| Residence One-Party Rates | | | |
| Central Hillsborough | $ 8.07 | $ 8.83 | $16.90 |

| | | | |
|---|---|---|---|
| GTE South | | | |
| Creedmoor | $13.48 | $ 6.53 | $20.01 |
| Durham | $12.65 | $ 6.53 | $19.18 |
| Research Triangle Pk. | -- | -- | -- |
| Mebane | | | |
| Mebane | $ 8.25 | $11.88 | $20.13 |
| Southern Bell | | | |
| Apex | $12.54 | $ 2.27 | $14.81 |
| Cary | $12.54 | $ 2.27 | $14.81 |
| Chapel Hill | $10.77 | $ 4.04 | $14.81 |
| Knightdale | $12.51 | $ 2.30 | $14.81 |
| Raleigh | $12.51 | $ 2.30 | $14.81 |
| RDU Airport | -- | -- | -- |
| Wendell | $12.51 | $ 2.30 | $14.81 |
| Zebulon | $12.51 | $ 2.30 | $14.81 |

Business One-Party Rates

| | | | |
|---|---|---|---|
| Central | | | |
| Hillsborough | $21.16 | $23.15 | $44.31 |
| GTE South | | | |
| Creedmoor | $33.72 | $16.34 | $50.06 |
| Durham | $31.65 | $16.34 | $47.99 |
| Research Triangle Pk. | $39.55 | $ 8.44 | $47.99 |
| Mebane | | | |
| Mebane | $21.70 | $30.08 | $51.78 |
| Southern Bell | | | |
| Apex | $34.54 | $ 6.25 | $40.79 |
| Cary | $34.54 | $ 6.25 | $40.79 |
| Chapel Hill | $29.52 | $11.27 | $40.79 |
| Knightdale | $34.44 | $ 6.35 | $40.79 |
| Raleigh | $34.44 | $ 6.35 | $40.79 |
| RDU Airport | $43.04 | ($ 2.25) | $40.79 |
| Wendell | $34.44 | $ 6.35 | $40.79 |
| Zebulon | $34.44 | $ 6.35 | $40.79 |

| | Residence 1-Party Rates | | | Business 1-Party Rates | | |
|---|---|---|---|---|---|---|
| | Current | Increase | New | Current | Increase | New |
| Carolina | | | | | | |
| Clayton | $12.79 | $ 0.89 | $13.68 | $30.90 | $2.13 | $33.63 |
| Fuquay Varina | $12.24 | $1.21 | $13.45 | $29.60 | $2.90 | $32.50 |
| Pittsboro | $12.25 | $1.43 | $13.68 | $29.65 | $3.38 | $33.03 |
| Wake Forest | $10.74 | $2.71 | $13.45 | $25.96 | $6.54 | $32.50 |

3. It is not in the public interest at this time to proceed further with flat-rate areawide EAS or the bifurcated proposal put forth by the Public Staff.

Throughout most of the life of this docket, the working assumption has been the proposal for areawide, flat-rate EAS. This vision of a unified calling area encompassing Wake, Durham, and Orange Counties was the official view originally propounded by representatives of TJCOG and supported by the Public Staff.

The Public Staff inverted this assumption by putting forward its bifurcated proposal. The most important aspect of this plan was that it severed the proposed EAS connection between Raleigh and Durham and instead created two overlapping EAS spheres. The Public Staff was candid concerning its reason for doing so: The rates were too expensive. The TJCOG telephone committee concluded that "the magnitude of rate increases applicable to the Durham exchange subscribers under the full regional plan would not be acceptable to those subscribers." The Public Staff also recommended a series of hearings on its proposal.

The Commission has explained why it believes that 100% toll loss at time of cut-over is the appropriate basis for figuring rates. The Commission also believes that the areawide proposal is the one most properly and appropriately before it. The areawide proposal is the original one on which expectations have been built. It is the most truly regional proposal. It preserves the Raleigh-Durham connection, in which there is more public interest than in some other routes. It is also more straightforward because it gives a more genuine picture of what a regional proposal would cost. In the original proposal, there is no attempt to rearrange the exchanges to arrive at a more palatable rates. It is the Commission's conviction that the proposal should be considered on its true cost over its original extent as a unit.

After careful examination of the filings in this docket and the statements and comments of parties, the Commission is constrained to conclude that proceeding further with either the flat-rate EAS or the bifurcated proposal of the Public Staff is not in the public interest. There are two major reasons for this decision which apply with equal or similar force to both proposals. First, there is insufficient community of interest to justify regional EAS and, second, the rates necessary and appropriate to support EAS are unacceptably high in many cases so as to render a decision to poll on them forlorn and wasteful.

Community of Interest. There are numerous methods, no one of which is necessarily determinative, that go into showing or negating community of interest. Proponents of EAS use resolutions and letters from civic groups, institutions, local governments, elected officials and petitions signed by affected subscribers to demonstrate a community of interest. Witnesses appear at Regular Commission Staff Conference and at public hearings to share their viewpoints. These same methods can be used by opponents of EAS to negate such assertions of community of interest.

All of these methods have been utilized in this docket by both sides. A nearly weeklong hearing in this docket was held in December 1987 at which some 40 witnesses appeared. The Commission has received numerous letters both for and against EAS, as well as petitions and phone calls. This docket was the subject of a recent Regular Commission Staff Conference. The Public Staff has asked for further hearings. The Commission is doubtful that such hearings

would be useful at this point. Accordingly, the Commission will deny the Public Staff's request for public hearings.

One further method for establishing or refuting community of interest is toll calling data. The Commission is not unmindful of the limitaions of toll calling data, notably the repression of calling that may be caused by the existence of toll itself. Nevertheless, toll calling data is at least one objective and quantifiable measure of community of interest. The rules concerning EAS recognize that toll calling studies will be used as general indications of interest and not as rigid standards for evaluating EAS. It is in this spirit that the Commission assesses such data.

The calling study data that the Commission has received tend to undercut the assertion that a community of interest exists regionally. Southern Bell, for example, submitted toll calling data on 49 regional routes. Its data showed that calls/line/month ranged from a low of .020 in Chapel Hill to Wendell to a high of 9.436 between Chapel Hill and Durham. The next highest was Chapel to Raleigh at 3.625. Raleigh to Durham was 2.246. Thirty-eight out of 49 routes had calls/line/month under one. With the exception of Chapel Hill to Durham, none had calls/line/month over 3.625.

GTE submitted Toll Message Volumes from Durham/Creedmoor for April 1988. The highest message volume was between Durham and Raleigh (409,652) with Chapel Hill (343,683) and Hillsborough (94,337) coming next. Wendell (2,498) and Zebulon (2,527) evidenced the lowest regional calling volumes, with the other exchanges in between toward the low end.

Central submitted data based on 7,436 access lines in Hillsborough for April 1988. The highest messages per access line were to Durham (16.03), followed by Chapel Hill (5.97), Mebane (1.78), and Raleigh (1.78). None of the other exchanges exceeded .24.

Mebane submitted a calling study showing highest average calls per customer per month to Hillsborough (6.227) and Durham (4.377), followed by Chapel Hill (3.346) and Raleigh (1.091). None of the remaining 10 routes exceeded an average of 1.0 calls per customer per month. Carolina's data also showed a relatively low community of interest index for most Triangle routes.

These figures tend to confirm what many have long suspected--that, to the extent there is community of interest at all, it may exist along certain discrete routes but not regionally. Even the higher calling figures tend not to be impressive. Given the data the Commission has received, it is less inclined to view these "pockets of interest"--in the words of the April 7, 1988, Order--"as being in the process of merging into a whole." (p.6). The true picture is more complex than that.

These types of figures also provide no support to the Public Staff bifurcated proposal. This proposal creates a "hopscotch" arrangement where several exchanges hop over Durham. The Raleigh-Durham route is excluded although Durham to Raleigh has the highest toll message volume, while Raleigh to Durham was the fifth highest of Southern Bell's calls/line/month. By attempting to reduce the cost, the Public Staff has aggravated the anomalies in the community of interest patterns.

Rates. The other major reason the Commission has for not proceeding further in this docket is, quite simply, the rates. It is the Commission's judgment that polling on the rates that the Commission has found to be most appropriate would not be in the public interest. Given the highly disparate community of interest and the applicable rate levels, the Commission finds it hard to conceive that subscribers over the entire area, or even a large part of it, would cast a positive vote. For example, the R-1 rates of Hillsborough would rise by $8.83 to $16.90, those of Durham by $6.53 to $19.18, those of Mebane by $11.88 to $20.13, those of Chapel Hill by $4.04 to $14.81. The Public Staff has indicated that this plan is not viable by switching over to its bifurcated plan.

Even so, the same considerations apply to the Public Staff's bifurcated plan. The Commission has already noted its own preference as to rates and scope as well as its view on the "hopscotch" nature of the Public Staff plan. The Commission would simply note that the Public Staff has hardly been able to reduce its rates to de minimis levels. Under the Public Staff plan, R-1 rates would still rise by $5.02 in Hillsborough, by $2.49 in Durham, by $6.15 in Mebane, and by $4.65 in Chapel Hill.

Despite the Commission's skepticism regarding the level of community of interest and the rates, the Commission is not adamant that polling never take place. If a party believes sufficient public support exists to poll on areawide EAS at the rates the Commission has set out in this Order, the Commission would be willing to entertain a motion or petition to that effect.

In conclusion, the Commission believes that it is not in the public interest at this time to proceed further with flat-rate areawide EAS or the bifurcated proposal put forth by the Public Staff. The Commission believes that the proposal should be reviewed as a unit over its original scope and at appropriate rate levels, since this will give a true picture of the actual regional costs to EAS. Further public hearings are not necessary. The level of community of interest is too low and the rates derived from the areawide proposal, or even those of the Public Staff using a different methodology, are too high to justify moving forward at this time. Nevertheless, the Commission is willing to consider a motion to poll on areawide EAS at rates set out in this Order.

4. GTE, Southern Bell, and Central should submit a final report as to the experimental plans.

The April 7, 1988, Order in Ordering Paragraph 2(c) provided for interim reports six months and one year after the effective date of the tariffs. Ordering Paragraph 2(d) provided that the experimental tariffs shall terminate 18 months from the time the tariffs became effective. The Commission believes that a final report is appropriate and that the telephone companies should be allowed to file comments before the 18 months have expired containing an assessment of the plans and whether they should be continued as they are or in a modified form.

IT IS, THEREFORE, ORDERED as follows:

1. That the Public Staff's proposal in this docket as set forth on February 12, 1990, be denied.

2. That GTE, Southern Bell, and Central shall file a final report with respect to their experimental plans no later than 21 months from the effective date of the tariffs of those plans.

3. That GTE, Southern Bell, and Central may file comments containing their preliminary final assessment of the experimental plans and their recommendation concerning their continuation or modification.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of June 1990.

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

Commissioner Sarah Lindsay Tate dissents.

DOCKET NO. P-55, SUB 898

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
An Investigation into a Request by the ) ORDER DENYING
Triad Telephone Committee for Toll-Free ) PUBLIC STAFF
Calling in the Triad Region ) PROPOSAL

BY THE COMMISSION: On June 9, 1988, the Commission issued an Order requiring ALLTEL Carolina (ALLTEL), Carolina Telephone and Telegraph Company (Carolina), North State Telephone Company (North State), Central Telephone Company (Central) and Southern Bell Telephone and Telegraph Company (Southern Bell) to submit cost studies and data concerning flat-rate, nonoptional extended area service (EAS) in the following exchanges of Guilford and Forsyth Counties: King, Lewisville, Old Town, Rural Hall, Stanleyville, Gibsonville, Kernersville, Walkertown, High Point, Greensboro, Julian, Monticello, Summerfield, and Winston-Salem.

On October 10, 1988, the Commission issued an Order denying the motions of certain telephone companies that the North Carolina Community Calling Plan, an optional calling plan, be implemented experimentally and made permanent the suspension of certain other proposed optional plans. The Commission did not derogate the possible merits of such approaches, but reiterated its intent that the flat-rate EAS standing alone should be considered first.

The several telephone companies submitted their cost studies and proposed rates in February 1989. Carolina and Central had been given the option of applying the EAS matrix tariffs for the analysis. Carolina chose to do so, while Central submitted an EAS cost study. A period of analysis of these plans by the various parties followed.

On March 12, 1990, the Public Staff presented its proposals to the Commission at the Regular Commission Conference. The Public Staff developed monthly local rate increases which it believed were appropriate and in accordance with the rules. The Public Staff said that its proposed rates reflected all incremental costs associated with establishing Triad EAS and said

there was no disagreement with the local exchange companies (LECs) on this item. However, the Public Staff identified the following areas of disagreement:

I. Growth of Toll Revenues Beyond EAS Cutover

In determining the net toll revenue loss for each LEC, the methodology used by the Public Staff reflected the level of toll revenues at the projected cutover date of the EAS. The Public Staff and the EAS cost study LECs are in agreement on the level of toll revenues at EAS cutover. However, the LECs, except ALLTEL and Carolina, also included the effect of growing toll revenues over a 10-year period beyond projected EAS cutover. ALLTEL's determination of toll revenue loss was based on a first year study period and did not use 10 years of toll growth. Carolina used its EAS matrix which does not involve a toll revenue loss calculation. The Public Staff's position on this is based on the fact that if the EAS is established, the only actual toll revenues subject to loss by the LECs are those at cutover since toll service will no longer exist after that time. The LECs simply cannot lose something that will never actually exist.

II. Amount of Net Toll Revenue Loss Excluded

In developing the local rate increases for the respective LECs, the Public Staff excluded one-half of the net toll revenue loss while the LECs excluded none. According to Commission Rule R9-7(e)(1), the Commission will exclude toll revenue loss in determining costs for providing EAS unless it can be clearly demonstrated in a particular case that a failure to consider toll revenues will result in serious financial distress to the affected LEC and, in turn, to its remaining local customers. By excluding one-half of the net toll revenue loss, the Public Staff attempted to balance the interests of the ratepayers and the telephone companies. The Public Staff stated it was firmly convinced that excluding one-half of the toll revenue loss would not cause serious financial distress to any of the LECs. The Public Staff excluded the following amounts of net toll revenue loss when computing its proposed EAS rate increases:

| LEC | Net Toll Revenue Loss Excluded |
|---|---|
| ALLTEL Carolina | $ 290,890 |
| Central | $ 100,432 |
| North State | $3,318,974 |
| Southern Bell | $9,050,366 |

III. Local Rate Design

This disagreement exists only between the Public Staff and Southern Bell. The Public Staff proposes the same local rate increase at each of Southern Bell's five affected exchanges, which results in each exchange having the same rate after the EAS increase. This takes into consideration that all five exchanges currently have the same calling scope and the same local rates and, if the EAS is established, all five exchanges would have identical calling scopes and should have the same rates. Southern Bell has designed exchange specific increases reflecting variations in toll revenue and equipment costs at

each exchange. Therefore, Southern Bell's rates are different for each exchange even though they all have the same calling scope.

The Public Staff also recommended that the Commission schedule a series of public hearings in Greensboro, High Point, and Winston-Salem to gauge subscriber sentiment on the proposed EAS increases.

The following persons appeared to speak on behalf of the Public Staff's recommendation: Vic Nessbaum, Mayor of Greensboro; Ken Croft of Citizens of Greensboro; and Mike Horn of the Citizens Committee for a Toll-Free Triad. Lorenzo Joyner of the Attorney General's Office also supported the Public Staff recommendation.

The following persons appeared to speak against the Public Staff's recommendation: Ray Watschter, President of the Greensboro Chapter of the American Association of Retired Persons; Representative Herman Gist of Greensboro; Ms. Mazie Woodruff, a former Forsyth County Commissioner; Joe Stanley of Southern Bell; William Dulan of North State; Dwight Allen of Carolina; Kent Burns, representing ALLTEL; and Jimmy Payne of Central. The LEC representatives argued that there was insufficient community of interest to justify EAS, that the Public Staff proposal was flawed and arbitrary, and that alternative optional plans were a superior approach.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

1. Regional EAS proposals present unique challenges to Commission decision making and should be decided according to reasonable criteria on a case-by-case basis.

The Triad EAS proposal represents both a qualitative and quantitative change. Traditionally, EAS proposals have had rather limited scope: An outlying exchange wishes to be able to call its county seat; a small rural exchange wishes to be able to call a large urban exchange; a small group of exchanges wishes to be able to call among themselves. These are some of the variations. The common thread is that these proposals involve comparatively small numbers of subscribers, a limited number of exchanges, clearer or at least simpler communities of interest, and a less serious financial impact on subscribers in the form of higher rates or on the telephone companies in the form of lost toll and other expenses related to the construction of the EAS facilities.

By contrast, this proposal involves two major counties, Forsyth and Guilford. The area includes two major cities (Greensboro and Winston-Salem) and one smaller city (High Point). Forsyth and Guilford counties cover approximately 1,063.25 square miles and have a combined population of approximately 603,190 as of July 1988. The region is served by five telephone companies (Southern Bell, Carolina, Central, North State, and ALLTEL). Each company has its own unique customer base, financial structure, and service area.

Adding to the complexity of the proposals was the myriad of routes to be analyzed. For example, Southern Bell alone submitted calling studies relating

to 47 routes. The number and variety of routes complicated the task of arriving at any uniform picture of community of interest.

Different socio-economic classes and interests, of course, exist within any community and are affected differently by any EAS proposal. The impact is magnified when the EAS proposal is as large as this one. Some persons, notably businesses that rely heavily on the telephone, stand to gain from flat-rate EAS, while others, notably low-volume residential customers, would end up paying more. For some classes of society, an added charge on the phone bill every month is a matter of indifference or at least outweighed by the probable benefits, while, for others, such as the poor, the extra outlay is a question of desperate significance.

The Commission is statutorily charged with closely examining the merits and drawbacks of the proposals before it and making a decision which in its opinion best serves the public interest. This process often involves a careful balancing of interests. There are many, often opposed, interests involved here--company and subscribers, residential and business, higher income and lower income, urban and rural, to name a few. This implies that the Commission must be willing to make difficult decisions in balancing these interests.

The Commission adopted Rule R9-7 on October 28, 1987, concerning procedures regarding requests for EAS. This rule was written in the context of traditional EAS and at some points specifically refers to likely traditional EAS scenarios. It may not be appropriate at all points for determining a regional EAS proposal. On the other hand, the rule does embody some sound and equitable principles for assessing EAS proposals. The Commission believes that the regional EAS proposals present unique challenges to its decisionmaking and should be decided according to reasonable criteria on a case-by-case basis. Such criteria include, but are not limited to: nature and extent of proposal; positions of parties; community of interest, including the results of calling studies; financial impact on telephone companies, including amount of toll loss; proposed rates, including toll loss as deemed appropriate, and amount of rate increase; likely impact on subscribers including subgroups of subscribers; and such other factors as the Commission deems appropriate.

2. The most appropriate cost figure for this regional EAS proposal is one which incorporates 100% lost toll revenue at time of cut-over.

Perhaps the most central question involved in an EAS proposal is that of cost. The unsophisticated may think of EAS as "free calling," but most people recognize that there is indeed a cost--sometimes a quite substantial cost which recurs every month indefinitely. After having received the data back from the telephone companies and the recommendations of the parties, the Commission's task is to decide the standard by which cost figures will be formulated and actually to formulate these figures.

The controversy over appropriate rates usually centers around the amount of lost toll revenue the telephone companies will lose as of what time period as a result of the implementation of EAS. Generally speaking, in most traditional EAS cases, the Commission will not consider lost toll as a component of rates absent a showing that failure to consider lost toll revenues will result in serious financial distress to the LECs and consequent harm to the local customers.

This regional EAS proposal has been considered different from traditional EAS cases from the beginning. In its June 9, 1988, Order, the Commission stated its willingness to consider toll loss "both as an informational item in the cost study and as an element in rate design." (at p. 3). The Commission clearly recognized that the size and scope of this proposal had significant financial implications to the LECs when it further stated:

> The Commission concludes that it has been demonstrated that failure to consider toll loss may result in serious financial hardships to the LECs, considering the size of the EAS proposal. Large toll increases should not be ignored either as to their potential impact on the local rate payers or their possible ultimate impact on ratepayers statewide. (Id.)

The Public Staff has implicitly recognized the force of this point since the rates it has proposed are based on 50% toll loss at time of cut-over. The LECs, by contrast, have asked for toll loss calculated over a 10-year period. If total toll loss at time of cut-over were not taken into consideration, the financial impact on the LECs would be approximately $25,521,324. The impact on North State is especially heavy. Based on North State's 1989 year-end income statement, 74.68% of its overall regulated revenues were comprised of toll revenues. Based on the Triad EAS cost study data for the test month of April 1988, 61.68% of North State's toll revenues involved in the Triad EAS area were derived from the High Point to Greensboro toll calls. The magnitude of these figures is an important reason that the Commission has chosen to take into consideration 100% of lost toll revenue at time of cut-over.

The Commission believes this represents an appropriate and intermediate position between that of the Public Staff and the LECs. The 50% toll loss suggested by the Public Staff is too small while the figure suggested by the LECs too extravagant. The Commission therefore concludes that the most appropriate cost figure for this regional EAS proposal is one which incorporates 100% of lost toll revenues at the time of cut-over.

Applying this principle to areawide EAS yields the following rates:

| Company/ Exchanges | Current Basic Rate | | EAS Increase | | New Basic Rate | |
|---|---|---|---|---|---|---|
| | Residence | Business | Residence | Business | Residence | Business |
| **ALLTEL** | | | | | | |
| King | $15.12 | $37.98 | $1.36 | $3.41 | $16.48 | $41.39 |
| Lewisville | $15.12 | $37.98 | $1.36 | $3.41 | $16.48 | $41.39 |
| Old Town | $15.12 | $37.98 | $1.36 | $3.41 | $16.48 | $41.39 |
| Rural Hall | $15.12 | $37.98 | $1.36 | $3.41 | $16.48 | $41.39 |
| Stanleyville | $15.12 | $37.98 | $1.36 | $3.41 | $16.48 | $41.39 |
| **Carolina** | | | | | | |
| Gibsonville | $11.70 | $28.35 | $1.98 | $4.68 | $13.68 | $33.03 |
| Kernersville | $10.61 | $25.65 | $2.76 | $6.62 | $13.37 | $32.27 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Central | | | | | | |
| Walkertown | $11.13 | $28.24 | $4.58 | $11.64 | $15.71 | $39.88 |
| North State | | | | | | |
| High Point | $ 3.72 | $ 8.58 | $4.31 | $11.50 | $ 8.03 | $20.08 |
| Southern Bell | | | | | | |
| Greensboro | $12.19 | $33.38 | $2.94 | $ 8.06 | $15.13 | $41.44 |
| Julian | $12.19 | $33.38 | $2.94 | $ 8.06 | $15.13 | $41.44 |
| Monticello | $12.19 | $33.38 | $2.94 | $ 8.06 | $15.13 | $41.44 |
| Summerfield | $12.19 | $33.38 | $2.94 | $ 8.06 | $15.13 | $41.44 |
| Winston-Salem | $12.19 | $33.38 | $2.94 | $ 8.06 | $15.13 | $41.44 |

One point should be noted regarding the North State rates. They reflect the impact of public and semi-public coin rate increases of $0.15 for a final rate of $0.25 and a Local Director Assistance charge increase of $0.11 for a final rate of $0.30 (High Point only). These changes have neither been submitted to nor approved by the Commission. A recalculation of the rates based on the current payphone and directory assistance charges would yield a higher rate than that portrayed herein.

3. It is not in the public interest at this time to proceed with flat-rate areawide EAS.

After careful examination of the filings in this docket and the statements and comments of parties, the Commission is constrained to conclude that proceeding further with the flat-rate EAS is not in the public interest. There are two major reasons for this decision. First, there is insufficient community of interest to justify this regional EAS and, second, the rates necessary and appropriate to support EAS are unacceptably high in many cases so as to render a decision to poll on them forlorn and wasteful.

Community of Interest. There are numerous methods, no one of which is necessarily determinative, that go into showing or negating community of interest. Proponents of EAS use resolutions and letters from civic groups, institutions, local governments, elected officials and petitions signed by affected subscribers to demonstrate a community of interest. Witnesses appear at Regular Commission Staff Conferences to share their viewpoints. These same methods can be and are used by opponents of EAS to negate such assertions of community of interest.

All of these methods have been utilized in this docket by both sides. The Commission has received numerous letters both for and against EAS, as well as petitions and phone calls. This docket was the subject of a recent Regular Commission Staff Conference. The Public Staff has asked for further hearings. The Commission is doubtful that such hearings would be useful at this point. Accordingly, the Commission will deny the Public Staff's request for public hearings.

One further method for establishing or refuting community of interest is toll calling data. The Commission is not unmindful of the limitations of toll calling data, notably the repression of calling that may be caused by the existence of toll itself. Nevertheless, toll calling data is at least one objective and quantifiable measure of community of interest. The rules concerning EAS recognize that toll calling studies will be used as general indications of interest and not as rigid standards for evaluating EAS. It is in this spirit that the Commission assesses such data.

The calling study data that the Commission has received tend to undercut the assertion that a community of interest exists regionally. For example, North State presented community of interest factors for 13 routes, ranging from a high in calls/account/month for High Point to Greensboro (5.95) to a low for High Point to Stanleyville (.01). The next highest route was High Point to Winston-Salem (1.90). No other community of interest factor exceeded that of High Point to Kernersville (.44).

Carolina submitted a Thirty Day Toll Summary calling study relating to 12 Gibsonville routes and 11 Kernersville routes. The highest community of interest index for Gibsonville was between Gibsonville and Greensboro (11.9955), the lowest Gibsonville to Lewisville (0.0045). Other than the Greensboro route, no other route exceeded 1.0. Similarly, the highest community of interest index for Kernersville was between Kernersville and Greensboro (6.8807), followed by Kernersville to High Point (2.3644). As with Gibsonville, almost none of the other terminating exchanges yielded a community of interest greater than 1.0.

Southern Bell submitted a Toll Calling Study covering 47 routes. The routes ran from a high in calls/line/month for Greensboro to High Point (2.681) to a low for Monticello to Stanleyville (.002). Only eight routes exceed a calls/line/month factor of one. Centel's data showed similarly low calling figures for its Walkertown exchanges: Only two terminating exchanges, Kernersville at 6.71 and Greensboro at 2.22, exceeded 1.0 messages per access line. The other 10 terminating exchanges were far below 1.0. ALLTEL's calling data was also relatively low.

These figures tend to confirm what many have long suspected--that, to the extent there is community of interest at all, it may exist along certain discrete routes but not regionally. Even the higher calling figures tend not to be impressive.

Rates. The other major reason the Commission has for not proceeding further in this docket is, quite simply, the rates. It is the Commission's judgment that polling on the rates that the Commission has found to be most appropriate would not be in the public interest. Given the highly disparate community of interest and the applicable rate levels, the Commission finds it hard to conceive that subscribers over the entire area, or even a large part of it, would cast a positive vote.

For example, the R-1 increase for High Point is $4.31 and that of Walkertown $4.58. All of Southern Bell's R-1 customers would see an increase pattern. The B-1 increase for High Point is $11.64 and that of Walkertown $11.50. The Southern Bell B-1 increases are $8.06, while that of Kernersville is $6.62.

Despite the Commission's skepticism regarding the level of community of interest and the rates, the Commission is not adamant that polling never take place. If a party believes sufficient public support exists to poll on areawide EAS at the rates the Commission has set out in this Order, the Commission would be willing to entertain a motion or petition to that effect.

In conclusion, the Commission believes that it is not in the public interest at this time to proceed further with flat-rate areawide EAS. The Commission believes that the proposal should be reviewed as a unit over its original scope and at appropriate rate levels, since this will give a true picture of the actual regional costs to EAS. Further public hearings are not necessary. The level of community of interest is too low and the rates derived from the areawide proposal are too high to justify moving forward at this time. Nevertheless, the Commission is willing to consider a motion to poll on areawide EAS at rate set out in this Order.

IT IS, THEREFORE, ORDERED that the Public Staff's proposal in this docket as set forth on February 12, 1990, be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of June 1990.

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

Commissioner Sarah Lindsay Tate dissents.
Commissioner Robert O. Wells dissents.

DOCKET NO. P-7, SUB 740

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Reporting of Interstate Billing and Collection Activity by Carolina Telephone and Telegraph Company | ) ) ) ) | ORDER REGARDING TREATMENT OF INTERSTATE BILLING AND COLLECTION ACTIVITY |

BY THE COMMISSION: On June 28, 1990, the Public Staff filed a petition requesting that the Commission issue an order to Carolina Telephone and Telegraph Company (Carolina or Company) requiring that Carolina report its interstate billing and collection activity as a regulated activity on its Telephone Surveillance Report (TS-1), Schedules 3 and 4 and on its Annual Report filed with the Commission. The Public Staff stated that this requirement will not be unduly burdensome to the Company.

## PUBLIC STAFF'S ARGUMENTS

In support of its petition, the Public Staff set forth various arguments as follows:

1. Interstate billing and collection activity is reported as a regulated activity by all cost-based settlement companies operating in North Carolina other than Carolina. Carolina's failure to report interstate billing and collection in the uniform manner adopted by the other cost-based Local Exchange Companies (LECs) makes comparisons of Carolina's reports with those of other LECs less meaningful and thus reduces the value of the required reports.

2. The manner in which interstate billing and collection is treated affects the analysis of Carolina's regulated/nonregulated apportionments. Interstate billing and collection is a major segment of activity represented by Carolina as nonregulated on its TS-1 Report Schedules 3 and 4.

3. Carolina's treatment of interstate billing and collection as nonregulated is inconsistent with the Company's own Cost Allocation Manual (CAM). The CAM, which provides specifics regarding Carolina's regulated/nonregulated cost apportionment procedures and its nonregulated activities, does not list interstate billing and collection as a nonregulated activity.

4. In CC Docket No. 85-88, Detariffing of Billing and Collection Services, the Federal Communications Commission (FCC) adopted detariffing of interstate billing and collection and deferred to state regulators the practice of disconnection of local telephone service for nonpayment of interstate toll charges.

5. Intrastate billing and collection is a tariffed service subject to the regulation of the North Carolina Utilities Commission.

6. In paragraph 79 of its Joint Cost Order, CC Docket No. 86-111, the FCC states:

> 79. d. Treatment of activities deregulated only in the interstate jurisdiction. We are not prepared to specify at this time the accounting treatment to be accorded every activity which we might deregulate at the interstate level without preempting all state regulation. Despite suggestions from certain parties that we must require that such activities be classified as nonregulated activities, the practical import of any decision to classify an activity as a nonregulated activity would be to place the costs of and revenues from that activity outside of the jurisdictional separations process. We believe it best to address such matters in the context of particular activities which we may deregulate in the interstate jurisdiction. Accordingly, we will implement our proposal to address questions regarding the accounting treatment to be accorded such activities on a case-by-case basis. To avoid future confusion, we will require that activities deregulated at the interstate level that are not preemptively deregulated, be classified as regulated activities until such time as this Commission decides otherwise. (Emphasis added)

7. In paragraph 81 of the Joint Cost Order, CC Docket No. 86-111, the FCC states:

> 81. We believe that billing and collection activities should continue to be accorded regulated accounting treatment. The arguments against that treatment implicitly assume that the jurisdictional separations process results in a misallocation of total billing and collection costs between the interstate and the intrastate jurisdictions. We are not convinced of the accuracy of that assumption. Indeed, it appears equally likely on this record that according nonregulated accounting treatment to billing and collection costs would result in an understatement of interstate costs. In these circumstances, it is appropriate to require subject carriers to continue to classify billing and collection as a regulated activity until such time as it is shown that such accounting treatment misallocates costs between the jurisdictions. We will continue to use our Part 69 rules to remove costs attributable to interstate billing and collection from access elements and the LEC interexchange category. (Emphasis added)

8. Carolina's accounting treatment violates Title 47 of the Code of Federal Regulations Part 32 (Part 32) Section 32.23(a) of the Uniform System of Accounts (USOA) for telephone companies adopted by this Commission. Part 32 Section 32.23(a) states as follows:

> 32.23 Nonregulated activities
>
> (a) This section describes the accounting treatment of activities classified for accounting purposes as "nonregulated." Preemptively deregulated activities and activities (other than incidental activities) never subject to regulation will be classified for accounting purposes as "nonregulated." Activities that qualify

for incidental treatment under the policies of this Commission will be classified for accounting purposes as regulated activities. Activities that have been deregulated by a state will be classified for accounting purposes as regulated activities. Activities that have been deregulated at the interstate level, but not preemptively deregulated, will be classified for accounting purposes as regulated activities until such time as this Commission decides otherwise. The treatment of nonregulated activities shall differ depending on the extent of the common or joint use of ~~assets~~ and resources in the provision of both regulated and nonregulated products and services. (Emphasis added)

CAROLINA'S ARGUMENTS

On July 23, 1990, Carolina filed a response in opposition to the Public Staff's petition. In support of its position on this matter, Carolina set forth its rebuttal arguments as follows:

1. The Public Staff's position is based on an erroneous interpretation of FCC Orders and incorrect statements concerning the impact of Carolina's procedures on intrastate financial monitoring. The Public Staff fails to consider that the Commission's regulatory jurisdiction extends only to intrastate services.

2. The accounting treatment of interstate billing and collection does not impact the analysis of Carolina's regulated/nonregulated apportionments for intrastate monitoring purposes. Carolina's costs associated with interstate billing are allocated to interstate operations using Title 47 of the Code of Federal Regulations Part 36 (Part 36) procedures. Once Part 36 procedures have been completed, the accounting treatment afforded to interstate billing and collection services does not impact intrastate results, whether the accounting for interstate billing and collection is deemed to be regulated or unregulated. The Public Staff seems determined, whether it makes any material difference or not, to make all telephone companies look exactly alike. This is both an unnecessary and impractical objective.

3. The Public Staff's conclusion that the Company's treatment of interstate billing and collection is inconsistent with the Company's CAM is incorrect. Since the CAM fails to list interstate billing and collection as an unregulated service, the Public Staff reasons that the Company's accounting treatment is incorrect and, thus, inconsistent with the CAM. It should be noted, however, that the CAM specifically provides that the manual applies only to those activities that have never been regulated and to those which have been preemptively deregulated. Interstate billing and collection falls into neither category and it was never intended to be included in the CAM. Carolina's billing and collection costs are separated on the basis of Part 36 and not the CAM.

4. Paragraphs 79 and 81 of the FCC's Joint Cost Order, CC Docket No. 86-11, address separation issues and not the underlying accounting treatment to be afforded to interstate billing and collection services. The FCC was simply trying to assure that billing and collection costs should be initially recorded in regulated accounts to assure that those costs are subject to Title 47 of the Code of Federal Regulations Part 69 (Part 69) allocations. Paragraph 80 of the

FCC's Order in CC Docket No. 86-111 states that "In the Billing and Collection Detariffing Order, we determined that the provision of billing and collection service for interexchange carriers is not a common carrier communication service subject to regulation under Title II of the Act." Therefore, if interstate billing and collection service is not a common carrier service subject to regulation, it is unreasonable to conclude that it should, nevertheless, be afforded regulated accounting treatment. Footnote 152 to that same Paragraph 80 indicates that even though the FCC did not preempt state regulation of intrastate billing and collection, it did preempt state regulation of interstate billing and collection services. Such a preemption does not reserve to state regulators the authority to determine the accounting treatment for a clearly preempted interstate service. Additionally, in Paragraph 48 of the FCC's Billing and Collection Detariffing Order, CC Docket No. 85-88, clearly refers to interstate billing and collection service as a deregulated service and states the following:

> The interstate billing and collection costs to be assigned to the deregulated billing and collection service will be calculated in compliance with Part 67 and Part 69 of our Rules and Regulations. Thus, the deregulation of billing and collection services should not shift costs between state and interstate jurisdictions. It merely removes some interstate costs from the regulated arena. (Part 67 was replaced by Part 36 effective January 1, 1988)

5. Even assuming for the sake of argument that the FCC's various statements are ambiguous, this Commission cannot ignore jurisdictional considerations which are a matter of state law. Chapter 62 contemplates that the Commission will regulate only intrastate services. The Commission has no authority other than that given to it by the legislature.

6. Carolina is puzzled by the Public Staff's recommendation. The Company has been booking interstate billing and collection in the same manner for approximately four years. The new method advocated by the Public Staff will not impact the intrastate results reported by Carolina. Apparently, the Public Staff is indirectly trying to change the accounting procedures utilized by some telephone companies who settle on a standard schedule basis rather than a cost basis. Since those companies are generally monitored on a combined basis, requiring them to account for interstate billing and collection as a regulated activity would tend to increase the regulated level of earnings by those companies. Dictating interstate accounting treatment for standard schedule and cost-based companies is inappropriate since it is not consistent with FCC directives and is beyond the scope of the Commission's jurisdiction.

## CONCLUSIONS

Based upon our review of the comments filed by the parties in this proceeding, the Commission agrees with the Public Staff's arguments and finds it appropriate to adopt the Public Staff's position which would require that interstate billing and collection be reported as regulated on Carolina's TS-1 Report, Schedules 3 and 4 and on its Annual Report. This treatment reflects that this activity is considered regulated prior to jurisdictional separations.

In response to Carolina's arguments, the Commission finds it necessary to remind the Company that it is very interested in the allocation of costs

between regulated versus nonregulated operations and interstate versus intrastate operations to avoid subsidization by the Company's intrastate regulated operations. The Commission believes it to be appropriate to require the LEC's to provide general information on these operations. In the TS-1 Reports which are required pursuant to Rule R9-9 adopted in Docket No. P-100, Sub 103, issued November 29, 1988, the Commission requires a calculation of intrastate rate base to be reported on Schedule 3 and a calculation of intrastate net operating income for return to be reported on Schedule 4. Each item of rate base and the components of net operating income for return reported on these schedules are required to be provided under the following classifications:

A. Total Company Operations
B. Total-North Carolina Operations [Regulated and Nonregulated]
C. Regulated-North Carolina Operations [Interstate and Intrastate]
D. Total Intrastate-North Carolina Operations
E. Intrastate IntraLATA Toll-North Carolina Operations
F. Intrastate InterLATA Toll-North Carolina Operations
G. Intrastate Local-North Carolina Operations

The Commission believes that the category for "Regulated-North Carolina Operations," which includes both interstate and intrastate operations, should include interstate billing and collection activity. In fact, Carolina acknowledges that the interstate billing and collection costs are allocated to interstate operations using Part 36 procedures for separating regulated costs between the interstate and intrastate jurisdictions. After Part 36 procedures have been completed, the Commission agrees that the accounting treatment given to interstate billing and collection services does not impact intrastate results.

Carolina's CAM which was issued December 31, 1989, specifies the procedures to apportion total costs from the books of account, as defined by Part 32-USOA, to regulated services and nonregulated activities in conformance with the FCC's guidelines as prescribed in CC Docket No. 86-111, the Joint Cost Order and in accordance with Title 47 of the Code of Federal Regulations Part 64 (Part 64) which sets forth the principles for separating regulated and nonregulated costs. Specifically, the scope of Carolina's CAM states that: "As required by the decision in CC Docket No. 86-111, the nonregulated activities referenced in this Manual are those activities which have never been regulated (e.g., real estate) and those which have been preemptively deregulated (e.g., inside wire). Incidental activities, activities deregulated only by state commissions, or activities deregulated only in the interstate jurisdiction (i.e., billing and collection) are treated as regulated activities." Carolina has argued that its treatment is not inconsistent with its CAM wherein, interstate billing and collection is treated as a regulated activity and is subject to jurisdictional separations procedures under Part 36. This being true for Carolina is exactly the point the Public Staff appears to be making and the Commission agrees that regulated North Carolina operations' data prior to separations should include interstate billing and collection activity.

In Carolina's arguments over the Public Staff's interpretation of the FCC's decision in CC Docket No. 86-111, Carolina states that the Public Staff's position just addresses separation issues and not the ultimate accounting

treatment to be afforded to interstate billing and collection. In Carolina's opinion, since interstate billing and collection service is not a common carrier service subject to regulation, it is unreasonable to conclude that it should be given regulated accounting treatment. The Commission finds Carolina's point of view inappropriate. Carolina did acknowledge that interstate billing and collection should be initially recorded in regulated accounts to assure that those costs are first subject to Part 36 jurisdictional separations procedures, followed by Part 69 access charge procedures for removing costs attributable to interstate billing and collection from the interstate regulated operations. Further, the FCC's Order in CC Docket No. 86-111 clearly states that it is appropriate to require subject carriers to continue to classify billing and collection as a regulated activity until such time as it is shown that such accounting treatment misallocates costs between the jurisdictions. Therefore, the Commission finds that the regulated North Carolina operations should include interstate billing and collection.

Carolina cited Paragraph 48 of the FCC's Billing and Collection Detariffing Order, CC Docket No. 85-88 and stated that the interstate billing and collection service is clearly a deregulated service. The Commission agrees, but recognizes that these costs will be calculated in compliance with Part 36 and Part 69 allocations, which means that these costs are included as regulated prior to the application of Part 36 and Part 69.

Carolina's final argument pointed out that it had been reporting interstate billing and collection this way for approximately four years, apparently ever since the detariffing of interstate billing and collection became effective January 1, 1987. Consequently, Carolina was puzzled as to why the Public Staff was now petitioning for a change and speculated that the Public Staff was indirectly trying to change the accounting procedures used by some telephone companies who settle on a standard schedule basis rather than a cost basis. The Commission does not see how the Company's speculation in this regard has any bearing on whether the Commission should accept or reject the Public Staff's position. The Commission is of the opinion that the Public Staff just wants to get Carolina's reporting in compliance with the FCC view that the interstate billing and collection activity which has been deregulated at the interstate level but not preemptively deregulated will be classified for accounting purposes as regulated activity. The Commission concludes that it is appropriate to require Carolina to report its interstate billing and collection as a regulated activity prior to separations just as all the other cost-based settlement companies do, apparently, believing this to be proper according to the FCC Orders on this matter.

IT IS, THEREFORE, ORDERED that Carolina Telephone and Telegraph Company shall conform its accounting practices such that its interstate billing and collection will be treated as regulated activity on the TS-1 Report Schedules 3 and 4, presently prepared quarterly, and the Annual Report.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of November 1990.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-354, SUB 74

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Application by Carolina Water Service, Inc., of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Raintree Subdivision, Wayne County, North Carolina, and for Approval of Rates | ORDER GRANTING FRANCHISE, REQUIRING REFUNDS, REQUIRING REPORT, AND SETTING RATES |

HEARD IN: Board Room, City Hall, 214 Center Street, Goldsboro, North Carolina, on Tuesday, February 20, 1990, at 6:30 p.m.

Commission Hearing Room, 2115 Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina, on Wednesday, April 11, 1990

BEFORE: Commissioner Robert O. Wells, Presiding; and Commissioners Charles H. Hughes and Laurence A. Cobb

APPEARANCES:

For the Applicant:

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

For the Intervenors:

David T. Drooz, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Public Staff - North Carolina Utilities Commission, representing the using and consuming public

Lemuel Hinton, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 626, Raleigh, North Carolina 27626-0626
For: The Attorney General Office, representing the using and consuming public

BY THE COMMISSION: This matter was initiated on July 27, 1989, when Carolina Water Service, Inc., of North Carolina (Applicant, Company, or CWS) filed an application with the North Carolina Utilities Commission (Commission) seeking authority to acquire a Certificate of Public Convenience and Necessity (certificate or franchise) to provide water utility service in Raintree Subdivision, Wayne County, North Carolina, and for approval of rates.

By letter dated August 17, 1989, Jan Larsen, a utilities engineer with the Public Staff's Water Division, advised Mr. Perry B. Owens, President of CWS, that additional information was needed before the Public Staff would proceed with the application. By filing on September 8, 1989, and September 22, 1989, CWS completed its application filing requirements.

By letter of November 3, 1989, the Public Staff informed CWS that its application was complete and that the Public Staff would continue with the processing of the application.

On November 13, 1989, the Public Staff presented this matter to the Commission at its regularly scheduled conference and recommended that the matter be handled without a public hearing and that public notice be given.

The Commission issued an Order on November 13, 1989, requiring public notice of the application and specified that a public hearing would not be required if significant protest were not received pursuant to the public notice. Said notice also informed the customers of Raintree Subdivision of the general rate increase filed by CWS.

By Petition dated November 25, 1989, signed by customers representing 15 of 25 homes served by CWS, the Commission was informed of service problems in Raintree Subdivision. (This petition was filed with the Commission on January 29, 1990.)

By letter dated January 30, 1990, the Commission was copied with a letter from CWS to its customers in Raintree Subdivision. In the letter to its customers, CWS informed the customers that it was aware of the service problems and would make the needed repairs and upgrade once the Commission had approved its request for the franchise.

On February 1, 1990, the Commission issued an Order delaying the decision on the granting of the franchise, scheduling a public hearing, and requiring public notice.

CWS, by letter dated February 12, 1990, again informed the customers in Raintree Subdivision that it planned to make improvements once the franchise was granted. This February 12, 1990, letter implied that the Commission had delayed the granting of the franchise and had allowed the Raintree Subdivision to be operated without complying with State regulatory standards.

In a letter to Perry Owens, Robert Bennink, General Counsel of the Commission, expressed the Commission's concern about the language and the tone of the February 12, 1990, letter and invited the author of the letter, Mr. Steven Kennedy, to appear at the public hearing to explain his statements.

The public hearing was held as scheduled by the Commission. The following public witnesses appeared and testified during the hearing: Charles McKee, Elaine Wilcox, Rick Verhaeghe, and E. C. Godfrey.

In the petition or through their testimony, these public witnesses complained of the following problems they had experienced: offensive taste, low pH, discoloration of the water, excessive chlorine in the water, excessive phosphates in the water, constant fluctuations in the water pressure, and the high rates charged by CWS. The petition stated that most people in the subdivision had installed filters in their homes or drank bottled water. Three of the public witnesses also indicated that they would prefer being on a sanitary district water system.

CWS offered the testimony of Patrick J. O'Brien, Vice President of Finance; Carl Daniel, Vice President of CWS; and Steve Kennedy, Director of Corporate Operation in support of its application.

The Public Staff offered the testimony of Jim Higdon, Environmental Engineer with the North Carolina Division of Environmental Health, Department of Environment, Health, and Natural Resources; and Andy Lee, Director of the Public Staff's Water and Sewer Division.

By Motion filed on February 26, 1990, the Public Staff presented additional information which it requested the Commission to consider in making its decision on this matter. This information pertained to a possible sale of Raintree Subdivision water system to the Southeastern Sanitary District.

On February 27, 1990, CWS filed information and exhibits requested at the February 20, 1990, hearing. This information included (1) the capital expenditures by CWS for the Raintree Subdivision water system, (2) an update of page 5 of the application filed on July 27, 1989, and (3) details of post-contract developments.

On March 6, 1990, CWS, through its Vice President of Business Development, Jim Cameren, filed a response to the Public Staff's February 26, 1990, Motion.

On March 14, 1990, the Commission issued Notice of Decision granting CWS a certificate of public convenience and necessity to provide water utility service in the Raintree Subdivision. The Commission's Notice stated that it was issued to accommodate a purchaser of a home in the Raintree Subdivision whose loan closing had to be completed by March 15, 1990. The Notice further provided that a complete Order with findings of fact and conclusions would be issued at a later time.

Additional hearing involving the Raintree Subdivision was held on Wednesday, April 11, 1990.

Upon consideration of the application and the entire record in this docket, and the hearing in Goldsboro on February 20, 1990, the Commission makes the following

## FINDINGS OF FACT

1. CWS is engaged in the business of selling water and sewer service to the general public within a broad area of North Carolina. CWS is a wholly-owned subsidiary of Utilities, Inc., a Illinois corporation with its principal office in Northbrook, Illinois.

2. CWS is a public utility corporation organized and existing under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission. CWS is lawfully before the Commission based upon its application for a certificate of public convenience and necessity to provide water utility service in Raintree Subdivision, Wayne County, North Carolina.

3. On July 27, 1989, CWS filed its application for a certificate in Raintree Subdivision. The rates proposed in the application are to be the same

as existing CWS rates. The Company's proposed rate increase in the Sub 81 docket has been consolidated with this Raintree application docket.

4. The water system has never been franchised. The developer of the Raintree Subdivision is in bankruptcy proceedings under Chapter 11 of the Bankruptcy Code.

5. CWS began operating the system in December 1988. The Company made improvements by adding chlorination and pH-balancing facilities to improve the safety of the water, providing a certified operator, and obtaining an easement for a new source of power. CWS has also received conditional approval to employ the sequestration process to remove excess iron.

6. CWS is unwilling to make the significant capital expenditures to improve the quality of water in Raintree until it receives a certificate from the Commission. The most significant improvement as disclosed by the evidence will be the installation of an iron filtration system in the event the sequestration treatment is unsatisfactory.

7. CWS has undertaken some negotiations with the Eastern Wayne and the Southeastern Wayne Sanitary District for the District to acquire the Raintree water system. These negotiations are inconclusive at the present time.

8. The water system is approved to ultimately serve 250 homes, but presently serves approximately 26 homes and can provide service up to 49 homes under the existing facilities, which include one well. A second well is required by the Division of Environmental Health (DEH) before the system can begin serving 50 or more customers.

9. The Division of Environmental Health (formerly Division of Health Services) will require the installation of iron removal equipment to the water system if the sequestration procedures do not "provide trouble-free, satisfactory water to the customers . . ." (Letter of DEH to the developer dated August 22, 1986. The excessive iron accounts for the brownish color of the water complained of by the customers.

10. Iron filtration equipment will cost a minimum of $20,000 and may exceed $30,000.

11. CWS began billing the customers of the water system in September 1989, for service in arrears for July and August, prior to obtaining a certificate, or temporary operating authority, from the Commission and approval of rates.

12. CWS did not apply to the Commission for temporary operating authority to begin charging rates in the Raintree Subdivision, although on at least one prior occasion it had applied to the Commission for temporary operating authority to operate another water system.

13. At the hearing in Goldsboro on February 20, 1990, the customers complained about the high chlorine content in the water, low Ph, offensive water taste, fluctuating water pressure, and a brownish color that appears in the water at times. The customers also testified that water quality has improved in the months prior to the hearing.

14. On March 14, 1990, the Commission issued Notice of Decision granting a certificate of public convenience and necessity to provide water utility service in Raintree Subdivision.

## CONCLUSIONS

I

CWS should be granted a certificate of public convenience and necessity to provide water utility service in Raintree Subdivision, Wayne County, North Carolina.

On March 14, 1990, the Commission issued Notice of Decision granting to Carolina Water Service a certificate of public convenience and necessity for the subject water system. The Commission reaffirms this Notice of Decision granting certificate subject to the following provision. The evidence at the hearing disclosed that although the water system had been approved to serve 250 homes, the water system could only serve 49 homes under existing facilities, which include one well. The regulations of the Division of Environmental Health (formerly Division of Health Services) require that the Company install a second well before the system can begin serving 50 or more customers. There was also evidence that the water has an excessively high iron content and that the developer received conditional approval from DEH to employ the sequestration process to remove the excess iron. In a letter of August 22, 1986, DEH provided that iron removal equipment must be installed if the sequestration process does not "provide trouble-free, satisfactory water to the customers." There was further evidence that if the sequestration process is unable to remove the excess iron in a manner satisfactory to DEH, the Company would install iron filtration equipment.

The Commission is of the opinion, and so finds and concludes, that the grant of certificate allowed herein should be subject to the provision that CWS shall serve no more than 49 homes in the Raintree Subdivision until such time as CWS places into operation a second well and an iron removal program to provide "trouble-free, satisfactory water to the customers."

II

CWS was without authority to charge rates in the Raintree Subdivision until such time as the Commission had granted to CWS a certificate of public convenience and necessity and approved the rates to be charged.

The evidence disclosed that CWS began operating the water system in December 1988; that on July 27, 1989, CWS filed its application with the Commission for a certificate to serve the Raintree Subdivision; that in September 1989 the Company began charging the customers in Raintree the Company's existing rates although CWS had not received a certificate and approval of rates from the Commission nor had the Company requested and received temporary operating authority; that by Notice of Decision issued on March 14, 1990, the Commission granted a certificate to CWS to provide water utility service in Raintree Subdivision.

The Commission disapproves of the manner in which CWS began operations of the water system and the charging of rates in Raintree Subdivision without

first having obtained a certificate, or a grant of temporary operating authority, and approval of rates. G.S. 62-110 provides that "[n]o public utility shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation. . . " (Emphasis added.) The Commission is granted authority to establish rates for all public utilities subject to its jurisdiction. "A rate is made, fixed, established or allowed when it becomes effective pursuant to the provisions of this Chapter." G.S. 62-130(a). Commission Rule R7-4 provides that rates for the sale of water shall not become effective until filed with and approved by the Commission. The Commission's procedure is to establish rates by the issuance of a written Order approving rates.

The Company acknowledged at the hearings in this docket and in Docket No. 354, Sub 81 (the general rate case), that it should have received the appropriate authority from the Commission before charging rates to the Raintree customers. In its defense the Company cited what it perceived to be excessive delays in the application process. Delays in the application process do not, however, excuse the charging of rates by a utility without first having obtained the written authority from the Commission to do so. Company witness O'Brien acknowledged that the option of obtaining temporary operating authority was available to the Company until such time as it had received its certificate and that the Company had requested temporary operating authority on a prior occasion. A timely request for temporary operating authority and for approval of rates thereunder would have allowed CWS to begin charging rates as early as December 1988 if the Company felt that it must begin the operation of the water system at that time.

This is the latest in a series of applications by public utility water and sewer companies in which the Commission has learned that operations have begun and rates have been charged before the Commission has had the opportunity to consider the applications and issue an order granting certificate and approving rates. A utility which violates G.S. 62-110 and Rule R7-4 runs the risks associated with having its application denied or its proposed rates denied or modified. CWS is the largest and one of the most experienced water and sewer companies regulated by the Commission and holds itself out as being one of the better-operated companies. The Company should hereafter refrain from beginning operations or charging rates until such time as it has received the proper authority from the Commission to do so.

We repeat our earlier statement that any utility that wishes to begin operations and to charge rates before the application process has been completed may request the Commission for a grant of temporary authority and for approval of rates.

Although the Notice of Decision issued March 14, 1990, did not expressly approve the rates proposed by CWS for the Raintree Subdivision, it was the intention of the Commission that the existing rates proposed in the application become effective on and after March 14, 1990. Under the circumstances of this docket, the Commission will consider the rates approved herein as effective for service rendered on and after March 14, 1990.

CWS shall be required to refund to its customers in Raintree Subdivision the rates collected by it prior to March 14, 1990, the date in which the Commission issued its Notice of Decision granting a certificate. The refund shall be paid to the customers in equal monthly installments as credits on their bills over a 12-month period. In the event the system is sold to the Southeastern Wayne Sanitary District within the 12-month refund period, CWS shall be excused from paying the balance of the refund to the customers. CWS may elect to make refund to its customers in one payment.

III

CWS shall continue the iron removal treatment under the supervision of the Division of Environmental Health. CWS is also encouraged to continue negotiations with the Southeastern Wayne Sanitary District to explore the possibility of water service being provided to Raintree Subdivision by that agency.

At the hearing in Goldsboro on February 20, 1990, the customers complained about the excessive iron in the water which causes the water to appear brownish in color. The evidence disclosed that the Raintree water system has an iron content in excess of DEH standards and that the Company is undertaking iron removal treatment by use of the sequestration process. The Company testified that if the sequestration procedures do not work to remove the excessive iron from the water, DEH will require the installation of filtration equipment. Mr. Daniel testified that iron filtration equipment will cost a minimum of $20,000 and may exceed $30,000.

The Company also testified that there had been some negotiations with the Eastern Wayne and the Southeastern Wayne Sanitary District about the possibility of service being provided by that agency. The results of these negotiations are inconclusive at the present time. There was evidence that the Sanitary District had not yet begun its operations. The Commission encourages CWS to continue to explore the possibility of the Sanitary District providing water to the Raintree Subdivision.

In any event CWS should continue its iron removal treatment in the subdivision under the supervision of the Division of Environmental Health.

IT IS, THEREFORE, ORDERED as follows:

1. That, as set forth in the Order of March 14, 1990, in this docket, CWS is granted a certificate of public convenience and necessity to provide water utility service in the Raintree Subdivision, Wayne County, North Carolina. A copy of this certificate was attached as Appendix A to the Commission's Order of March 14, 1990, and shall serve as evidence of the authority granted herein. Provided, however, that the grant of authority allowed herein is subject to the limitation that CWS shall serve no more than 49 homes in the Raintree Subdivision until such time as CWS places into operation a second well and an iron removal treatment program to provide "trouble-free, satisfactory water to the customers."

2. That CWS shall be authorized to charge, effective for service rendered on and after March 14, 1990, the existing rates of the Company.

3. That, beginning in the next billing after the date of this Order, CWS shall refund to its customers in Raintree Subdivision the rates collected by it prior to March 14, 1990. The refund shall be paid to its customers in equal monthly installments as credits on their bills over a 12-month period. In the event the Raintree water system is sold or transferred to the Southeastern Wayne (or Eastern Wayne) Sanitary District within the 12-month refund period, CWS shall be excused from paying the balance of the refunds to the customers. CWS may elect to make the refunds ordered herein in one payment.

4. That, within ten days after receipt of this Order, CWS shall mail or hand deliver to its customers the Notice attached as Appendix B to this Order.

5. That the Company shall file a report on the customer refunds when all refunds have been made pursuant to this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of April 1990.

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

APPENDIX A

DOCKET NO. W-354, SUB 74
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By These Presents, That

CAROLINA WATER SERVICE, INC., OF NORTH CAROLINA

is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide water utility service
in

RAINTREE SUBDIVISION

Wayne 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 25th day of April 1990.

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

APPENDIX B

DOCKET NO. W-354, SUB 74

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Applicant by Carolina Water Service, Inc.,<br>of North Carolina, 2335 Sanders Road,<br>Northbrook, Illinois, for a Certificate<br>of Public Convenience and Necessity to<br>Furnish Water Utility Service in Raintree<br>Subdivision, Wayne County, North Carolina,<br>and for Approval of Rates | ) | NOTICE TO THE CUSTOMERS |

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has granted a certificate of public convenience and necessity to Carolina Water Service to provide water utility service in the Raintree Subdivision, Wayne County, North Carolina.

The Commission's Order also required the Company to continue the excess iron removal treatment in compliance with the rules and regulations of the North Carolina Division of Environmental Health in order to provide trouble-free, satisfactory water to the customers. The Company was also encouraged to continue negotiations with the Southeastern Wayne Sanitary District.

The rates approved for the water system are the Company's existing rates. The Commission, however, expressed its disapproval of the Company's having begun operations and the charging of rates prior to obtaining the necessary authority from the Commission to do so. The Commission ordered that CWS shall be required to refund to its customers in Raintree Subdivision the rates collected by it prior to March 14, 1990, the date in which the Commission issued its Order granting a certificate. The refund to customers shall be paid to the customers in equal monthly installments as credits on their bill over a 12-month period. (CWS may elect to make the refunds in one payment.) In the event the water system is sold or otherwise transferred to Southeastern Wayne (or Eastern Wayne) Sanitary District within the 12-month refund period, CWS shall be excused from paying the balance of the refund to its customers.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of April 1990.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-95, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Ned J. Bowman and Other Residents of the Crestmont Development, Hickory, Catawba County, North Carolina,<br>Complainants | ) | RECOMMENDED ORDER REQUIRING SUBMISSION OF A PLAN OF IMPROVEMENT WITHIN 30 DAYS |
| v. | ) | |
| Huffman Water Systems, Inc.,<br>Respondents | ) | |

HEARD: December 7, 1989, at 7:00 p.m., in City Hall, 3rd Floor Conference Room, 76 N. Center Street, Hickory, North Carolina

BEFORE: Commissioner Robert O. Wells

APPEARANCES:

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

WELLS, HEARING COMMISSIONER: On October 17, 1989, Ned Bowman and other residents of Crestmont Development in Catawba County filed a Petition requesting the Commission for an investigation of the water service provided by Huffman Water Systems, Inc., ("Huffman") a division of Mid South Water Systems, Inc., in the Crestmont Development. The complaint alleged that the customers have experienced "many periods of insufficient water pressure, muddy water unsuitable for consumption or household use, and are now concerned as to its purity."

On October 20, 1989, Jerry H. Tweed, Executive Vice-President of Mid South Water Systems, Inc., filed a letter with the Commission responding to the Petition of the Crestmont residents.

On November 7, 1989, the Commission issued an Order scheduling a hearing on the complaint of the Crestmont residents in Hickory on December 7, 1989, at the City Hall. The Order also instituted an investigation on the complaint of Mr. Bowman and the other residents. The Order requested the Public Staff and the North Carolina Division of Health Services ("DHS") to assist the Commission in the investigation of the complaint and to make a report on their investigation at the hearing. Attached to the Order Scheduling Hearing were the Petition of the residents and the response thereto of Mr. Tweed.

The matter came on for hearing as scheduled on December 7, 1989, in Hickory. A number of residents of Crestmont appeared at the hearing and offered testimony in support of their complaints: Ned J. Bowman, Dwight

Proctor, Brian Hudson, Kenneth Proctor, J. T. Hubbard, Marjorie Mallonee, Barbara Lee, Lucille Fulbright, Jean Benfield, and Roy Brewer. Testimony was also presented by Jerry Twiggs, Public Utilities Director of the City of Hickory, and James Kier, Director of Planning and Development for Catawba County. Jerry Tweed, Executive Vice-President of Mid South Water Systems, Inc. and Huffman Water Systems, testified for the utility. The Public Staff presented the testimony of Andy Lee, Director of the Water and Sewer Division of the Public Staff.

A number of customers presented samples of water in support of their testimony.

Upon consideration of the testimony and exhibits presented at the hearing in Hickory on December 7, 1989, and the entire record in this docket, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. Huffman Water Systems, Inc., a subsidiary of Mid South Water Systems, Inc., is a public utility regulated by the Commission and provides water utility service to approximately 75 customers in Crestmont Development, Catawba County, near the City of Hickory.

2. On October 17, 1989, Ned Bowman and other residents of Crestmont Development filed a Petition requesting the Commission to investigate the water service provided by Huffman in the Crestmont Development. The customers alleged that they have experienced "many periods of insufficient water pressure, muddy water unsuitable for consumption or household use, and are now concerned as to its purity."

3. The residents have informally complained to the Commission about these problems for at least one year.

4. At the hearing in Hickory on December 7, 1989, a number of customers attended the hearing and testified about the problems they have experienced with the water service provided by Huffman.

5. The problems experienced by the customers include the following: low water pressure; "muddy" or brownish-colored water; discoloration to clothing and appliances resulting from the discolored water; a thin film on the water which coats everything it touches; appliances such as hot water heaters and commodes "rusting out" from the high iron content of the water; and company non-responsiveness to customer calls.

6. Most of the customer complaints were on the low water pressure and the muddy water. Customers testified that they have experienced these problems for a number of years. (Some customers have lived in Crestmont for at least 30 years.) The pressure problem is particularly acute at times of peak usage; washing machines, for example, may take up to one-half hour to fill; customers may not have sufficient pressure to take a shower. The muddy or discolored water is also a source of irritation and concern; some customers will not drink the water or allow their guests and families to drink it.

7. The water system in Crestmont Development is an old system, having been installed in the 1950s. The system consists of three wells and a distribution system of galvanized pipe. Well No. 1, which is the main well, has an excessively high iron content in the raw water--5 parts per million (ppm) of iron; after the water is treated by an iron filter, the iron content in Well No. 1 is approximately .3 ppm. (The DHS allowable limit for iron is .3 ppm.) Well No. 2, which has no filter, has an iron content of .3 ppm. Well No. 3, which also has no filter, has approximately .3 to .4 ppm. These results were obtained by the Public Staff in tests conducted prior to the hearing. The existing well sites would not be approvable today under the standards of DHS, since the well lots are too small; there are houses within 100 feet of each of the three wells.

8. The distribution system, which consists of two-inch or smaller sized pipe, is undersized based on today's DHS standards.

9. The galvanized pipe in the water system is subject to corrosion and therefore accumulates rust deposits over time. The opinion of the expert witnesses is that the "muddy" water complained of results from the accumulated iron breaking loose within the pipes and flowing to the customers' homes. This problem is especially acute when the system has an outage or a broken pipe. The use of blow off valves is an appropriate treatment to solve the problem of corrosion and rust deposits in the galvanized pipes. The Crestmont water system, however, does not have blow off valves. Moreover, since the mains were constructed by Mr. Huffman in the middle of the streets, it will be difficult to install blow off valves.

10. The use of PVC piping will eliminate or greatly reduce the iron deposit accumulation problem.

11. If blow off valves are installed and the Company begins the flushing of the mains to reduce the rust accumulation, the customers will suffer greater discomfort for at least six months from the discolored water being flushed away.

12. Huffman/Mid South is willing to make "reasonable improvements to the existing system that are not cost prohibitive."

13. A test of the water pressure prior to the hearing, and during an off-peak time, disclosed that the pressure was adequate. However, water pressure becomes inadequate during the peak hours of the day.

14. The water system of the City of Hickory is very near the Crestmont Development; in fact, the City water system is in part of the development at the present time and has six customers on it.

15. The City of Hickory, with the assistance of Catawba County, is willing to furnish City water service to the Crestmont Development provided that there are a sufficient number of customers willing to connect their homes to the City system. In fact, ten of the customers who signed the Petition can connect to the City now; overall, there are 50 to 60 homes in the development that can now connect to the City system.

16. The City will assess the Crestmont customers a fee of $635.00 to connect to the City; there will not be a frontage fee. (If the development is later annexed by the City, a frontage fee will be charged in addition to the $635.00 connection fee.) The $635.00 connection fee is applicable both inside and outside the City.

17. The City has no plans to annex the Crestmont Development within the next five years.

18. If there is a sufficient commitment from the customers in Crestmont, the City is prepared to provide water to them. On January 30, 1990, the Commission was advised by the Public Utilities Director of the City of Hickory that the City plans to construct the City water system into the Crestmont Development whether or not Mid South/Huffman elects to abandon the water system in Crestmont. The City's decision was the result of a Petition for City water service received from the Crestmont residents after the Commission hearing on December 7, 1989, in Hickory.

19. Mid South/Huffman is concerned that if the City water system goes into the Crestmont Development, the Company would be left with only a few customers, resulting in an unprofitable system. In that event, the Company would prefer to be allowed to abandon the franchise in Crestmont.

20. The most appropriate long-term solution to the water problems complained of in the Crestmont Development would be for the City of Hickory to replace Huffman Water System as the supplier of water in the subdivision.

21. Huffman performs the monthly sampling of the water as required by State law and the regulations of DHS.

22. Huffman/Mid South's procedure to take calls from customers during the 24-hour period is adequate.

## CONCLUSIONS

### I

The Petitioners/Complainants have successfully shown to the Commission that there are serious problems with the quality and quantity of water being provided to them in the Crestmont Development by Huffman.

The Hearing Commissioner concludes that the water service provided by Huffman in the Cresmont Development is inadequate and needs to be improved to DHS standards.

The testimony of the customers disclosed that they are experiencing serious problems. These problems include "muddy" or discolored water and low water pressure during times of peak use. The customers testified in great detail about the distress and discomfort which these problems have caused them: the customers will not drink the discolored water, nor will they allow their families and guests to drink it. The customers have also experienced problems with appliances such as commodes and hot water heaters "rusting out" due to the high concentration of iron in the water. Clothing has been ruined when washed in the discolored water. The low water pressure during peak times also causes

discomfort and inconvenience to the customers; they are unable to take showers or to use appliances such as washing machines due to the inadequate flow of water.

The testimony of Mr. Tweed and Mr. Lee, which the Commission treats as expert testimony, disclosed that the water system in Crestmont Development is an old system, having been installed in the 1950s. The main well, Well No. 1, has an excessively high iron content prior to treatment--5 parts per million of iron--and has an iron content of approximately .3 ppm after treatment by an iron filter. The other two wells, which have no filter, have an iron concentration of approximately .3 to .4 ppm. The allowable limit for iron under DHS standards is .3 ppm.

The distribution system consists of galvanized pipe, which is subject to corrosion and iron deposit accumulation over time. The opinion of Mr. Lee and Mr. Tweed was that the "muddy" water complained of results from the accumulated iron deposits breaking loose within the galvanized pipes and flowing to the customers' homes. This problem appears to be especially acute when the water system has a broken pipe or an outage.

Mr. Lee also testified that the existing well sites are not approvable under today's standards of the DHS, since the well lots are too small. There are houses within 100 feet of three wells. Mr. Tweed and Mr. Lee also testified that the size of the mains were, for the most part, smaller than that allowed under today's DHS standards.

Mr. Tweed recommended that a possible solution to the muddy water problem was to install blow off valves on the distribution system. He pointed out, however, that the installation of blow off valves would prove difficult since Mr. Huffman had installed the water mains in the middle of the streets. Mr. Tweed also admitted that the use of blow off valves may not solve the problem, estimating that there was a 75 percent possibility that the blow off valves would work. He further pointed out that if blow off valves are installed and the flushing of the water by the Company begins to dislodge the iron deposits, the customers would experience great discomfort during the six months or so that it would take to flush the pipes. He pointed out that a lot of debris was entrapped within the mains over the 30-year period and that this debris would break loose and turn up in the customers' homes.

Mr. Lee pointed out that PVC pipe is used today in the water industry instead of galvanized pipe and that PVC pipe would result in no or little accumulation of iron deposits.

Mr. Tweed did not offer to replace the existing galvanized pipe with PVC piping, nor did he offer to bring the well sites into compliance with today's DHS standards.

II

The most appropriate long-term solution to the water problems in the Crestmont Subdivision would be for the City of Hickory to replace Huffman Water Systems as the supplier of water in the subdivision.

Jerry Twiggs, Public Utilities Director of the City of Hickory, and James Kier, Director of Planning and Development for Catawba County, appeared at the hearing and offered testimony about the assistance that the City and Catawba County would be able to render in the Crestmont Development. These officials testified that the City of Hickory, with the assistance of Catawba County, is willing to provide City water service to the Crestmont Development, subject only to the condition that there are a sufficient number of customers willing to connect their homes to the City system. Mr. Twiggs pointed out that there are approximately 50 to 60 homes in the development that can now connect to the City system.

The City also advised the Commission that it would assess the Crestmont customers a one-time fee of $635.00 to connect their homes to the City water system. The City also stated that a frontage fee would not be charged unless the development is annexed into the City.

In his testimony, Mr. Lee recommended that the best solution for the Crestmont Development would be for the City to become the supplier of water in the subdivision.

Mr. Tweed testified that his Company was willing to make "reasonable improvements to the existing system that are not cost prohibitive." He expressed the concern of Mid South that, if the City water system is constructed into the Crestmont Development, the Company would be left with only a few customers, resulting in an unprofitable system. In that event, Mr. Tweed stated that the Company would prefer to be allowed to abandon its franchise in Crestmont.

The Commission is of the opinion that the best long-term solution to the water problems complained of in the Crestmont Development would be for the City of Hickory to replace Huffman Water Systems as the supplier of water in the subdivision. The Hearing Commissioner also concludes that the terms of the City's offer to supply water to Crestmont are reasonable.

In so deciding, the Hearing Commissioner notes the following: The customers in Crestmont have complained of the poor water quality for a number of years, and to date there has been no satisfactory resolution of their problems. The Hearing Commissioner notes Mr. Tweed's testimony to the effect that the installation of blow off valves may solve the problems of the discolored water. The questions remains, however, Why did Mid South/Huffman not undertake the installation of blow off valves prior to the hearing? The answer, of course, lies partly in the fact that the water system was constructed by Mr. Huffman more than 30 years ago in a manner not consistent with the currently approved standards of DHS. For example, Mr. Huffman placed the mains in the middle of the streets, making the installation of blow off valves difficult to do; the well lots of the three existing wells are too small by today's DHS standards.

The most serious defect in the Crestmont water system is that the distribution system consists of galvanized pipe, which is subject to corrosion and iron deposit accumulation over time. The use of PVC piping would eliminate or greatly reduce the problem of iron deposit accumulation. Mid South/Huffman did not offer to replace the existing galvanized pipe with PVC piping.

Mid South did agree to make "reasonable improvements to the existing system that are not cost prohibitive." No evidence was presented on the cost of making the necessary improvements to correct the Crestmont water system and to bring it into compliance with the standards of DHS. The Commission is of the opinion that such improvements may very well be "cost prohibitive." It may be the case that when compared with the City's offer to provide water service at a connection fee of $635.00 per customer, connection to the City of Hickory water service may be the most economical solution to the problems complained of.

In any event the Commission was advised on January 30, 1990, that the City of Hickory plans to construct the City water system into the Crestmont Development whether or not Mid South/Huffman elects to abandon its franchise in Crestmont. The Public Utilities Director of the City advised the Commission by telephone that the City's decision was the result of a Petition for City water service received from the Crestmont residents after the hearing on December 7, 1989.

III

Mid South/Huffman should be required to submit to the Commission a schedule of improvements that it will be willing to undertake to correct the problems complained of in the Crestmont Development and to bring the water system into compliance with the standards of the DHS. The schedule should list, in detail, the improvements necessary to be made, the cost of such improvements, and the time in which such improvements will be completed. The Commission will examine the schedule, allow comments to be filed by the Public Staff and DHS, and will then issue a further Order.

Mid South may also elect to advise the Commission that the improvements needed to be made are in fact "cost prohibitive" and that it is willing to abandon the water system once the City of Hickory makes its water service available to all of the customers in Crestmont.

Although the Hearing Commissioner concludes that the most appropriate long-term solution to the water problems complained of would be for the City of Hickory to replace Huffman Water System as the supplier of water in the subdivision, the Commissioner further concludes that Mid South/Huffman should be given the opportunity to demonstrate its willingness to correct the problems complained of in a manner that will meet the standards of the Division of Health Services. The Commission will not be satisfied with cosmetic improvements. The problems complained of by the Crestmont customers at the hearing in Hickory are serious and acute, and these customers should no longer suffer the serious problems to which they have testified.

IT IS, THEREFORE, ORDERED as follows:

1. That, within 20 days after the effective date of this Order, Mid South/Huffman shall submit to the Commission a detailed schedule of improvements which it plans to make in the Crestmont Development to correct the problems complained of in a manner that will meet the requirements of the Division of Health Services and the findings and conclusions of this Order. The schedule of improvements shall contain a detailed list of the improvements to be made, the cost of such improvements, and the time in which such improvements will be completed. The Commission will examine this schedule, allow comments to be filed by the Public Staff and DHS, and will then issue a further Order. If, after consideration of the improvements that will need to be made in Crestmont, Mid South/Huffman determines that the improvements will be cost prohibitive, it may request the Commission for permission to abandon the water system once the City of Hickory water system becomes available to the Crestmont Development.

2. That comments by the Public Staff and DHS are requested to be made within 20 days after Mid South/Huffman files its schedule of improvements with the Commission.

3. That a copy of this Order shall be sent to the City of Hickory and to Catawba County.

4. This this docket shall remain open for further Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of January 1990.

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

DOCKET NO. W-887, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Dare Resorts, Incorporated, c/o Russell E. Twiford, Twiford, O'Neal & Vincent, Attorneys at Law, Post Office Box 99, Elizabeth City, North Carolina 27909,<br>Complainant<br>vs.<br>Outer Banks Beach Club, Inc.,<br>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 September 5, 1990, at 9:30 a.m.

BEFORE: Commissioner Julius A. Wright, Presiding; Commissioners Sarah Lindsay Tate, Ruth E. Cook, Robert O. Wells, and Charles H. Hughes

APPEARANCES:

For Outer Banks Beach Club, Inc.:

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

For Dare Resorts, Incorporated:

F. Kent Burns, Burns, Day & Presnell, P.A., Attorneys at Law, Box 10867, Raleigh, North Carolina 27605

BY THE COMMISSION: On June 22, 1990, Commissioner Hearing Examiner Wilson B. Partin, Jr., entered a Recommended Order in this docket permanently enjoining the Outer Banks Beach Club, Inc. (Respondent), from terminating, or threatening to terminate, the sewer service to Dare Resorts, Incorporated (Complainant), for failure to pay a tap-on fee for sewer capacity of not more than 13,500 gallons per day or the usage fees for November and December 1986 and affirming the Interlocutory Order entered in this docket on November 7, 1989.

On July 9, 1990, Outer Banks Beach Club, Inc., filed "Exceptions to Recommended Order" and requested the Commission to schedule an oral argument on the exceptions.

By Order entered in this docket on August 10, 1990, the Commission scheduled an oral argument on exceptions for September 5, 1990, at 9:30 a.m.

The matter subsequently came on for oral argument on exceptions before the Commission at the appointed time and place. Counsel for both the Complainant and the Respondent were present and participated in the oral argument.

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 June 22, 1990, 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 Outer Banks Beach Club, Inc., should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions filed by the Outer Banks Beach Club, Inc., with respect to the Recommended Order entered in this docket on June 22, 1990, be, and the same are hereby, overruled and denied.

2. That the Recommended Order entered in this docket by Hearing Examiner Wilson B. Partin, Jr., on June 22, 1990, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of September 1990.

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

DOCKET NO. W-218, SUBS 70, 71, 72, and 73

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Hydraulics, Ltd., Post Office Box 35047, Greensboro, North Carolina, for Authority to Increase Its Rates for Providing Water Utility Service in All Its Service Areas in North Carolina )

and

In the Matter of
Application by Hydraulics Limited, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Allendale Heights Subdivision in Randolph County, North Carolina, and for Approval of Rates )

and

In the Matter of
Application by Hydraulics Limited, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in River Run Subdivision in Randolph County, North Carolina, and for Approval of Rates )

and

In the Matter of
Application by Hydraulics Limited, for Authority to Transfer the Franchise to Provide Water Utility Service in Ridgeway Courts Subdivision, Rockingham County, North Carolina, from Clear Flow Utilities, Inc. and for Approval of Rates )

ORDER GRANTING RATE INCREASE AND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: City Hall, Council Chambers, 76 North Center Street, Hickory, North Carolina, on Tuesday, October 9, 1990 at 7 p.m.

Guilford County Courthouse, Courtroom 2A, No. 2 Governmental Plaza, Greensboro, North Carolina, on Wednesday, October 10, 1990 at 7 p.m.

Council Chambers, Municipal Building, 202 South Eighth Street, Morehead City, North Carolina, on Thursday, October 11, 1990 at 7 p.m.

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, October 30, 1990, at 9:30 a.m.

WATER AND SEWER - RATES

BEFORE: Commissioner Charles H. Hughes, Presiding, Chairman William W. Redman, Jr., and Commissioner Ruth E. Cook

APPEARANCES:

For Hydraulics, Ltd.:

William E. Grantmyre, Attorney at Law, Post Office Drawer 4889, Cary, North Carolina 27511

For the Using and Consuming Public:

Victoria O. Hauser, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: This matter arose on May 31, 1990, upon the filing of an application by Hydraulics, Ltd., (Hydraulics, the Applicant or the Company) for authority to increase its rates and charges for providing water utility service in all its service areas in North Carolina. The Company also filed a motion for an interim rate increase on June 19, 1990. Subsequent to scheduling of oral argument on the motion, the Applicant and the Public Staff proposed a settlement of the issue of interim rates. The Commission by Order on Interim Rates dated July 12, 1990, authorized an interim rate increase of twenty-one cents ($.21) per 1,000 gallons used per month, subject to refund. The Order also cancelled the oral argument scheduled for July 13, 1990.

On August 20, 1990, the Company filed an application with the Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Allendale Heights Subdivision, Randolph County, North Carolina. By Order dated October 5, 1990, the Commission consolidated the hearing on this application with the hearings on the pending rate case, granted temporary operating authority, and approved interim rates. On September 19, 1990, the Company filed an application with the Commission for a Certificate of Public Convenience and Necessity to provide water utility service in River Run Subdivision, Randolph County, North Carolina. By Order dated October 5, 1990, the Commission consolidated the hearing on this application with the hearings on the pending rate case, granted temporary operating authority, and approved interim rates.

On October 5, 1990, Hydraulics filed an application with the Commission for authority to acquire the franchise for providing water utility service in Ridgeway Courts Subdivision, Rockingham County, North Carolina from Clear Flow Utilities, Inc. and for approval of rates. The Applicant was serving as emergency operator in this subdivision at the time of application. By Order dated October 5, 1990, the Commission consolidated the hearing on this application with the hearings on the pending rate case.

The matters came on for hearing on October 9, 10, and 11, 1990, for the purpose of receiving testimony from public witnesses regarding quality of service and concerns regarding rates. The following customers of Hydraulics testified: from Hilltop Subdivision - Larry Starnes; from Jamestown Subdivision - Jeff Shook, Scott Little, Tommy Cansler, Richard Savage, and John Cornacchio; from Ponderosa Subdivision - Joann Sharp, Mickey Lafone, and Scotti Lafone;

from Chatham Subdivision - Kent Thomas; from Clarendon Gardens Subdivision - William Kanzler, Ray Gamel, and Ward Minkler; from Ridgeway Courts Subdivision- Henry Jones; and from Shade Tree Acres Subdivision - Daisy Beaver and Guy Beaver.

The hearing resumed on October 30, 1990, at which time six (6) additional customers of Hydraulics testified: from Kimberly Court Subdivision - Bruce Spry, James Owen, Eddie Grubb, and Nancy Lloyd; and from Chatham Subdivision - John Peffley and Liz Peffley. The Applicant then presented the testimony and exhibits of Manuel Perkins, President of Hydraulics, Ltd. The Public Staff presented the testimony and exhibits of David Poole, Staff Accountant, Andy Lee, Director, Water Division, and Kenneth Rudder, Utilities Engineer.

Based on the foregoing, the evidence adduced at the hearing, and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. The Applicant, Hydraulics, Ltd., is a public utility providing water utility service to more than 2,717 customers in approximately 60 subdivisions in fourteen counties in North Carolina and is subject to the jurisdiction of this Commission.

2. The Applicant's approved rates prior to July 12, 1990, are as follows for the majority of its systems:

Metered rates: Monthly

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| Base charge, zero usage | $ 8.50 |
| Commodity charge per 1,000 gallons | 1.80 |

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|---|---|
| Flat rates: Monthly (Westview and Shade Tree Acres) | $15.50 |

3. The Applicant's approved monthly metered rates for Beachwood Cove Subdivision, Canterbury Trails Subdivision, Crestview Subdivision in Rowan County, Kimberly Court Subdivision, and Lancer Acres Subdivision, prior to July 12, 1990, are as follows:

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|---|---|
| Base charge, zero usage | $ 7.50 |
| Commodity charge per 1,000 gallons | 1.59 |

4. The Applicant's approved interim rates as of July 12, 1990, included an increased commodity charge of twenty-one cents ($.21) per thousand gallons in all systems with metered rates.

5. The Applicant has requested the following rates for all systems in its service area:

Metered rates: Monthly

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|---|---|
| Base charge, zero usage | $ 9.00 |
| Commodity charge per 1,000 gallons | 2.32 |

Flat rates: Monthly $18.00

6. The Applicant is providing generally adequate water utility service. Several systems, however have experienced significant service problems, frequently involving current chemical treatment of the water or need for treatment. The Applicant has agreed to take appropriate action to address these problems, including weekly inspection visits to each well site.

7. The Public Staff has conducted an audit of Hydraulics, Ltd., and based on its findings has proposed, and the Company has stipulated to, the following rates:

Metered rates: Monthly

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|---|---|
| Base Charge, zero usage | $ 8.51 |
| Commodity charge per 1,000 gallons | 2.41 |

Flat rates: Monthly $18.00

8. The test period established for use in this proceeding is the twelve month period ended December 31, 1989, adjusted for actual changes in the Applicant's costs, revenues, and property used and useful in providing water utility service.

9. The Applicant's original cost rate base is $289,255 which includes utility plant in service of $1,556,854 and an allowance of cash working capital of $70,338, less accumulated depreciation of $214,505, average tax accruals of $10,251 and contributions in aid of construction of $1,113,181.

10. The annualized level of net operating revenue under the Applicant's present rates is $642,902; and under its proposed rates and those recommended by the Public Staff is $768,143.

11. The annualized level of reasonable and appropriate operating revenue deductions under the Applicant's present rates are $658,286 and under the rates requested by the Company and approved herein are $692,131. These amounts include annual depreciation expense of $43,349.

12. The Applicant in this proceeding has accepted all the Public Staff's accounting and engineering adjustments pertaining to the general rate case and has agreed to the Public Staff's recommended rates.

13. The water rates approved herein produce a margin on operating revenue deductions which is just and reasonable and represent an increase of $125,241

in annual net operating revenues. The rate of return is negotiated and nonprecedential in nature.

14. The rates contained in Appendix A, attached hereto, will result in satisfying the Applicant's gross revenue requirement and should be approved.

15. The Applicant has agreed that the Notice to the Public in these dockets should note that customers may call Hydraulics collect.

Allendale Heights Franchise

16. Hydraulics, Ltd., is before this Commission seeking a Certificate of Public Convenience and Necessity to furnish water utility service in Allendale Heights Subdivision in Randolph County, North Carolina.

17. The Applicant indicated, through testimony of its witness, that it has operated the Allendale Heights Subdivision water system for approximately four years prior to making application for a Certificate of Public Convenience and Necessity for this system.

18. The Applicant has charged the residents of Allendale Heights the rates approved by the Commission for the Applicant's franchised service areas for the last four years.

19. The Applicant has held itself out as a public utility in Allendale Heights Subdivision since 1986.

20. The system was not completed pursuant to the approved DEH requirement, lacking a booster pump, an air compressor and proper piping inside the pump house.

21. The Applicant is the only entity that has furnished water service in this system and holds title to the well lot.

22. The Applicant was ordered by the Commission on May 17, 1990, to make refunds in systems operated by the Applicant where customers were billed prior to Hydraulics obtaining Certificates of Public Convenience and Necessity for those systems.

23. Hydraulics continued to bill customers of Allendale Heights Subdivision prior to application for a franchise and prior to the grant of temporary operating authority on October 5, 1990.

24. Hydraulics is the appropriate company to hold a Certificate of Public Convenience and Necessity in Allendale Heights Subdivision.

River Run Franchise

25. Hydraulics, Ltd., is before this Commission seeking a Certificate of Public Convenience and Necessity to furnish water utility service in River Run Subdivision in Randolph County, North Carolina.

26. The Applicant indicated, through testimony of its witness, that it has operated the River Run Subdivision water system for approximately four

years prior to making application for a Certificate of Public Convenience and Necessity for this system.

27. The Applicant has charged the residents of River Run Subdivision the rates approved by the Commission for the Applicant's franchised service areas for the last four years.

28. The Applicant assumed operation of the River Run Subdivision from an unsatisfactory operator and has made substantial improvements in the system since that time.

29. The Applicant has held itself out as a public utility in River Run Subdivision since 1986.

30. The Applicant does not have title to the well lot, nor did the original operator have title. The Applicant is proceeding with due diligence to obtain title. In the event Applicant is unable to obtain title, the Commission should apply to the Superior Court for an order appointing Hydraulics the emergency operator of the well lot.

31. The original operator applied for a franchise for this system prior to 1986, but the franchise application was returned due to incompleteness. The application was never refiled in completed form.

32. Hydraulics continued to bill customers of River Run Subdivision prior to application for a franchise and prior to the grant of temporary operating authority on October 5, 1990.

33. Hydraulics is the appropriate company to hold a Certificate of Public Convenience and Necessity in River Run Subdivision.

Ridgeway Courts Transfer of Franchise

34. The water utility franchise for the Ridgeway Courts Subdivision is currently held by Clear Flow Utilities, Inc.

35. No customers have expressed opposition to this transfer.

36. The Applicant is currently serving as emergency operator of this system. The customers of Ridgeway Courts Subdivision will be adequately served by the Applicant.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-5

These findings are based on the verified application, in the records of the Commission and in the record in this proceeding and are uncontested and noncontroversial.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6 and 15

The evidence supporting these findings of fact is contained in the testimony of the public witnesses at the two customer hearings in Hickory and Greensboro and in the testimony of Applicant witness Perkins and Public Staff witness Rudder. Each subdivision with reported service problems is discussed below:

Hilltop-Burke County

Mr. Larry Starnes testified at the Hickory hearing regarding problems with blue stains on fixtures, smell, low pH, and effects on health. Witness Perkins testified at the public hearing in Raleigh that chemicals are being added to adjust the pH to within State standards. He also stated that Hydraulics will be checking the pH adjustment twice a week until it is stabilized. The blue stains are probably caused by low pH which may be relieved when the pH adjustment is completed.

Jamestown-Catawba County

Five customers testified in Hickory about water quality problems in the subdivision, specifically a brownish/charcoal grey residue on fixtures and an oily film in the water. They also were concerned about water pressure and water smell. One customer spoke about the method of billing.

The Applicant witness Perkins testified that the iron and manganese were both well within limits set by the Division of Environmental Health. He stated that the water may become discolored after service is resumed following an outage, but that is primarily due to stirred up sediment.

Hydraulics has spent more time and money on repairing and upgrading the well houses. They have reroofed, painted and insulated the well houses in addition to adding thermostatic heaters and new doors.

Witness Perkins testified that Hydraulics will investigate the residue complaint further.

Ponderosa-Catawba County

Three customers testified at the Hickory hearing about water quality problems, a chlorine smell and a slick, brownish residue. Two of the customers complained of an uncovered cut-off valve that created a hazard for children playing near it.

At the hearing in Raleigh, Applicant witness Perkins testified that iron and manganese were within State standards and that the smell was likely from when Hydraulics began chlorinating the water.

Witness Perkins continued testimony by saying the cut-off valves have had lids put on them subsequent to the public hearing, in order to prevent injury.

## Chatham-Chatham County

Mr. Kent Thomas testified in Greensboro on behalf of the homeowners of Chatham Subdivision. Mr. Thomas specified three water quality complaints: 1) a white residue left when water evaporates; 2) when water pressure is low residents at the higher elevation get dark, muddy color in the water, and; 3) staining of fixtures. He later testified to two seasonal problems: 1) excessive air in the distribution system and; 2) during the summer, very low water pressure.

Two other Chatham residents testified at the Raleigh hearing regarding the amount of the requested increase and a smell in the water.

Hydraulics witness Perkins testified that he had experienced a similar white residue problem from his own well and that he had the water analyzed. The lab could find no problem or any reason that would cause white spots or residue. The dirty water was caused by resuming service after an outage.

Mr. Perkins testified that the air in the lines was caused by a malfunction of a telemetry unit that has been repaired and is now functioning properly. Mr. Perkins also testified this was the reason for the summer low pressure problem.

Regarding the smell, Mr. Perkins testified that he would go to the subdivision and follow-up to seek a solution to this problem.

The customers in Chatham Subdivision also complained of poor Company/customer communications. Hydraulics has recently installed cellular telephones in the service trucks, which witness Perkins feels will help provide answers to customers in a more timely manner.

## Clarendon Gardens-Moore County

Three public witnesses testified at the hearing in Greensboro regarding low pressure at one house and the monitoring of the pH level. There has been a pH problem in the past but Hydraulics has begun treatment and there is no problem at this time.

Witness Perkins testified in Raleigh that Hydraulics has installed a pressure recorder and will be monitoring the pressure problems.

## Shade Tree Acres-Rowan County

Two customers testified at the Greensboro hearing objecting to the rate increase and the fact that they have to call Hydraulics long distance. These customers had a billing dispute that was resolved during the hearing. The customers were unaware that they could call the Company collect.

## Kimberly Court-Rowan County

Four customers testified at the Raleigh hearing concerning the length of time required for a service man to arrive when problems occur and stated that there have been no improvements to justify the requested increase.

Witness Perkins testified that the long delay came from having to replace a pump during the outage in question and needing the time to size the pump properly.

Seagate I-Carteret County

No customers from the Seagate I Subdivision testified at the public hearing. However, the Commission received a complaint letter concerning a high bacteria notice. Both Public Staff witness Rudder and Applicant witness Perkins, in addition to DEH Assistant Regional Engineer, James B. Higdon, responded by letter to the complainant.

The Commission concludes that the Applicant should follow-up on all complaints reported above to ensure the remedies are continuing to be satisfactory and file a late filed exhibit showing date of customer contact, type of problem, method of solution, and customer response to solution. This should be filed within three months of the date of this Order. In addition, the Commission is concerned with the problems that appear to stem from poor customer contact. The Commission strongly encourages Mr. Manuel Perkins to conduct meetings to hear customer concerns at Jamestown, Ponderosa, Chatham, Shade Tree Acres, Kimberly Court, and Seagate I Subdivisions. The Commission would welcome a report from Hydraulics on customer response to the meetings.

Further, the Commission concludes that there is reason for concern regarding monitoring of chemical feed in these systems. Applicant witness Perkins testified to his willingness to monitor these systems weekly and the Commission concludes that this should be required. Further, there are concerns regarding the extensive geographical territory involved in the Applicant's service areas, and the appropriate utilization of a manpower that has recently doubled. It is incumbent for the Applicant to provide services in the most cost-efficient manner. Consequently, it is the opinion of this Commission that this Docket should be held open for six months at the end of which time the Applicant should file a report on manpower utilization with the Commission and the Public Staff.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-14

These findings of fact are based on the verified application, the pre-filed and rebuttal testimony of Manuel Perkins, and the pre-filed testimonies and exhibits of Public Staff Accountant Poole and Utilities Engineer Rudder. Both Mr. Poole and Mr. Rudder testified to having conducted an audit of the Company's books and billings which supported the revenue requirement initially requested by the Company. The Public Staff testified that their investigation had shown the Company's level of expenses supported a finding that the proposed revenue requirement not to be unfair or unreasonable to either the customers or the Company. The Public Staff did propose a different rate structure than that proposed by the Company. The Company stipulated its agreement to the findings of the Public Staff and to the rates as proposed by the Public Staff.

It is the conclusion of this Commission that the revenue requirement requested by the Company is supported by the weight of the evidence and that the rates proposed by the Public Staff and stipulated to by the Company are fair and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 16-24

These findings of fact are supported by the verified applications, the testimony of Manuel Perkins, and the testimony of Kenneth Rudder.

At the hearing Manuel Perkins testified that the Company had operated this system since 1986, that it had charged residents of Allendale the rates approved by the Commission for its franchised areas for those four years. Company witness Perkins testified that the developer had not finished the system serving Allendale Subdivision to comply with the plans approved by DEH. Mr. Perkins testified that he felt justified in waiting to file for a franchise for this area in hopes that a mortgage would be held up and pressure could be put on the developer in that way. Mr. Perkins admitted that several properties had been sold in the four year period with no problem.

The second of the reasons given for delaying application for a Certificate in this system was the inability of Hydraulics, Ltd., to post the bond as required by G.S. 62-110.3. In other words, the Company's reason for failing to fulfill the statutory requirement to apply for a Certificate was because it was also in violation of another statute. Statutory requirements are not optional. If a company is unable to meet these obligations, then it is in no position to take on a water franchise. Mr. Perkins states that Hydraulics is now willing to file a bond in this system as required by law.

While the Commission is averse to awarding Certificates of Public Convenience and Necessity where all the required exhibits are not available, there does not appear to be any other way to fully protect the rights of the customers to a utility operator responsible to this Commission and to the customers. Certainly, Hydraulics has given the residents of Allendale Heights Subdivision reason to believe that its operations in that subdivision are already regulated. It has held itself out to these customers as already having a Certificate of Public Convenience and Necessity by serving official Commission notice for rate increases in 1988 and 1990 upon them. Further, it included the expenses of this system in its original application for a general rate increase well before it applied for a franchise for this system.

Consequently, the Commission determines that a Certificate of Public Convenience and Necessity to provide water utility service in Allendale Heights Subdivision in Randolph County, North Carolina, should be granted to the Applicant.

This certificate is being granted subject to the Company making the necessary capital improvements within ninety days to bring the system into compliance with the plans approved by DEH. Failure to make these improvements in a timely fashion shall subject the Certificate to revocation. The Commission cautions the Company in the strictest terms possible that all future franchise applications should be timely filed in accordance to the General Statutes of the State of North Carolina and the Rules and Regulations of this Commission. Failure to follow these guidelines shall result in denial of the request for Certificate.

The Public Staff proposed that the Applicant make partial refunds to customers on the grounds that the Applicant had full notice of that potential

on May 17, 1990, and still chose to delay application. Due to the need not to financially injure the utility's ability to provide service, the Public Staff proposed that the refunds should only encompass the amount collected between May 17, 1990, and August 20, 1990. The Commission is concerned about the Company's operating of the Allendale system without a proper Certificate, as spoken to above. However, the Commission is also aware that the Company has provided generally adequate service to this subdivision. In addition, the Commission is aware of the extenuating circumstances surrounding the failure to bring the system into compliance with DEH approved plans. Based on the foregoing, the Commission concludes that no refunds should be made to customers in the Allendale Subdivision. The Commission further notes that there is no evidence in the record that the rates charged exceeded the reasonable cost of providing service to said subdivision.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 25-33

The evidence supporting these findings of fact is found in the verified applications, the testimony of Manuel Perkins, the testimony of Kenneth Rudder, and the late-filed affidavit of Tommy Cross.

At the hearing Manuel Perkins testified that the Company had operated this system since 1986, at the urging of an employee of the Public Staff. Testimony by the parties indicated that the system was not being adequately maintained by the original operator. There was no evidence presented by the Company that Hydraulics did not deal directly with that operator when it took over the system. According to all parties the well lot is not owned by Hydraulics, nor was it owned by the previous operator. Mr. Perkins testified that he had delayed applying for a Certificate of Public Convenience and Necessity for this system because he did not have control of the well lot.

As has been noted previously, the Commission does not look with favor on granting franchises where all the required elements are not present. However, the same conditions prevail in this docket as in that of Allendale Heights. The evidence shows that Hydraulics has held itself out as a public utility in this subdivision by noticing the residents of general rate cases and by charging the resulting rates. It is the opinion of this Commission that the residents of River Run Subdivision are also entitled to regulated water service, and to rely upon the representations of the Company. Consequently, it is the opinion of this Commission that a Certificate of Public Convenience and Necessity should be awarded to the Company to provide water utility service in River Run Subdivision in Randolph County, North Carolina.

In the event that Hydraulics is satisfied that it will be unable ever to obtain title to the well lot by any reasonable means, it should so inform the Commission and request that the Commission apply for a Superior Court order pursuant to G.S. 62-118(b), appointing Hydraulics as the emergency operator of the well. In this way the Company and its customers will be protected against any unauthorized interruption of water from this well.

It is also the opinion of the Commission that the Company should not be subject to partial refunds in this subdivision for the same reasons as were found to be persuasive in Allendale Heights.

The Company has asserted that it should not be subject to bonding for River Run Subdivision because the original operator once sent in an application for a franchise in this subdivision prior to the bonding statute. Tommy Cross states clearly in the affidavit submitted by the Applicant that the initial application was returned for insufficiency and was never returned to the Commission. G.S. 62-110.3 requires as a matter of law that franchises initially applied for subsequent to October 1, 1990 must be supported by bond.

The Commission has given this matter much consideration. The record is clear that the initial application for franchise was returned by the Public Staff and that the Public Staff did not initially inform the applicant that a franchise had never been approved for the previous owner. Based on this set of circumstances, the Commission concludes that a bond is not required by the Applicant for River Run Subdivision.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 34-36

No objections were received to the transfer of Ridgeway Courts in Rockingham County to Hydraulics, Ltd. Hydraulics has served as the emergency operator in that system for some time. The Commission concludes that it is in the best interests of the customers to approve the transfer.

IT IS, THEREFORE, ORDERED as follows:

1. That Hydraulics, Ltd., is authorized to increase its rates for water utility service to produce additional net annual revenues of $125,241 based on test year operations.

2. That the Schedule of Rates attached as Appendix A is approved for water utility service rendered by Hydraulics, Ltd., on and after the date of this order. This schedule is deemed filed pursuant to G.S. 62-138.

3. That Hydraulics, Ltd., deliver a copy of the notice attached as Exhibit F to all customers except those in Ridgeway Courts Subdivision with their next billing statements.

4. That Hydraulics is hereby granted a Certificate of Public Convenience and Necessity to provide water utility service to River Run and Allendale Heights Subdivisions in Randolph County, North Carolina.

5. That Hydraulics is hereby granted a Certificate of Public Convenience and Necessity to provide water utility service to Ridgeway Courts Subdivision in Rockingham County, North Carolina and the franchise previously issued to Clear Flow Utilities for Ridgeway Court is hereby cancelled.

6. That within 60 days of this order, Applicant shall properly file a bond in the amount of $10,000 for Allendale Heights Subdivision.

7. That Hydraulics make all necessary capital improvements within ninety days to bring the Allendale Heights Subdivision system into compliance with the plans approved by DEH.

8. That with respect to Allendale Heights, River Run, and Ridgeway Courts 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 a court rules at some future date that taxes are due. The granting of these franchises shall not be deemed prior approval of any method other than the full gross up method with respect to collection of taxes associated with CIAC.

9. That Hydraulics shall file with the Commission at intervals of three months and six months after the date of this Order, a report on the utilization of field personnel and water treatment.

10. That Hydraulics shall service each well on a weekly basis at the least.

11. That in the event that Hydraulics is satisfied that it will not be able to obtain title to the well lot in River Run by any reasonable means, it should so inform the Commission and request that the Commission apply to the Superior Court for an order pursuant to G.S. 62-118(b) appointing Hydraulics the emergency operator of the well.

12. That Hydraulics deliver a copy of the notice attached as Exhibit E to all customers in Ridgeway Courts Subdivision with their next billing statements.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of December 1990.

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

APPENDIX A

SCHEDULE OF RATES

for

HYDRAULICS, LTD.

for providing water utility service in

ALL ITS SERVICE AREAS

Monthly Metered Rates:

| | |
|---|---|
| Base charge (zero usage) | $ 8.51, minimum |
| Usage charge | $ 2.41/1,000 gallons |

Monthly Flat Rates: $ 18.00

Connection Charge:

| | |
|---|---|
| Meter fee | $ 425.00 |
| Main extension fee per single family dwelling | $ 625.00 |

Reconnection Charges:

| | |
|---|---|
| If water service cut off by utility for good cause: | $25.00 |
| If water service cut off by utility at customer's request: | $ 2.00 |

Returned Check Charge: $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.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-218, Subs 70, 71, 72, 73 on the 28th day of December 1990.

APPENDIX B

DOCKET NO. W-218, SUBS 70, 71, 72, 73

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Presents, That

HYDRAULICS, LTD

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water utility service

in

ALLENDALE HEIGHTS SUBDIVISION

Randolph County, North Carolina

subject to such orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of December 1990.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX C

DOCKET NO. W-218, SUBS 70, 71, 72, 73

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Presents, That

HYDRAULICS, LTD

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water utility service

in

RIVER RUN SUBDIVISION

Randolph County, North Carolina

subject to such orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of December 1990.

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

APPENDIX D

DOCKET NO. W-218, SUBS 70, 71, 72, 73

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Presents, That

HYDRAULICS, LTD

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water utility service

in

RIDGEWAY COURTS SUBDIVISION

Rockingham County, North Carolina

subject to such orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of December 1990.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX E

DOCKET NO. W-218, SUB 73

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of Application by Hydraulics, Ltd., Post Office Box 35047, Greensboro, North Carolina 27425, for Authority to Transfer the Franchise for Water Utility Service in Ridgeway Courts Subdivision in Rockingham County, North Carolina, from Clear Flow Utilities, Inc., and for Approval of Rates | ) | NOTICE TO CUSTOMERS OF TRANSFER AND NEW RATES |

BY THE COMMISSION: Notice is hereby given that the North Carolina Utilities Commission has approved the transfer of the water utility system serving Ridgeway Courts Subdivision in Rockingham County, North Carolina, from Clear Flow Utilities, Inc., to Hydraulics, Ltd., and has approved the rates requested by Hydraulics, Ltd. This decision was based upon evidence presented at the public hearing held on October 30, 1990, in Raleigh, North Carolina. The new rates are as follows and are effective for service rendered on and after the date of this notice:

| | |
|---|---|
| Base charge, zero usage | $ 8.51, minimum |
| Usage charge | $ 2.41/1,000 gallons |

Average $22.30 (based on 5,731 gallons usage)

The Commission has also ordered that this docket be left open for six months and has required the Company to file a report with the Commission and the Public Staff attesting to the actions taken in support of assurances given at the hearing by the Company.

CUSTOMERS OF HYDRAULICS, LTD., MAY CALL THE HYDRAULICS, LTD. OFFICE COLLECT.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of December 1990.

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

DOCKET NO. W-218, SUBS 70, 71, 72, 73

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Hydraulics, Ltd., Post Office Box 35047, Greensboro, North Carolina 27425, for Authority to Increase Its Rates for Providing Water Utility Service in All Its Service Areas in North Carolina | ) | NOTICE TO CUSTOMERS OF RATE INCREASE |

BY THE COMMISSION: Notice is hereby given that the North Carolina Utilities Commission has granted a rate increase to Hydraulics, Ltd., for water utility service provided in all of its service areas in North Carolina. An application was file with the Commission on May 31, 1990, by the Applicant. On June 24, the Commission issued an order scheduling hearing and requiring public notice. On July 12, 1990, the Commission approved an interim rate increase. Investigation by the Public Staff found the following rates to be fair and reasonable. The Commission has approved the following rates for water utility service provided by Hydraulics, Ltd. in all of its service areas in North Carolina:

Monthly Metered Rates:

| | |
|---|---|
| Base charge (zero usage) | $ 8.51 minimum |
| Usage charge | $ 2.41/1,000 gallons |

Monthly Flat Rates: $ 18.00

Connection Charge:

| | |
|---|---|
| Meter fee | $425.00 |
| Main extension fee per single family dwelling | $625.00 |

Reconnection Charges:

| | |
|---|---|
| If water service cut off by utility for good cause: | $25.00 |
| If water service cut off by utility at customer's request: | $ 2.00 |

Returned Check Charge: $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.

CUSTOMERS OF HYDRAULICS, LTD., MAY CALL THE HYDRAULICS, LTD. OFFICE COLLECT.

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Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-218, Subs 70, 71, 72, 73 on the 28th day of December 1990.

DOCKET NO. W-274, SUB 59

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application by Heater Utilities, Inc., Post Office Drawer 4889, Cary, North Carolina, for Authority to Increase Rates for Water Utility Service in All Its Service Areas in North Carolina | ) ) ) ) ) | ORDER DENYING MOTION FOR INTERIM RATES |

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Friday, July 13, 1990, at 9:30 a.m.

BEFORE: Commissioner Julius A. Wright, presiding, and Commissioners Sarah Lindsay Tate, Ruth E. Cook, Charles H. Hughes, and Robert O. Wells

APPEARANCES:

For the Applicant:

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

For the Public Staff:

Antoinette R. Wike, Chief Counsel, and Victoria Hauser, Staff Attorney, North Carolina Utilities Commission Public Staff--Legal Division, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On May 21, 1990, Heater Utilities, Inc. (Heater, Company or Applicant), filed an application with the Commission for authority to increase its rates for providing water utility service in all its service areas in North Carolina. The Applicant presently provides water utility

service under three rate schedules: Heater - formerly Hasty Utilities, Inc.; Heater - formerly Glendale Water Company; and Heater. The Applicant is proposing one uniform metered rate for all customers.

On May 29, 1990, Heater filed a Motion for Interim Rates. William E. Grantmyre, President of Heater, filed an affidavit in support of the interim rates on June 11, 1990. The interim rate request would affect the "Hasty" customers only.

On Monday, June 18, 1990, the Public Staff presented these matters to the Commission. The Public Staff recommended that a hearing be scheduled for October 1-2, 1990, on the rate increase application; that the requested interim rates be denied; and that Heater be required to prefile testimony.

The Applicant spoke in support of its interim rate request and against the requirement to prefile testimony. On June 19, 1990, Heater filed a schedule, as requested by the Commission, indicating its capital improvements budget for 1990.

By Order issued on June 20, 1990, the Commission established a general rate case in this matter and suspended the proposed rates for up to 270 days.

On June 26, 1990, the Commission issued an Order scheduling oral argument on the request for interim rates for Friday, July 13, 1990. The parties were required to file affidavits for consideration at the oral argument, and they each did so on July 6, 1990.

The request for interim rates came on for oral argument on Friday, July 13, 1990. The parties were present and represented by counsel. The applicant presented the affidavit of William E. Grantmyre, President of Heater Utilities, Inc., in support of the motion for interim rates. The Public Staff presented the affidavit of Kris Au Hinton, an accountant with the Public Staff. Toni Pinkston, a customer in the Saddle Run Subdivision and a member of the Board of Directors of the Saddle Run Homeowners Association, spoke in opposition to the interim increase and complained about the color and smell of the water.

Upon consideration of the application, the filings in this docket, the oral argument before the Commission on July 13, 1990, and the affidavits of the parties filed July 6, 1990, which were submitted at the oral argument, the Commission makes the following

## FINDINGS OF FACT

1. Heater Utilities, Inc., is a public utility certificated by the Commission and provides water and sewer utility service in approximately 175 service areas in central North Carolina.

2. Heater filed its verified application for an increase in its water rates in this docket on May 21, 1990. The Company last received a rate increase in 1985.

3. Heater filed its motion for an interim rate increase on May 29, 1990. The interim rate increase would apply only to those customers of Heater who

were formerly served by Hasty Utilities. The proposed interim increase would not apply to Heater's other customers.

4. The interim rates requested would produce 35.5% of the applied-for increase in revenues in this proceeding.

5. In its affidavit supporting an interim increase, the Company stated that it has a capital expenditure budget of $478,450 for 1990 system-wide water plant replacements, renovations, and improvements to serve end-of-test-year customers. Heater alleged that without the interim rate increase, it would be in an emergency situation and unable to borrow money for these capital improvements but for the existing unconditional guarantee of Heater's stockholder to North Carolina National Bank; Heater cited its poor pretax interest coverage, the negative return on equity, and the low rate of return, all of which are based on pro forma accounting.

6. In its affidavit Heater further stated that its actual cash payments for laboratory VOC testing during 1990 will be $74,500, for a total of 149 wells systemwide. Heater further stated that its total additional 1990 costs directly associated with the VOC testing are $110,000.

7. In its affidavit, the Public Staff took issue with Heater's use of pro forma accounting to support the interim rate increase. It is the position of the Public Staff that interim rates to a company such as Heater should be based on the per books amounts unless there is a reasonable expectation of dramatic growth or other significant changes during the test year. The Public Staff pointed out that the Company's per books amounts show that current rates generate a positive cash flow sufficient for the Company to provide adequate and reasonable service. Heater shows net operating income per books of $15,946. After excluding non-utility costs and adding back depreciation expense of $170,245, the Company has a positive cash flow of $287,230, according to the Public Staff.

## CONCLUSIONS

The Commission concludes that Heater's motion for interim rate increase should be denied.

The Applicant and the Public Staff disagreed over the need for interim rates. The Applicant contended in its affidavit and oral argument that the pro forma accounting data submitted by it, together with the Company's 1990 capital expenditure budget and the VOC testing requirements, show the need for immediate interim rate relief "to maintain the financial stability of the Company."

The Public Staff, on the other hand, contends that the per books amounts shown on the Company's applications fail to establish that the Applicant is experiencing a financial emergency which would justify interim rate relief.

The Commission is of the opinion, and so concludes, that Heater has not shown, to the satisfaction of the Commission, a financial emergency affecting the Company which would justify the interim rates asked for. Although the Company's affidavit states that the Company is experiencing a negative cash flow and a pretax interest coverage substantially below the 2.0 pretax coverage

deemed appropriate for utilities, the Public Staff's affidavit, which in the opinion of the Commission is as equally credible as that of the Company's, states that on a per books basis the Company has a positive cash flow of $287,230. We note that both the Company's and the Public Staff's figures have not been subject to the intensive audit and investigation that is required of the rate application of a company the size of Heater.

There are other features of the Applicant's request which cause concern to the Commission. In its affidavit Heater relied upon the projected expenditures of its 1990 capital budget and the VOC testing expenses in support for its need for interim relief. These expenditures, however, were largely in the control of the Company and were foreseeable. Heater could have filed its application for rate increase at an earlier date if it felt that the projected capital expenditures and the VOC monitoring fees would require the approval of increased rates.

The capital expenditures for 1990, attached as Exhibit A to the Company's affidavit, relate to improvements needed systemwide, not just in the subdivisions formerly served by Hasty. Yet the interim increase sought by the Company is to apply only to the former Hasty customers. The Commission disapproves of placing the entire burden of the interim increase only on the Hasty customers, especially when the capital expenditures, which are used as justification for the need for interim relief, are applicable to the Company's service areas systemwide.

We also note that the VOC expenses are not limited to the former Hasty customers but apply to the Company's customers systemwide.

In conclusion, the Commission is reluctant to approve an interim increase that would fall upon one class of customers only, where the Company's asserted justification for interim relief is grounded upon the needs of all of its customers in all of its service areas.

The filing of an application for a rate increase is largely in the control and discretion of the utility. Heater last received rate increases from the Commission in 1985. The Commission is of the opinion that Heater is of the size and has the resources so as to anticipate the need to make an earlier filing for rate relief, in order to avoid the need for interim rates. In conclusion, the Commission is of the opinion that Heater has failed to show that it is facing a financial emergency that would justify the approval of interim rates only on the former Hasty customers.

IT IS, THEREFORE, ORDERED that the Motion of Heater Utilities, Inc., for interim rates, filed May 29, 1990, be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of August 1990.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-274, SUB 59

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Heater Utilities, Inc.,<br>Post Office Drawer 4889, Cary, North<br>Carolina, for Authority to Increase<br>Rates for Water Utility Service in All<br>Its Service Areas in North Carolina | )<br>)<br>)<br>)<br>) | ORDER GRANTING<br>PARTIAL RATE INCREASE |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, October 1, 1990, at 7:00 p.m., and Tuesday, October 2, 1990, at 9:30 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding, and Commissioners Charles H. Hughes and Robert O. Wells

APPEARANCES:

FOR HEATER UTILITIES, INC.:

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

FOR THE USING AND CONSUMING PUBLIC:

Antoinette R. Wike, Chief Counsel, and Victoria O. Hauser, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: This matter arose on May 21, 1990, upon the filing of an application by Heater Utilities, Inc., (Heater, the Applicant or the Company) for authority to increase its rates and charges to customers previously served under three separate rate schedules: Heater - formerly Hasty Utility, Inc., Heater - formerly Glendale Water, Inc. and Heater - only. The Company also filed a motion for an interim rate increase on May 21, 1990. The Commission heard oral argument on June 20, 1990, and on August 13, 1990, issued an Order denying the motion.

A request for leave to intervene was filed on September 21, 1990, by Carolina Water Service, Inc. of North Carolina and was denied by Order issued on September 27, 1990. However, the Order of September 27, 1990 allowed Carolina Water Service to file Amicus Curiae comments or brief. Carolina Water Service's September 28, 1990, request for reconsideration was denied by Order issued October 7, 1990. On October 1, 1990, Bryan & Watson, Inc., filed a request for leave to intervene, which was denied by a ruling from the bench after oral argument on October 2, 1990.

On September 7, 1990, the Company and the Public Staff filed a joint stipulation on the issue of cost of capital. By Order issued September 27, 1990, the Commission tentatively accepted the stipulation but deferred ruling on final acceptance pending hearing.

The matter came on for hearing on October 1, 1990, for the purpose of receiving testimony from public witnesses regarding quality of service. The following customers of Heater testified: from Robinswood Subdivision - Terry Hill, Susan Williams, Wayne Sherman, Elise Light, and Lynne Duncan; from Saddle Run Subdivision - Carolyn McCain; from Brassfield Subdivision - Margaret Farmer and Miles Grosskopf; and from Nottingham Forest Subdivision - Paxton Jordan, Coretta Ball, and Everett Black. Jerry H. Tweed, Director of Regulatory Relations, Environmental Affairs, and Wastewater Operations for Heater testified in response to some of the customers' concerns.

The hearing resumed on October 2, 1990, at which time one public witness, Victor Yoskey from Brighton Woods, testified. The Applicant then presented the testimony and exhibits of the following witnesses: William E. Grantmyre, President and House Counsel of Heater Utilities, Inc.; Freda Hilburn, Director of Regulatory Accounting; Jerry Tweed, and Jo Ann Journigan, Director of Finance. The Public Staff presented the testimony and exhibits of Jan A. Larsen, Utilities Engineer, and Kris Au Hinton, Staff Accountant.

On November 2, 1990, Carolina Water Service filed Amicus Curiae Brief.

The Commission takes official notice of the following: Orders of October 23, 1986, and October 20, 1987 in Docket No. M-100, Sub 113; Order of April 21, 1988 in Docket No. W-274, Sub 44; Application of November 23, 1988, Order of January 18, 1989, and Late Filed Exhibit No. 1 of December 28, 1989, in Docket No. W-274, Sub 50; and Order of October 16, 1990, in Docket No. W-354, Subs 82, 86, 87, and 88.

Based on the foregoing, the evidence adduced at the hearing, and the entire record in this matter, the Commission makes the following

## FINDINGS OF FACT

1. The Applicant, Heater Utilities, Inc., is a public utility providing water utility service to more than 8,200 customers in 160 service areas in North Carolina and is subject to the jurisdiction of this Commission.

2. The Applicant acquired 21 water utility systems formerly operated by Glendale Water, Inc., in 1988 (Docket No. W-274, Sub 44) and 63 water utility systems formerly operated by Hasty Utilities, Inc., in 1989 (Docket No. W-274, Sub 50).

3. The Applicant's present and proposed residential rates are as follows:

Present Rates - Heater

| | |
|---|---|
| Base charge, zero usage | $7.00, minimum |
| Usage charge | $1.98/1,000 gallons |

Present Rates - Glendale (former)

| | |
|---|---|
| Base charge, zero usage | $8.10, minimum |
| Usage charge | $2.40/1,000 gallons |

Present Rates - Hasty (former)

| | |
|---|---|
| Base charge, zero usage | $5.00, minimum |
| Usage charge, first 12,000 gallons | 1.60/1,000 gallons |
| Usage charge, all over 12,000 gallons | 2.75/1,000 gallons |

Proposed Rates - all systems

| | |
|---|---|
| Base charge, zero usage | $7.00, minimum |
| Usage charge | $2.61/1,000 gallons |

4. The Applicant's present and proposed commercial rates are as follows:

Present Rates

| | | |
|---|---|---|
| Base charge, zero usage (based on meter size) | 3/4" x 5/8" meter | $ 7.00 |
| | 1" meter | 8.16 |
| | 2 " meter | 15.04 |
| | 3" meter | 24.43 |
| Usage charge (all meter sizes) | | $1.98/1,000 gallons |

Proposed Rates

| | | |
|---|---|---|
| Base charge, zero usage (based on meter size) | 3/4" x 5/8" meter | $ 7.00 |
| | 1" meter | 8.16 |
| | 2" meter | 15.04 |
| | 3" meter | 24.43 |
| Usage charge (all meter sizes) | | $2.61/1,000 gallons |

5. The Applicant is providing generally adequate water utility service. Several systems, however, have experienced significant service problems, mostly due to high manganese and iron content of the untreated water. The Applicant is taking appropriate action to address these problems.

6. The test period established for use in this proceeding is the twelve months ended December 31, 1989, adjusted for actual changes in the Applicant's costs, revenues, and property used and useful in providing water utility service through the date of the hearing.

7. In 1988 and 1989, the Applicant realized a net-of-tax gain of $76,823 on the abandonment of one system and the sale of another. The Applicant's treatment of this net-of-tax gain is appropriate in this proceeding.

8. The Applicant's original cost rate base is $3,338,159, which includes utility plant in service of $3,882,914, meters and supplies inventory of $87,222, and an allowance for working capital of $172,382, reduced by deferred taxes of $69,601, customer deposits of $8,341, and accumulated depreciation of $726,417.

9. The Applicant's adjusted gross service revenues for the test year under present rates were $1,755,276. Under the Applicant's revised proposed rates, gross test year service revenues would have been $2,128,823.

10. The reasonable level of operating revenue deductions under present rates is $1,645,120.

11. The reasonable capital structure to be used in this proceeding is as follows:

| | |
|---|---|
| Debt | 47.71% |
| Preferred Stock | 5.41% |
| Common Equity | 46.88% |
| Total | 100.00% |

12. The reasonable cost rates for debt and preferred stock to be used in this proceeding are 8.11% and 8.07%, respectively.

13. The reasonable rate of return on common equity to be allowed the Applicant is 12.85%.

14. The annual gross service revenue requirement for the Applicant's water utility operations in North Carolina is $2,117,805 which is an increase of $362,529. This increase will give the Applicant the opportunity to earn an overall return on its rate base of 10.33%, which is reasonable in this proceeding.

15. The rates contained in Appendix A will produce the Applicant's annual revenue requirement and are just and reasonable.

16. Due to changes in tax rates created by the Tax Reform Act of 1986 (TRA-86), Heater must make refunds of $17,682 due to overcollection of income taxes, to its ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

These findings are based on the verified application and on the Commission's records in Docket No. W-274, Subs 44 and 50. These findings involve matters that are uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

This finding is based on the testimony of the public witnesses and of Company witnesses Tweed and Grantmyre.

The service complaints from each subdivision and the Applicant's responses are as follows:

Robinswood-Orange County

Five customers testified concerning the water quality problems in this subdivision. These customers complained of water that stained laundry, ruined water fixtures and appliances, turned water filters black, and had an oily taste. Several customers expressed concern over the health aspects of the water, and some said they had begun using bottled water for drinking. One customer complained about a hole in the pavement that Heater did not properly repair after digging up a water line.

Company witness Grantmyre testified that the water in Robinswood Subdivision contains excessive amounts of iron and manganese and that these minerals may have accumulated in the lines. Witness Grantmyre explained that Heater is treating the iron and manganese with Aqua-Meg, a polyphosphate sequestration agent that sequesters or ties up iron and manganese in clear or liquid state through keeping them non-objectional.

Both Company witness Tweed and Company witness Grantmyre testified that the injection point for the polyphosphate may be too close to the injection point for the chlorine (chlorine causes iron and manganese to precipitate or oxidize, the opposite of the desired effect of the polyphosphate). Witness Tweed stated that moving these two injection points farther apart would allow for more contact time for the polyphosphate and should help sequester the iron and manganese more efficiently. Witness Grantmyre stated that the Company would also do the following:

1. Flush the lines once every three months instead of annually as done now.

2. Reconstruct the well house plumbing to increase distance between polyphosphate and chlorine from the existing two feet to eight feet.

3. Try another polyphosphate.

4. Repair the hole in the road.

Witness Grantmyre also stated that, if the polyphosphate treatment was not successful, Heater would install an iron removal filter or drill a new well.

Saddle Run

One customer testified at the oral argument on interim rate relief and another testified at the evidentiary hearing concerning a rotten egg smell and excessive iron in the water.

Company witness Grantmyre testified that the rotten egg smell was associated with iron bacteria, a nondisease-producing bacteria that feeds on iron. Witness Grantmyre stated that Heater would "super chlorinate" the well, which involves adding a high concentration of chlorine to the well and letting it penetrate the aquifer for a period of 24 hours or more. Witness Grantmyre also stated that Heater would increase the chemical feed rate on the chlorine feed and may drill another well or add an iron filter.

Stonebridge/Sedgefield

One customer testified about poor water quality which is high in iron and manganese and ruins water fixtures. This customer also complained of a reddish-brown to purple color of the water, a rotten egg smell, and water that has air in it.

Company witness Grantmyre testified that Heater took over this system in April of 1990, and that it was in the process of placing the iron filter and chlorinator in operation again. In addition, witness Grantmyre stated that a

fourth well lot is available on which to drill a well. Heater is also in the process of installing meters on this currently unmetered system. Unmetered systems usually have higher usage than metered systems since customers do not have to pay according to usage.

Brassfield

Two customers testified concerning reddish-brown staining of laundry and water fixtures and sediment problems.

Company witness Grantmyre testified that Brassfield is part of the Bayleaf Master System and that Heater is currently installing new radio telemetry controls in this system. Witness Grantmyre also stated that four new wells were recently added to this Master System and that Heater had experienced a problem with maintaining proper chemical levels. Witness Grantmyre stated that Heater would begin flushing the system to remove any accumulated iron and would also install iron removal filters or drill new wells if the existing polyphosphate treatment is not successful in sequestering the iron.

Nottingham Forest

Three customers testified concerning low water pressure, air in the water, poor taste and odor, sediment, and stains.

Company witness Tweed testified that the water quality problem is not at the source but iron and manganese have built up in the mains over a period of time. Witness Tweed stated that Heater would flush the system and would expedite putting the filters back on line.

Public Staff witness Larsen testified concerning complaints the Public Staff had received from residents of Coachman's Trail, Stone Creek, Saddle Run, Thompson Mill, Brassfield, and Hunter's Landing Subdivisions. He further testified that, having discussed these complaints with the Company and having heard the Company's testimony, he agreed with the procedures they proposed to follow to address the service problems.

The Commission believes that the Company has explained the reasons for these service problems and is actively attempting to solve them. The Applicant will be required to submit a late-filed exhibit showing a schedule for making the corrections testified to at the hearing. The Applicant will also be required to submit quarterly reports concerning the status of these problems. These reports will include repairs made and the success of the polyphosphate sequestration.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

This finding is based on the verified application and the pre-filed testimony and exhibits of Public Staff witness Hinton and involves matters that are uncontroverted.

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

These findings are based on the verified application, the pre-filed and rebuttal testimony of Company witness Grantmyre, the pre-filed testimony of Company witness Hilburn, the pre-filed and rebuttal testimony of Company witness Tweed, Rebuttal Exhibit No. 3 of Company witness Journigan, the pre-filed testimony and exhibits of Public Staff witness Larsen, the pre-filed and supplemental testimony and exhibits of Public Staff witness Hinton, and the Commission's Order of October 16, 1990, in Docket No. W-354, Subs 82, 86, 87, and 88.

The following chart summarizes the amounts which the Company and the Public Staff proposed as the proper levels of rate base to be used in this proceeding.

| | Company | Public Staff | Difference |
|---|---|---|---|
| Utility plant in service | $3,955,914 | $3,882,914 | $(73,000) |
| Deferred taxes | (69,601) | (69,601) | 0 |
| Customer deposits | (8,341) | (8,341) | 0 |
| Accumulated depreciation | (726,417) | (726,417) | 0 |
| Meters and supplies inventory | 87,222 | 87,222 | 0 |
| Unamortized balance of net gain on sale | 0 | (30,728) | (30,728) |
| Working capital allowance | 172,382 | 172,382 | 0 |
| Original cost rate base | $3,411,159 | $3,307,431 | $(103,728) |

The Company and the Public Staff agreed on the amounts to be included for deferred taxes, customer deposits, accumulated depreciation, meters and supplies inventory, and working capital allowance. The Commission, therefore, finds that these amounts are reasonable and proper for use in the determination of original cost rate base.

Utility plant in service and accumulated depreciation include $17,077 and $1,708, respectively, to reflect 41% of the radio control system used and useful at the time of the hearing and a 10% depreciation rate shown on page 2 of 2 of Grantmyre Late Filed Exhibit 2.

The first difference between the Company and the Public Staff relates to the reduction of the Hasty acquisition adjustment through estimated avoided capital costs, which results in a $73,000 difference in utility plant in service.

The $73,000 represents the estimated cost of buying two lots, drilling a new well, and running a water line to replace a well that went bad in Heater's Sancroft Subdivision. Heater was able to avoid incurring this cost because the Sancroft System had been interconnected with three other systems. Two of these three systems, the Hallmark and Hollybrook systems, had been acquired from Hasty. The actual cost of connecting the Sancroft and Hallmark Systems was $18,800. Heater included this amount, along with the other costs of interconnecting the four systems, in plant in service.

According to the testimony of Company witness Tweed, these interconnections have benefitted the customers because they are now served by a total of five wells plus consolidated storage, thus decreasing the likelihood of outages or pressure problems. Public Staff witness Larsen testified that, as between Sancroft and Hallmark, it was the Heater's Sancroft system that had a deficiency, not the Hallmark system that had belonged to Hasty. According to evidence presented by witness Larsen, if Heater had not acquired the Hasty systems, Hallmark residents would have been supplied by as many wells as necessary, up to three wells, by the developer. It would have been Sancroft residents and, presumably all other Heater customers paying uniform rates, who would have had to pay for a new well to serve Sancroft. By taking on Sancroft's need, formerly Hasty customers actually received a diminution of the well and storage capacity previously available to them. As a consequence, the Heater corporate shareholder was able to avoid further investment in Sancroft. The Public Staff asserts that this does not represent a changed circumstance that could support a reduction to the credit acquisition adjustment.

The Commission stated in its order of June 15, 1990, in Docket No. W-354, Sub 81:

> "As a general proposition, when a public utility buys assets that have previously been dedicated to public service as utility property, the acquiring utility is entitled to include in rate base the lesser of the purchase price or the net original cost of the acquired facilities in the hands of the transferor at the time of transfer. The theory behind this proposition is that the investor in utility property should only be entitled to recover his own investment. Also, public utility ratepayers normally should only be responsible for reimbursing an investor once for the cost of public utility property through depreciation expense recovered through rates and through payment of a return on the unrecovered investment."

Heater would have the Commission depart from this proposition on the grounds that the present and potential interconnections of the Heater and Hasty systems are beneficial to everyone. Under this approach, the excess cost of acquiring Hasty would be reduced by any costs avoided as a result of an actual interconnection, while the costs associated with that interconnection are also included in rate base. In other words, all of Heater's ratepayers (Heater-only, Heater-formerly Hasty and Heater-formerly Glendale) would pay rates that include a return not only on the cost of interconnecting Heater and Hasty systems but also on the estimated cost of drilling a well on a Heater system that the interconnection enabled Heater to avoid.

It is irrelevant that the acquisition adjustment, and therefore any reduction of it, is money actually spent by Heater to acquire Hasty. This is true of all credit acquisition adjustments. In this case, the money was spent to acquire 63 Hasty systems; it was not spent to acquire two lots and drill a well on one Heater system. Yet under Heater's approach, the cost of the latter would go into rate base. There is no authority or precedent for such a result. The proposed $73,000 reduction to the credit acquisition adjustment associated with Heater's purchase of the Hasty systems therefore should be disallowed.

The other difference between the Company and the Public Staff concerning the proper level of rate base to be used in setting rates in this proceeding is

the issue of the net-of-tax gain on sale. Company witness Grantmyre testified that Heater's Ossipee system in Alamance County was paralleled by the Ossipee Rural Water District in 1988 and the unrecovered plant was written off the Company's books. The Maplewood Ravenwood/Tiffany Garden system on the other hand was sold to the City of Goldsboro at a gain in 1989. The Company proposed that its stockholder absorb the loss and keep the gain. The Public Staff proposed that fifty percent of the net gain go to the Company's remaining ratepayers. The Company and the Public Staff are in agreement that the net-of-tax gain on sale amount is $76,823.

Both the Company and the Public Staff presented testimony citing their positions on the issue in Docket No. W-354, Subs 82, 86, 87, and 88 involving Carolina Water Service. Public Staff witness Hinton stated in her pre-filed testimony that "if the Commission finds that the benefit of the gains on the sales of Carolina Water Service's systems should go to its remaining ratepayers, . . . the . . . gain on the sale of the Company's systems [should] be treated the same way." She recommended that the ratepayers' portion of the net-of-tax gain on sale be amortized over a five-year period and that the unamortized balance be deducted from rate base.

Company witness Grantmyre testified that "really the argument of Heater here is that the Commission's ruling on gain on sale should not be retroactive to prior sales by utilities." He also testified that "a retroactive ruling would be very unfair to the companies that have already made sales...and cannot renegotiate a sales price."

The first case where the Commission decided, as a contested issue, the question of who should retain the benefit of the gain on sale of an operating water or sewer utility system with customer base was in the case of Carolina Water Service, Inc., (CWS), Docket No. W-354, Subs. 82, 86, 87 and 88, with Order dated October 16, 1990. In this Order, the Commission stated in part: "The Commission has determined in this proceeding, based on all the evidence presented to it, that the gain on sale of the subject water and sewer systems should be equally allocated to the CWS shareholder and the remaining ratepayers of CWS."

Witness Grantmyre testified there was one direct precedent for the utility company retaining all the benefit of the gain on sale. In 1985, LaGrange Waterworks Corporation sold two water systems to the Fayetteville Public Works Commission. The transfer Application showed a pretax gain on sale. The Commission, by Order dated November 5, 1985, in Docket No. W-200, Sub 18, approved this transfer to the Fayetteville Public Works Commission. The Commission's Order did not discuss the issue of gain on sale or state that the issue would be deferred until the Company's next rate case. LaGrange's next general rate case was in Docket No. W-200, Sub 20, wherein the Commission's Order was dated May 27, 1988. The issue of gain on sale was not raised in the rate case, either by the Company, the Public Staff or the Commission. The final Order did not address the issue of gain on sale.

Witness Grantmyre testified that Heater had been under the impression for years that gains (as well as losses) on sale would be retained 100% by the stockholders. Heater based this conclusion upon the fact that there had been numerous transfers approved by the Commission, where the Orders never addressed the issue of gain on sale or stated that the issue would be deferred until

future rate cases. He testified that Heater was not aware of any Public Staff data request or statements of position regarding who retains the gain on sale in any of these transfer cases.

Witness Grantmyre testified that in the case of the Ossipee abandonment, Heater's stockholder totally absorbed the loss. The unrecovered cost of plant was removed from rate base and written off Heater's books. Heater's income statement reflected the loss of the plant and abandonment costs as an entry in account 414.00, entitled Gain (Losses) From Disposition of Utility Property.

Witness Grantmyre testified that Heater's management was well aware that LaGrange's shareholders were allowed to keep the gain from the sale of the two water systems to the Fayetteville Public Works Commission. Heater's sale to the City of Goldsboro in 1989 was subsequent to the LaGrange general rate case Order dated May 27, 1988.

The Commission concludes that it would be inequitable for the Commission's recent ruling on who should retain the benefit of gains on sale to be applied retroactively to transfers approved by the Commission prior to the filing of the applications in Docket No. W-354, Subs 82, 86, 87, and 88, the first of which was filed on April 10, 1990. All the water and sewer utilities which previously sold their water or sewer systems, including their customer base, had no notice, prior to or during their transfer proceedings, that the Commission would consider the distribution of the gain on sales, to someone other than the utility's stockholder(s) in a later rate case proceeding.

The Public Staff's evidence did not cite any prior Commission Orders where the issue of gain on sale was discussed or the Order stated that the issue would be deferred until the Company's next rate case.

The Commission concludes that it would be inequitable to apply any gain on sale order or formula distribution retroactively to the Heater transfer of the Ravenwood/Maplewood/Tiffany Gardens water systems which occurred prior to the filing of the first application on April 10, 1990, in Docket No. W-354, Subs 82, 86, 87 and 88 and Commission Order dated October 16, 1990. By the time the Commission's Order of October 16, 1990 was issued, the contract between Heater and the city of Goldsboro had already been negotiated, executed, submitted to the Commission, along with the Application for transfer, and approved by the Commission. There had been no mention or statement by the Public Staff to the effect that the gain on sale issue should be deferred until a later rate case. Should the Commission rule, in this Docket, that the net-of-tax gain should be allocated among Heater's shareholder and its remaining customers, Heater would not be able to renegotiate the contract with Goldsboro. The Heater situation is in sharp contrast to the facts presented in Docket No. W-354, Subs 82, 86, 87 and 88, where none of the contracts submitted to the Commission, together with the transfer applications by CWS, had been fully executed. Therefore, CWS at its own risk, could attempt to renegotiate these draft contracts, whereas none of the other water utilities with previously-approved Commission transfers have the option to renegotiate.

Company witness Grantmyre testified that the customers on the Ravenwood/Maplewood/Tiffany Gardens water system received direct financial benefits from the manner in which Heater negotiated its sales contract with Goldsboro. Heater insisted that the customers not be charged any tap fee,

connection fee, acreage fee or assessment fees. Heater used a formula to negotiate the sales contract whereby the actual sales price was based on the current installation cost of the distribution system when the subdivision was in an early state of development. Company witness Grantmyre testified that, under this formula, the system was priced to the City as if the streets were still in rough grade and unpaved, with none of the curb and gutters, driveways and most underground utilities installed. This pricing method substantially reduced the cost it would have taken for the city to parallel Heater's mains by installing lines under the streets, cutting pavement and patching, working under roads, driveways, curb and gutter and working around underground utilities. He further testified that the formula had a reduction for the length of time the component parts had been in service, in order to reflect depreciation based on aging. Witness Grantmyre testified that this formula method significantly reduced the purchase price. He testified that Heater, through this reduction in purchase price under the formula method, passed a portion of the gain on sale to the existing customers on the Ravenwood/Maplewood/Tiffany Gardens water system, since these customers received the benefit of the lower purchase price and were not required to pay the City of Goldsboro any tap fee, connection fee, acreage fee or assessments.

The Commission concludes that Heater's shareholder shall retain all the net-of-tax gain from sale of the Maplewood/Ravenwood/Tiffany Gardens water system and the shareholder shall absorb all the loss from the Ossipee abandonment.

Based on the foregoing, the Applicant's reasonable original cost rate base used and useful in providing service within the State of North Carolina is $3,338,159. The rate base consists of utility plant in service of $3,882,914, meters and supplies inventory of $87,222 and an allowance for working capital of $172,382 reduced by deferred taxes of $69,601, customer deposits of $8,341, and accumulated depreciation of $726,417.

On November 2, 1990, Carolina Water Service filed an Amicus Curiae Brief in the proceeding. In this document Carolina Water Service raises various concerns, primarily related to the determination of rate base in this proceeding. As noted above, the Commission has carefully reviewed the evidence in this proceeding and has concluded that the proper level of rate base supported by said evidence is $3,338,159. The evidence supporting this determination is generally uncontroverted, except for the issues discussed herein. The Public Staff's evidence on these matters is based on an extensive review of the application, and supporting workpapers provided by the Company. Based on the foregoing, the Commission concludes that the issues raised by the Amicus Curiae Brief filed by Carolina Water Service have been properly addressed in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

This finding is based on the testimony and exhibits of the Company and the Public Staff. The parties agreed on the level of adjusted gross service revenues under present rates. Therefore, the proper level of adjusted gross service revenues under present rates, after accounting and pro forma adjustments, is $1,755,276 and under the Company's revised proposed rates is $2,128,823.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

This finding of fact is based on the pre-filed and rebuttal testimony and exhibits of Company witnesses Grantmyre, Tweed, and Hilburn as well as the pre-filed and supplemental testimony and exhibits of Public Staff witnesses Larsen and Hinton. The following chart sets forth the amounts proposed by the Company and the Public Staff.

| | Company | Public Staff | Difference |
|---|---|---|---|
| O&M | $ 703,234 | $ 703,234 | $ -0- |
| General | 560,494 | 560,494 | -0- |
| Depreciation | 227,778 | 227,778 | -0- |
| Taxes other than income | 152,021 | 152,021 | -0- |
| State income taxes | 99 | 380 | (281) |
| Federal income taxes | 446 | 1,715 | (1,269) |
| Amortization of ITC | (43) | (43) | -0- |
| Amortization of net gain on sale | -0- | (7,682) | 7,682 |
| Total operating revenue deductions | $1,644,029 | $1,637,897 | $ 6,132 |

Several adjustments to O&M expenses were proposed by the Public Staff, and the Company agreed to all of these adjustments. The general expenses in the chart above include an amount of $1,532 related to general liability insurance as shown on Hilburn Late Filed Exhibit 1. The differences shown in the chart are related to the amortization of the net gain on sale, which is discussed in the Evidence and Conclusions for Finding of Fact No. 7, and the Company's proposed reduction of the Hasty acquisition adjustment as discussed in the Evidence and Conclusions for Finding of Fact No. 8. The Commission has concluded that the net-of-tax gain on sale treatment proposed by the Company is appropriate for this proceeding and that the reduction of the acquisition adjustment should be disallowed. Based on the foregoing, the Commission concludes that the reasonable present level of test year operating revenue deductions is $1,645,120.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11-14

These findings are based on the joint stipulation of Heater and the Public Staff setting forth the capital structure, cost rates, overall weighted cost of capital, and retention factors which the parties had agreed should be used to determine the Company's revenue requirements for return and taxes in this proceeding. The Commission accepted this stipulation pending hearing. There having been no evidence to the contrary presented at the hearing, the Commission concludes that the stipulation should be fully accepted as determinative of the issues it addresses. The approved rates of return will afford the Company the opportunity to earn a reasonable return for its stockholder while providing adequate and economical service to its ratepayers.

The following schedules summarize the gross revenues and rates of return the Company will have a reasonable opportunity to achieve based on the approved rates.

SCHEDULE I

HEATER UTILITIES, INC.

NORTH CAROLINA OPERATIONS

Docket No. W-274, Sub 59

STATEMENT OF CAPITALIZATION AND THE RELATED COSTS

For the Test Year Ended December 31, 1989

| | Capitalization Ratio | Original Cost Rate Base | Embedded Cost | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Debt | 47.71% | $1,592,636 | 8.11% | $129,163 |
| Preferred Stock | 5.41% | 180,594 | 8.07% | 14,574 |
| Equity | 46.88% | 1,564,929 | (.76%) | (11,931) |
| Total | 100.00% | $3,338,159 | | $131,806 |
| | Approved Rates - Original Cost Rate Base | | | |
| Debt | 47.71% | $1,592,636 | 8.11% | $129,163 |
| Preferred Stock | 5.41% | 180,594 | 8.07% | 14,574 |
| Equity | 46.88% | 1,564,929 | 12.85% | 201,093 |
| Total | 100.00% | $3,338,159 | | $344,830 |

SCHEDULE II

HEATER UTILITIES, INC.

NORTH CAROLINA OPERATIONS

Docket No. W-274, Sub 59

STATEMENT OF RATE BASE AND RATE OF RETURN

For the Test Year Ended December 31, 1989

| Item | Amount |
|---|---|
| Utility plant in service | $3,882,914 |
| Deferred taxes | (69,601) |
| Customer deposits | (8,341) |
| Accumulated depreciation | (726,417) |
| Net utility plant in service (sum of lines 1-4) | 3,078,555 |
| Meters and supplies inventory | 87,222 |
| Working capital allowance | 172,382 |
| Original cost rate base | $3,338,159 |
| Rate of Return: | |
| Present | 3.95% |
| Approved | 10.33% |

SCHEDULE III

HEATER UTILITIES, INC.

NORTH CAROLINA OPERATIONS

Docket No. W-274, Sub 59

STATEMENT OF OPERATING INCOME

For the Test Year Ended December 31, 1989

| Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating revenues: | | | |
| Service revenues | $1,755,276 | $362,529 | $2,117,805 |
| Miscellaneous revenues | 30,704 | 1,259 | 31,963 |
| Uncollectables | (9,054) | (1,871) | (10,925) |
| Total operating revenue | 1,776,926 | 361,917 | 2,138,843 |
| Operating expenses: | | | |
| Operation & maintenance | 703,234 | -0- | 703,234 |
| General | 560,494 | -0- | 560,494 |
| Depreciation | 227,778 | -0- | 227,778 |
| Total operating expenses | 1,491,506 | -0- | 1,491,506 |
| Taxes other than income taxes | 152,021 | 14,859 | 166,880 |
| State income taxes | 297 | 24,294 | 24,591 |
| Federal income taxes | 1,339 | 109,740 | 111,079 |
| Amortization of ITC | (43) | -0- | (43) |
| Total operating revenue deductions | 1,645,120 | 148,893 | 1,794,013 |
| Net operating income for return | $ 131,806 | $213,024 | $ 344,830 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

This finding is based on the testimony and exhibits of Company witness Grantmyre and Public Staff witness Larsen.

Witness Grantmyre testified that all of Heater's customers are served by water systems in the Research Triangle area. All but two of the systems are served with rock wells, and all of the wells are chlorinated. Public Staff witness Larsen testified that the net utility plant per customer and number of customers per well were similar for the Heater-only, Heater-formerly Glendale, Heater-formerly Hasty and combined Heater-North Carolina systems. Both witnesses recommended a uniform rate structure for allocating the Company's overall cost of service, and the Commission agrees that this is appropriate.

Public Staff witness Larsen also recommended that commercial rates for zero usage be determined by the relationship between the meter size and the maximum safe operating capacity in gallons per minute as determined by the American Water Works Association.

The Applicant proposed a $20.00 reconnect fee for service cut off for good cause. This exceeds the $15.00 limit under NCUC Rule R7-20(f). Based on cost data provided by the Applicant, however, the Public Staff recommended that a fee of $20.00 be approved.

The Schedule of Rates attached as Appendix A incorporates the recommendations of the Company and the Public Staff concerning rate structure. These rates are designed to produce the annual gross revenues which have been found necessary to enable the Company to earn a reasonable rate of return on its investment. They are therefore just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

This finding is based on the testimony, exhibits, and additional direct testimony of Public Staff witness Hinton, the rebuttal testimony, exhibits, and additional direct testimony of Company witness Journigan, and the Commission's Orders of October 23, 1986, and October 20, 1987, in Docket No. M-100, Sub 113 (the "Tax Docket").

The following chart presents the refund proposals of the Company and the Public Staff as shown in Journigan Late Filed Exhibit 1. The Company and the Public Staff agreed to the amounts calculated but not the amount to be refunded.

| | Company | Public Staff | Difference |
|---|---|---|---|
| Heater-only | $ 32,997 | $32,997 | $ -0- |
| Formerly Hasty | (15,315) | -0- | (15,315) |
| Refund due to Heater-only customers | | $32,997 | |
| Refund due to all Heater customers | $17,682 | | |

Company witness Journigan testified that Heater calculated the refund according to the Commission's Order dated October 20, 1987, in Docket No. M-100, Sub 113. She further testified that the Company has calculated the refund based upon the difference of the tax Heater actually paid and the tax that it has collected from its customers.

The Heater calculation, on a stand-alone basis, would result in a $32,997 refund to the Heater-only customers. The Hasty calculation had a negative $15,315 impact on the overall calculation of the Company proposed $17,682 refund. The Public Staff's position is that the Hasty portion of the calculation should go to zero and refunds only be made to the Heater-only customers of the $32,997 Heater component of the tax calculation.

The Commission issued an Order on December 29, 1988 in Docket No. W-274, Sub 50, approving the transfer of Hasty to Heater. In so doing, the Commission approved the consolidation of the two companies into one entity, with all customers thereafter being treated as Heater customers.

The Commission concludes that Heater has calculated and maintained its reserve account, showing the revenue impact of TRA-86, in accordance with this Commission's October 20, 1987 Order. Since all customers are now Heater customers, and have been since December 29, 1988, it is appropriate to make the consolidated tax refund of $17,682 to all customers.

The Commission further concludes that the TRA-86 over-collections should include interest up to the time of the refund. In addition, the Commission concludes that the refund should be reflected as a credit to bills, as proposed by the Company. The Company should file an accounting of the refund with the Commission within thirty days of completion of the refund process.

IT IS, THEREFORE, ORDERED as follows:

1. That Heater Utilities, Inc., is authorized to increase its rates for water utility service to produce additional annual gross service revenues of $362,529 based on test year operations.

2. That the Schedule of Rates attached as Appendix A is approved for water utility service rendered by Heater Utilities, Inc., on and after the date of this Order. This schedule is deemed filed pursuant to G.S. 62-138.

3. That Heater Utilities, Inc., refund $17,682 representing tax savings and interest related to TRA-86 through a one-time credit to all its customers

4. That Heater Utilities, Inc., submit (a) a schedule showing repairs and other corrective actions to address service problems testified to at the hearing, and (b) quarterly reports on the status of these actions, including the success of polyphosphate sequestration.

5. That Heater Utilities, Inc., deliver a copy of the Notice attached as Appendix B to all of its customers with their next billing statements.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of December 1990.

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

SCHEDULE OF RATES

for

HEATER UTILITIES, INC.

for providing water utility service in

ALL ITS SERVICE AREAS

in North Carolina

Residential Metered Rates (monthly)

| | | |
|---|---|---|
| Base charge, zero usage | | $7.00, minimum |
| Usage charge | | $2.37/1,000 gallons |
| | or | $1.78/100 cubic feet |

Commercial Metered Rates (monthly)

| Meter size | Base charge, zero usage |
|---|---|
| 5/8" | $ 7.00 |
| 5/8 x 3/4" | 7.00 |
| 3/4" | 10.50 |
| 1" | 17.50 |
| 1-1/2" | 35.00 |
| 2" | 56.00 |
| 3" | 105.00 |
| 4" | 175.00 |

| | | |
|---|---|---|
| Usage charge (all meter sizes) | | $2.37/1,000 gallons |
| | or | $1.78/100 cubic feet |

Temporary Service: $40.00- A one time charge to builder of residence under construction payable in advance. Fee entitles builder to six months, unless construction is completed earlier and the service is intended for only normal construction needs for water (not irrigation). Applicable only in the five following subdivisions where such charges is specifically provided by contract with the developer:

| | | |
|---|---|---|
| Fairstone | - | Contract date September 3, 1988 |
| Fox N' Hound | - | Contract date June 13, 1988 |
| Pear Meadow | - | Contract date January 19, 1988 |
| Pebble Stone | - | Contract date August 24, 1988 |
| Southwinds | - | Contract date May 25, 1988 |

* Connection Charges: 3/4" x 5/8" meters

| | |
|---|---|
| For taps made to existing mains installed inside franchised service area: | $525.00 |
| For mains extended by Heater outside of franchised service area: | 120% of the actual cost of main extension |

* Connection Charges: Meters exceeding 3/4" x 5/8"

| | |
|---|---|
| For all taps: | 120% of actual cost |

* Meter Installation Fee:

| | |
|---|---|
| Where cost of meter installation is not otherwise recovered through connection charges: | $70.00 |

Reconnection Charge:

| | |
|---|---|
| If water service cut off by utility for good cause: | $20.00 |
| If water service discontinued at customer's request: | $ 5.00 |

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charges for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Returned Check Charge: $10.00

* In most areas connection charges do not apply pursuant to contract and only the $70.00 meter installation fee will be charged to the first person requesting service (generally the builder). Where Heater must take a tap to an existing main the charge will be $525.00 and where the main extension is required the charge will be 120% of the actual cost.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-274, Sub 59 on this the 20th day of December 1990.

APPENDIX B

DOCKET NO. W-274, SUB 59

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Heater Utilities, Inc.,<br>Post Office Drawer 4889, Cary, North<br>Carolina, for Authority to Increase<br>Rates for Water Utility Service in All<br>Its Service Areas in North Carolina | )<br>)<br>)<br>)<br>)<br>) | NOTICE TO CUSTOMERS |

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an order authorizing Heater Utilities, Inc., to charge increased rates for water service to most of its customers in North Carolina. Since the Heater customers formerly served by Glendale Water, Inc., were paying rates slightly higher than those approved by the Commission in this proceeding, then these customers will receive a slight rate decrease. The rates are shown in Appendix A attached.

The Commission issued its decision following public hearings in Raleigh on October 1 and 2 at which a number of customers appeared and offered testimony. The Public Staff also offered testimony on this matter. The Commission found that the service provided by Heater is generally adequate but noted that problems do exist on several of the Company's systems. The Commission has required Heater to file quarterly status reports on the progress of correcting these problems.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of December 1990.

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

DOCKET NO. W-354, SUB 74
DOCKET NO. W-354, SUB 79
DOCKET NO. W-354, SUB 81

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Carolina Water Service, Inc.,<br>of North Carolina, 2335 Sanders Road,<br>Northbrook, Illinois 60062, for Authority<br>to Increase Rates for Providing Water<br>and Sewer Utility Service in Its Service<br>Areas in North Carolina | )<br>)<br>)<br>)<br>)<br>) | ORDER<br>GRANTING<br>PARTIAL RATE<br>INCREASE |

HEARD IN: Courtroom #1, Watauga County Courthouse, 403 West King Street, Boone, North Carolina, on Monday, February 5, 1990, at 7 p.m.

District Courtroom #1, 7th Floor, Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina, on Tuesday, February 6, 1990, at 7 p.m.

Commissioners' Board Room, Room 204, Buncombe County Courthouse, 60 Court Plaza, Asheville, North Carolina, on Wednesday, February 7, 1990, at 9 a.m.

Room 267, 2nd Floor, Charlotte Mecklenburg Government Center, 600 East 4th Street, Charlotte, North Carolina, on Thursday, February 8, at 7 p.m., and Friday, February 9, 1990, at 9 a.m.

Council Chambers, 2nd Floor, City Hall, 101 North Main Street, Winston-Salem, North Carolina, on Tuesday, February 13, 1990, at 7 p.m.

Superior Courtroom #317, New Hanover County Courthouse, Fourth and Princess Streets, Wilmington, North Carolina, on Thursday, February 15, 1990, at 7 p.m.

Carthage Agricultural Extension Auditorium, Pinehurst Avenue, Carthage, North Carolina, on Monday, February 19, 1990, at 7 p.m.

Board Room, City Hall, 214 Center Street, Goldsboro, North Carolina, on Tuesday, February 20, 1990, at 7 p.m.

Superior Courtroom, 2nd Floor, Craven County Courthouse, Broad Street, New Bern, North Carolina, on Wednesday, February 21, 1990, at 7 p.m.

Pine Knoll Shores Meeting Room, Town Hall, Municipal Circle, Pine Knoll Shores, North Carolina, on Thursday, February 22, 1990, at 7 p.m.

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, March 19, 1990, at 7 p.m.; Tuesday, March 20, 1990, at 9 a.m.; Wednesday, March 21, 1990, at 9:30 a.m.; Thursday, March 22, 1990, at 9 a.m.; Wednesday, April 11, 1990, at 9:30 a.m.; Tuesday, April 17, 1990, at 2 p.m.; Wednesday, April 18, 1990, at 9 a.m.; and Thursday, April 19, 1990, at 9:30 a.m.

BEFORE: Commissioner Robert O. Wells, Presiding, and Commissioners Charles H. Hughes and Laurence A. Cobb

APPEARANCES:

For the Applicant:

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

For the Using and Consuming Public:

Antionette R. Wike, Chief Counsel, 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

Jo Anne Sanford, Special Deputy Attorney General, Lorinzo Joyner, Lemuel Hinton, Karen E. Long, and Richard L. Griffin, Assistant Attorneys General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

For the Village of Whispering Pines:

W. Lamont Brown, Attorney at Law, Brown, Robbins, May, Pate, Rich, Scarborough & Burke, 10 Turnberry Wood, Post Office Box 370, Pinehurst, North Carolina 28373

For the Town of Pine Knoll Shores, Inc., The Town of Atlantic Beach, and Brandywine Bay Homeowners Association

Theodore C. Brown, Jr., Attorney at Law, Fruitt & Brown, 1042 Washington Street, Post Office Box 72547, Raleigh, North Carolina 27605-2547

BY THE COMMISSION: This matter was initiated with the filing of an application by Carolina Water Service, Inc., of North Carolina (Carolina Water Service, CWS, Company, or Applicant) on October 25, 1989, seeking authority to increase its rates and charges for providing water and sewer utility service in all of its service areas in North Carolina. On November 3, 1989, the Applicant filed a motion requesting interim approval of its requested rates. On November 20, 1989, the rate increase application and motion for interim rates were brought before the Commission. The Public Staff and Attorney General opposed the interim rates requested. CWS offered support for its motion for interim rates. On November 22, 1989, the Commission issued an Order declaring this matter to be a general rate case and suspending the proposed rates for up to 270 days. On November 29, 1989, the Commission issued an Order which reaffirmed its Order of November 22, 1990, and established the test period as the 12-month period ended June 30, 1989, set the matter for public hearing, required public notice, and denied the motion for interim rates.

On January 11, 1990, the Public Staff filed a motion in which it requested the Commission to issue an Order requiring CWS to provide the Public Staff copies of certain documents. On January 16, 1990, CWS filed its response to the Public Staff's motion in which it moved the Commission to deny said motion.

By motion filed on January 22, 1990, CWS informed the Commission that it had inadvertently neglected to notify customers in Powder Horne Subdivision of the rate increase application and requested that it be allowed to give late notice of the rate increase and hearings. CWS also requested that, because of the negotiations for the sale of the Beatties Ford and Hyde Park East Subdivisions (hereinafter referred to collectively as Beatties Ford) to the Charlotte Mecklenburg Utility Department (CMUD), it be allowed to exclude those

customers from the notice requirements of the Commission November 22, 1989, Order.

On January 23, 1990, the Attorney General filed it's Notice of Intervention in this matter. The Public Staff intervention is deemed appropriate pursuant to G.S. § 62-15(d).

On January 23, 1990, the Public Staff filed its response to CWS' motion of January 22, 1990, in which it agreed with CWS that the customers in Powder Horne Subdivision should be given public notice but requested additional time to file its response to the Beatties Ford matter.

On January 23, 1990, CWS filed its response to the Public Staff motion of January 11, 1990, concerning the filing of certain documents.

On January 25, 1990, the Public Staff filed its response to the Beatties Ford matter in which it moved the Commission to include Beatties Ford in this rate case. Also on January 25, 1990, the Public Staff filed a motion for an additional hearing in the Wilmington area which was approved by Order of January 29, 1990.

On January 29, 1990, the Commission issued an Order requiring public notice of the rate increase application to the customers in Powder Horne Subdivision.

On January 30, 1990, the Commission issued an Order which allowed the Public Staff Motion of January 11, 1990, pertaining to CWS filing of certain documents. Said Order also required the confidentiality of certain of these documents as agreed to by the parties.

By Motion filed on January 30, 1990, CWS renewed its previous motion to exclude Beatties Ford from the rate increase proceeding.

By Order issued on February 2, 1990, the Commission allowed the Company's request to exclude Beatties Ford Subdivision from the notice requirements in this proceeding, fixed the time for the filing of rebuttal testimony, and scheduled a further hearing in Winston-Salem.

On February 9, 1990, the Village Council of the Village of Whispering Pines filed a Petition to Intervene. This was allowed by Order issued on February 16, 1990.

On February 9, 1990, the Applicant filed the testimony of Patrick J. O'Brien, the Vice President and Treasurer of the Company.

By Petition filed on February 9, 1990, the Town of Pine Knoll Shores, Inc., moved to intervene in this proceeding. Said intervention was allowed by Commission Order of February 21, 1990.

By Motion filed on February 26, 1990, the Town of Pine Knoll Shores filed a motion to expand its intervention to include the Town of Atlantic Beach and Brandywine Bay Homeowners Association and requesting permission to file expert testimony on March 8, 1990. Both the Public Staff and the Company filed responses on February 28, 1990. The Commission in its Order of March 1, 1990,

allowed the expanded intervention but set the date of filing of expert testimony at March 5, 1990.

On March 2, 1990, the Public Staff filed the testimony and exhibit of Andy R. Lee, Director, Water Division; Linda Petrie Haywood, Staff Accountant, Accounting Division; Fredrick W. Hering, Staff Accountant, Accounting Division; and Kevin W. O'Donnell, Financial Analyst, Economic Research Division. The Town of Pine Knoll Shores, et. al., filed the testimony and exhibits of Jocelyn M. Perkerson, CPA, on March 5, 1990.

On March 6, 1990, CWS filed a letter from Mr. James Camaren, Vice President, Business Development, in Docket No. W-354, Sub 74 (the application of CWS for a Certificate of Public Convenience and Necessity to provide water utility service in Raintree Subdivision in Wayne County). Docket No. W-354, Sub 74, has been consolidated with Docket No. W-354, Sub 81, for hearing and consideration. On March 8, 1990, the Public Staff filed a motion in reply to the letter of March 6, 1990, requesting the opportunity to file rebuttal testimony and to cross-examine Mr. Perry Owens, Chairman and Chief Executive Officer of CWS, and Mr. Camaren, regarding the letter and related matters. On March 15, 1990, the Commission issued an Order permitting the Public Staff to file rebuttal testimony and requiring Mr. Owens and Mr. Camaren to appear at a hearing on April 11, 1990, for cross examination on the matters alleged in the March 6, 1990, motion of the Public Staff. Pursuant to the Order of March 15, 1990, the Public Staff filed the testimony of Andy Lee on April 4, 1990. At a hearing on April 11, 1990, the Commission heard the testimony of Messrs. Camaren, Owens, and Lee, and received into evidence the affidavit of Mr. Tyndall Lewis.

On March 13, 1990, CWS filed a motion seeking extension of time to file rebuttal testimony and asking that the issue of refund of deferred revenues related to the Tax Reform Act of 1986 be severed from this proceeding. The Public Staff and Intervenors Town of Pine Knoll Shores, et al., filed responses to this Motion on March 14 and 16, 1990, respectively. The Commission issued an Order on March 16, 1990, granting an extension of time to file rebuttal testimony and denying the motion of severance of the deferred revenues issue.

On April 6, 1990, CWS filed the rebuttal testimony of Patrick J. O'Brien, David H. Demaree, Carl J. Wenz, Carl Daniel, Dr. Edward W. Erickson, Benjamin A. McKnight, and Dale C. Stewart.

Public hearings were held as scheduled. The following public witnesses appeared and offered testimony and exhibits at the various hearings.

| | |
|---|---|
| Boone<br>February 5 | Barry Noll, Bill Crawford, George McLaney, Randy Carter, Robert Durant, Ed Laughlin, Bob Stephenson, Fraser Manis, Marjorie Unrath, and George Scheitlin |
| Asheville<br>February 6 | Steve Clark, Gene Rainey, Jesse Ledbetter, Burley Tipton, Tim Erwin, Les Churchill, E.B. Trueblood, Grady Balentine, Jack Babb, Rita Large, Rosa Shade, William McLoughlin, David Harwood, David Martin, Becky Martin, Arthur McNatt, Jo Ann Goforth, James T. Tanner, Jr., H.K. Pohlman, Iona Young, Thomas Simmons, and Aubry Wooten |

| | |
|---|---|
| Asheville February 7 | Marion Hawkins, Donald Downs, John Zgavec, Wilhemina Milam, Jerry Allison, and Curtis Solomon |
| Charlotte February 8 | Robert L. John, Fenton N. Gravely, Charles Jenkins, Ed Spooner, Rembert Sessions, Debra Forbes, Gwen Jones, Cathy McGinn, Doug Fink, Thelma Luckie, Nancy Lynch, Joe Marks, Debbie Cochran, Stephen Smith, Dorothy Hyatt, Clifford Crocker, Richard Casas, Perry Hancock, Bernice Nix, and Robert Broome |
| Charlotte February 9 | Nancy Runnion, Russ Ford, Ann Robey, Steve Caldwell, Harry Lerner, and Jim Adams |
| Winston-Salem February 13 | Randolph Yanagawa, Donald Guthrie, Perry Mixter, Charles Bumgarner, Keith Bess, Mike Rowe, David Wade, Rosa Keatts, Paul Grubb, Richard Stewart, Richard Williams, Harry Martin, and Randy Melton |
| Wilmington February 15 | William D. Bailey, R.M. Fitzpatrick, Howard Sterne, and J.L. Peters |
| Carthage February 19 | George Reaves, Bruce Wiesly, George Simpson, Phil Jones Durwood Epps, and Bob Yager |
| Goldsboro February 20 | Jim Barnwell and Moses Almond, Sr. |
| New Bern February 21 | Robert Morra and Stuart Miller |
| Pine Knoll Shores February 22 | Robert Grady, Ken Hanan, Barney Zmoda, Clyde Lynn, Paul B. Maxson, Charles S. Allen, and John Chapin |
| Raleigh March 19 | Alan McKenzie, Byron Harris, Scott Smith, Maggie Wellbrock, Marian Johnson, William Bailey, Crissty Martin, Terry Hawley, Harvey Bauman, Bill DeTamble, Jane Diedrick, Mike Ledford, Richard Gamble, Mike Marvel, Robert Thornburg, Arthur Curtis, and Charles Tomlinson |
| Raleigh March 20 | O. W. Godwin, Jr. |

CWS presented the testimony and exhibits of: Patrick J. O'Brien, Vice President and Treasurer of CWS, and the rebuttal testimony and exhibits of the following witnesses: Patrick J. O'Brien; David H. Demaree, Vice President of Operations and Secretary of CWS; Carl Daniel, Vice President and Regional Director of Operations of CWS; Carl J. Wenz, Director of Regulatory Accounting of CWS; Dr. Edward W. Erickson, Professor of Economics and Business at North Carolina State University and Director of the NCSU Center for Economic and Business Studies; Benjamin A. McKnight, partner in the firm of Arthur Andersen & Company; and Dale C. Stewart, P.E. of LandDesign Engineering Services.

The Public Staff presented the testimony and exhibits of Andy R. Lee, Linda Petrie Haywood, Fredrick W. Hering, and Kevin W. O'Donnell.

The Intervenors, Town of Atlantic Beach, et al., presented the testimony and exhibits of Jocelyn M. Perkerson.

On May 15, 1990, the parties submitted proposed orders and briefs. On May 25, 1990, CWS filed a Reply Brief addressing the Public Staff's proposed order.

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. CWS is a corporation duly organized under the laws of, and authorized to do business in, the State of North Carolina. It is a franchised public utility providing water and/or sewer service to customers in North Carolina. CWS is properly before the Commission, 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. Brandywine Bay Utility Company, Belvedere Utility Company, C.W.S. Systems, Inc., Queens Harbor Utility, Watauga Vista Water Corporation and Riverpointe Utilities, Inc., are also wholly owned subsidiaries of Utilities, Inc., and are duly franchised by this Commission to operate as public utilities providing water and/or 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, Watauga Vista Water Corporation, and Riverpointe Utilities, Inc., are all operated under Carolina Water Service, Inc., of North Carolina. In 1989, Brandywine Bay Utilities Company, Belvedere Utility Company, and Queens Harbor Utility merged their accounting books and records into CWS. Only CWS Systems, Inc., Riverpointe Utilities, Inc., and Watauga Vista Water Corporation keep separate accounting records. However, all share operating personnel and common plant, including transportation and office equipment. Reference to Carolina Water Service, CWS, Company, or Applicant in this Order is to the joint operation of these seven affiliated companies.

4. The test period appropriate for use in this proceeding is the 12 months ended June 30, 1989.

5. The Applicant provides water and/or sewer utility service to approximately 23,000 customers in more than 80 service areas located within the State of North Carolina.

6. The Applicant's present rates are as follows:

WATER RATES

RESIDENTIAL (Monthly charges):

(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 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: $2.30/1,000 gallons ($1.25 for untreated irrigation water in Brandywine Bay).

(D) Flat rate for unmetered single-family residences: $15.50.
Flat rate for unmetered commercial customers: $15.50/single family equivalent.

COMMERCIAL AND OTHER (Monthly charges):

(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 |
| 6" meter | 400.00 |

(B) Commodity charge: $2.30/1,000 gallons.

AVAILABILITY RATES: Monthly charge/customer: $2.00

Applicable only to property owners in Carolina Forest and Woodrun Subdivisions.

CONNECTION CHARGE: $100.00 for 5/8" meter ($300 in Hound Ears Subdivision). Meters larger than 5/8" - actual cost of meter and installation.

PLANT IMPACT: $400 for 5/8" meter

Multifamily or commercial customers - to be negotiated on basis of equivalence to a number of single-family customers, but not less than $400 payable by developer or builder.

NEW WATER CUSTOMER CHARGE: $22.00

RECONNECTION CHARGE:

If water service cut off by utility for good cause: $22.00
If water service discontinued at customer's request: $22.00
(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected.)

SEWER RATES

RESIDENTIAL:

Flat rate/month/dwelling unit: $20.50

COMMERCIAL AND OTHER:

100% for 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 :

Residential: $100/single family dwelling unit. ($300.00 in Hound Ears Subdivision and $700.00 in Corolla Light Subdivision).

Commercial: Actual cost of connection

PLANT IMPACT FEES: $1,000 for single family customers
$1,456 in Brandywine Bay

Multifamily or commercial customers: to be negotiated on the 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 is cut off by utility for good cause, the actual cost of disconnection and reconnection will be charged.
(This charge will be waived if customer also receives water service from Carolina Water Service.)

FINANCE CHARGE FOR LATE PAYMENT: 1% per month for balance due 25 days after billing date.

CHARGE FOR PROCESSING OF NSF CHECK: $7.00

7. The Applicant's proposed rates are as follows:

METERED WATER RATES

RESIDENTIAL:

(A) Base Facility Charge: $9.00 per dwelling unit. This $9.00 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: $8.30 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: $2.90 per 1,000 gallons for all metered water usage. ($2.00 for untreated irrigation water in Brandywine Bay).

(D) Flat rate for unmetered single-family residence: $20.00

Flat rate for unmetered single-family residence: $20.00 per single family equivalent.

COMMERCIAL AND OTHER:

(A) Base Facility Charge:

| | |
|---|---|
| 5/8" x 3/4" meter | $ 9.00 |
| 1" meter | 22.50 |
| 1 1/2" meter | 45.00 |
| 2" meter | 72.00 |
| 3" meter | 135.00 |
| 4" meter | 225.00 |
| 6" meter | 450.00 |

(B) Commodity Charge: $2.90 per 1,000 gallons, or 134 cubic feet.

AVAILABILITY RATES: $2.00 monthly charge/customer.

Applicable only to property owners in Carolina Forest and Woodrun Subdivisions.

CONNECTION CHARGE : 5/8" meter - $100

($300 in Hound Ears Subdivision, $950 in Sherwood Forest Subdivision, and $925 in Wolf Laurel 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.

NEW WATER CUSTOMER CHARGE: $22.00

RECONNECTION CHARGE:

If water service cut is off by the utility for good cause: $22.00

If water service is discontinued at the 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 per month per dwelling unit: $29.00

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:

150% for water service subject to a minimum rate of $29.00 per month. Customers who do not take water service will pay $29.00 per single family equivalent.

NEW WATER AND SEWER CUSTOMER CHARGES:

New Sewer Customer Charge: $16.50
(If customer also receives water service, this charge will be waived.)

CONNECTION CHARGE (tap on fee):

Residential: $100 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 FEES: $1,000 for single family customers
$1,456 in Brandywine Bay Subdivision

Multifamily or commercial customers: to be negotiated on the 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 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 customers with cut-off notice.
(This charge will be waived if customer also receives water service from Carolina Water Service.)

FINANCE CHARGE FOR LATE PAYMENTS: 1% per month for balance due 25 days after billing date.

CHARGE FOR PROCESSING OF NSF CHECK: $7.00

8. The Company did not give notice of its proposed rate increase to the customers in Beatties Ford Park and Hyde Park East subdivisions (sometimes hereinafter cited collectively as Beatties Ford), as ordered by the Commission. The Beatties Ford area has been annexed into the City of Charlotte, which is committed to provide municipal services to the residents of the area. The Charlotte Mecklenburg Utility District (CMUD) and CWS have been negotiating for the sale of CWS's water and sewer facilities to CMUD; however, as of the issuance of this Order, no agreement has been reached. CWS has stated to the Commission in Docket No. W-354, Sub 82, that it may decline to sell the facilities to CMUD if the Commission refuses to permit CWS to retain the gain on sale for the benefit of its stockholders. The Commission has scheduled a hearing on this issue for July 18, 1990. As of the issuance of this Order, CWS continues to own the water and sewer facilities serving Beatties Ford and continues to serve the Beatties Ford customers, and CWS's franchise for the Beatties Ford area remains in effect. Beatties Ford should be included in this proceeding for purposes of calculating revenues, expenses, and rate base, but the rate increase ordered herein will not be imposed on the customers of Beatties Ford because CWS failed to give notice of this rate case to those customers.

9. The level of water and/or sewer utility service being provided by CWS is basically adequate; however, several systems have experienced some degree of service problems and significant problems exist in the Mt. Carmel/Lee's Ridge service area (sometimes hereinafter referred to collectively as Mt. Carmel). The Company has adequately addressed these problems or is taking steps to correct the problems in all areas except the Mt. Carmel service area.

10. It is appropriate in this proceeding to allow the Company's investment in rate base related to the plant capacity utilized fully at the end of the test year as a percentage of the total capacity of certain items of plant in service. Any disallowance resulting from such percentage utilization methodology will be reduced by 35 percent which the Commission concludes to be a reasonable capacity allowance in this proceeding. Such capacity allowance takes into consideration engineering, construction, and maintenance efficiencies which are inherent in meeting reasonably anticipated growth.

11. It is appropriate to utilize a standard of 400 gallons per day per connection in determining the design capacity of elevated storage tanks and sewage treatment plants.

12. The net investment of the Company in the Cabarrus Woods elevated storage tank is $164,780. The appropriate reduction in rate base for this facility, based on the Commission's percentage utilization method, would be $72,767. However, this reduction should be offset for a reasonable capacity allowance of 35 percent, as set forth in Finding of Fact No. 10, which results in a total reduction in the amount to be included in rate base of $47,299. The net investment to include in rate base is $117,481.

13. The net investment of the Company in the Cabarrus Woods sewage treatment plant is $228,203. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $129,003. However, this reduction should be offset for a reasonable capacity allowance of 35 percent, as set forth in Finding of Fact No. 10, which results in a total reduction in the amount to be included in rate base of $83,852. The net investment to include in rate base is $144,351. The Company's net investment in the Cabarrus Woods sewer lift station is $138,000. This entire investment should be included in rate base.

14. The investment of the Company in four wells drilled in or near Cabarrus Woods is $174,428. This entire investment should be included in rate base.

15. The investment of the Company in water softeners for the Cabarrus Woods Subdivision is $22,000. This entire investment should be included in rate base.

16. The net investment of the Company in water softening equipment for the Emerald Point Subdivision is $31,190. This entire investment should be included in rate base.

17. The Company has proposed to include in rate base $72,365 for the cost of installing meters in the Hound Ears Subdivision. This entire cost should be excluded from rate base because these meters were not used and useful by the close of the hearings in this proceeding.

18. The Company has proposed to include in rate base an investment of $100,000 in a well and tanks installed in the Wolf Laurel Subdivision. This entire investment should be allowed in rate base.

19. The net investment of the Company in the Brandywine Bay elevated storage tank is $250,000. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $160,000. However, this reduction should be offset for a reasonable capacity allowance of 35 percent, as set forth in Finding of Fact No. 10, which results in a total reduction in the amount to be included in rate base of $104,000. The net investment to include in rate base is $146,000.

20. The net investment of the Company in the Brandywine Bay sewage treatment plant is $408,738. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $260,489. However, this reduction should be offset for a reasonable capacity allowance of 35 percent, as set forth in Finding of Fact No. 10, which results in a total reduction in the amount to be included in rate base of $169,318. The net investment to include in rate base is $239,420.

21. The net investment of the Company in the Danby wastewater treatment plant is $209,000. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $123,728. However, this reduction should be offset for a reasonable capacity allowance of 35 percent, as set forth in Finding of Fact No. 10, which results in a total reduction in the amount to be included in rate base of $80,423. The net investment to include in rate base is $128,577.

22. The net investment of the Company in the Queens Harbor water and sewage system is $70,000. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $66,605. However, this reduction should be offset for a reasonable capacity allowance of 35 percent, as set forth in Finding of Fact No. 10, which results in a total reduction in the amount to be included in rate base of $43,294. The net investment to include in rate base is $26,706.

23. The net investment of the Company in the Riverpointe water and sewage system is $35,000. The appropriate reduction in rate base for this facility based upon the Commission's percentage utilization method, would be $32,375. However, this reduction should be offset for a reasonable capacity allowance of 35 percent, as set forth in Finding of Fact No. 10, which results in a total reduction in the amount to be included in rate base of $21,044. The net investment to include in rate base is $13,956.

24. The net investment of the Company in the Sherwood Forest water system is $26,500. The appropriate reduction in rate base for the water mains associated with this facility, based upon the Commission's percentage utilization method, would be $22,421. However, this reduction should be offset for a reasonable capacity allowance of 35 percent, as set forth in Finding of Fact No. 10, which results in a total reduction in the amount to be included in rate base of $14,574. The net investment to include in rate base is $11,926.

25. The net investment of the Company in the TET sewage system is $9,327. The appropriate reduction in rate base for this facility, based upon the Commission's percentage utilization method, would be $7,661. However, this reduction should be offset for a reasonable capacity allowance of 35 percent, as set forth in Finding of Fact No. 10, which results in a total reduction in the amount to be included in rate base of $4,980. The net investment to include in rate base is $4,347.

26. The Applicant's total original cost of its plant in service is $40,168,215.

27. The appropriate amount for the debit balance in deferred taxes is $406,919.

28. The appropriate level of accumulated depreciation is $3,007,709.

29. The appropriate level of the plant acquisition adjustment account is $2,608,030.

30. The appropriate level of customer deposits is $100,861.

31. The appropriate level of contributions in aid of construction is $17,795,400.

32. The appropriate level of deferred taxes is $852,599.

33. The appropriate amortization period for rate case expenses is three years.

34. The beginning point of the rate case amortization period should be the date the related order is issued approving rates that include said costs.

35. The rate case costs found to be proper for the Company's previous general rate case in Docket No. W-354, Sub 69, should not be updated in this proceeding.

36. The unamortized balance of the Sub 69 rate case costs to be included in deferred charges is $37,923, and the annual amortization of the Sub 69 rate case costs is $18,961.

37. The appropriate amortization period for Docket No. M-100, Sub 113, costs and Docket No. W-354, Sub 69, appeal costs is five years.

38. The unamortized balance of Docket No. M-100, Sub 113, costs to be included in deferred charges is $9,071 and the annual amortization of Docket No. M-100, Sub 113, costs is $2,474.

39. The appropriate level of unamortized Docket No. W-354, Sub 69, appeal costs to be included in deferred charges is $37,498, and the annual amortization of Docket No. W-354, Sub 69, appeal costs is $9,375.

40. The appropriate level of total Docket No. W-354, Sub 81, costs to be recovered from the Company's ratepayers is $158,611. This amount consists of legal expenses of $50,914, water service personnel of $39,119, customer notices of $26,783, travel of $16,956, outside witnesses of $20,700, and audit and filing fees of $4,139.

41. The appropriate level of unamortized Docket No. W-354, Sub 81, costs to be included in deferred charges is $105,741, and the annual amortization of said costs is $52,870.

42. The total Hugo costs included for recovery should be reduced by the regular pay related to out-of-state affiliated personnel.

43. The proper level of Hugo costs to be included in deferred charges are $67,226, and the appropriate amortization level, based on a 6 year amortization period, is $13,445.

44. The total deferred charges for inclusion in rate base is $404,509.

45. The appropriate working capital allowance to be included in the Company's rate base is $425,333.

46. The Applicant's original cost rate base is $12,320,548. Such amount is determined by adding plant in service of $40,168,215, debit balance in

deferred taxes of $406,919, deferred charges of $404,509, and working capital allowance of $425,333 and deducting accumulated depreciation of $3,007,709, plant acquisition adjustment of $2,608,030, customer deposits of $100,861, advances in aid of construction of $257,020, contributions in aid of construction of 17,795,400, excess book value of $4,462,809, and deferred taxes of $852,599.

47. The Applicant's net revenues for the year under present rates after accounting and pro forma adjustments are $5,298,878. After giving effect the Company's proposed rates, such gross revenues are $6,998,108.

48. The salaries and related expenses of 1.5 sewer operators should be allocated to the Company's contract sewer operations.

49. The salary of the plant manager excluded by the Public Staff should be included in the Company's cost of service.

50. The proper level of end-of-period operator salaries to be included in the Company's cost of service is $1,067,272.

51. The transportation, maintenance and repair, office supplies and other office expenses, and telephone expenses should be adjusted for customer growth.

52. The methodology proposed by the Public Staff to reflect expenses charged to plant is appropriate.

53. The appropriate depreciation rate to be applied to plant offsets is the composite depreciation rate computed excluding computers and transportation equipment.

54. The appropriate level of depreciation expense based on Commission approved end-of-period plant is $434,514.

55. The reasonable level of operating revenue deductions, after accounting and pro forma adjustments, is $4,741,687.

56. The reasonable capital structure to be used herein is as follows:

| | |
|---|---|
| Long term debt | 59.7% |
| Common Equity | 40.3% |
| Total | 100.0% |

57. The Applicant's embedded cost of long term debt is 10.25%.

58. The reasonable rate of return on common equity to be allowed the Company is 13.45%.

59. The Applicant should be allowed an increase in approved rates which, if fully implemented, would produce an increase in annual gross service revenues of $1,497,467. This increase would allow the Applicant the opportunity to earn an 11.54% overall rate of return on its rate base, which the Commission finds to be reasonable in this proceeding.

60. In order to refund to customers the currently estimated tax savings plus interest related to the Tax Reform Act of 1986 (TRA-86), the Applicant should reduce the rates approved herein by $331,686 for a period of one year.

61. The Company's rates should be established under a uniform, statewide rate structure in this case. However, a separate investigation should be initiated to consider the reasonableness of ordering system-separate accounting for purposes of future rate cases.

62. The Company's rates approved herein shall apply to the Powder Horn Mountain Subdivision.

63. There is no need to further address the issues raised in Docket No. W-354, Sub 74, regarding the provision of water service to the Raintree Subdivision.

64. It is appropriate to include language in the rate schedules allowing different water tap fees for the Hound Ears, Sherwood Forest, and Wolf Laurel Subdivisions.

65. It is appropriate to include language in the rate schedules allowing different sewer tap-on fees for the Hound Ears and Corolla Light Subdivisions.

66. The Applicant should be allowed to increase its annual gross service revenues for water by $975,937 and to sewer by $521,530. The rates contained in Appendix A will allow this increase, should enable the Applicant the opportunity to earn an 11.54% return on rate base, and is fair to the Applicant and its customers. These rates also reflect the one year flow through to customers of tax savings and interest related to TRA-86. Accordingly, the rates set forth in Appendix A are approved as the proper rates in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 1 - 7

The evidence supporting these Findings of Fact is contained in the verified application; the Commission files and records regarding this proceeding; the Commission Orders scheduling hearings; the Company's last general rate case, Docket No. W-354, Sub 69; and the testimony and exhibits of the witnesses. These findings are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are essentially uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is contained in the testimony and exhibits of Company witnesses O'Brien and Owens and the supplemental testimony and revised exhibit of Public Staff witness Haywood. Additional support is found in the February 1, 1990, oral argument in this docket and in Docket No. W-354, Sub 82.

Many of the differences between the Public Staff and the Company, regarding the correct level of expenses, revenues, and rate base, result from a disagreement between the parties over the inclusion of the Beatties Ford systems in this case. The Company recommends that the systems be excluded.

Although the Public Staff initially accepted the exclusion of the systems, the Public Staff now urges the Commission to include the systems.

Counsel for CWS stated in oral argument on February 1 that "What I was told is that the Company feels about 90 percent sure that soon, and certainly by the time the hearing is closed, they will have a deal with CMUD under which the facilities serving Beatties Ford/Hyde Park East area will be transferred to CMUD, and CMUD will then take over to provide service under the rates that CMUD charges." Company President, Perry Owens, testified at the April 11, 1990, hearing, "It has already, the area, been annexed by CMUD and their policy is that they will condemn the property. We have no choice. We're out whether we like it or not."

CWS filed an application to relinquish its franchise to serve the Beatties Ford Subdivision in Docket No. W-354, Sub 82, on April 10, 1990. CWS alleged that the Beatties Ford area had been annexed into the City of Charlotte, which was committed to provide municipal services to the residents, and that the CMUD and CWS have been negotiating a contract under which CMUD would acquire the water and sewer facilities that CWS owns in the area. In its application, the Company states "CWS deems it imperative that it learn from the Commission what regulatory treatment the Commission will order and whether it will permit CWS to retain the gain on sale for the benefit of its stockholders. If the Commission declines to permit CWS to retain the gain on sale, CWS may decline to execute the contract and will retain the facilities." On May 3, 1990, the Commission issued an Order authorizing CWS to transfer its water and sewer facilities to CMUD and providing that CWS's franchise in the area would be deemed cancelled upon receipt of notice that such a sale and transfer has been completed. However, the Commission deferred ruling on the issue of who shall retain the gain on such a sale. By Order of May 23, 1990, the Commission scheduled a hearing on this issue for July 18, 1990.

The Public Staff proposed that the revenues, expenses, and rate base for the Beatties Ford systems be included in determining the appropriate rates in this rate proceeding. The Public Staff based this request on the uncertainty surrounding the proposed sale of Beatties Ford. Public Staff witness Haywood testified at the hearing that she received the following response to a data request:

> CWS and the Charlotte Mecklenburg Utility District (CMUD) have had several discussions concerning the sale of the Beatties Ford water and sewer system at prices ranging from $350,000 to $850,000. No agreement has been prepared or signed by either party. We are currently exploring the cost of removal of the existing sewage treatment plant and elevated water tank. We would expect a written offer from the District within the next 30 to 60 days, but cannot be assured that the terms and conditions will be acceptable.

Witness Haywood also testified that CWS continues to incur the cost of operating these systems, and it continues to receive revenues from customers on these systems. She also testified that no time frame has been established as to when this will cease.

As of the issuance of this Order, no signed contract for the sale of these systems has been filed with the Commission. CWS continues to own the water and

sewer facilities serving Beatties Ford and continues to serve the customers in the area. Its franchise for this area remains in effect.

Having carefully examined the evidence regarding the Beatties Ford Subdivision, the Commission has determined that these systems should be included in this case for purposes of calculating revenues, expenses and rate base. G.S. § 62-133(c) states in part as follows:

> . . . the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period . . .

There has been no actual change in the ownership of the water and sewer facilities serving the Beatties Ford Subdivision. CWS continues to provide utility service in the area, and its franchise in the area has not been cancelled. Although earlier in this proceeding, CWS expressed a certainty of concluding a deal with CMUD, no such deal has yet been concluded, and CWS's filing in Docket No. W-354, Sub 82, indicates that CWS may refuse to transfer the facilities if the Commission does not rule favorably on the "gain on sale" issue, which will not be decided until after the hearing scheduled for July 1990. The Commission concludes that there has been no "actual change" which would justify the exclusion of the expenses, revenues, and rate base treatment of the Beatties Ford system.

Although the Beatties Ford area will be considered for purposes of setting rates, the rate increase ordered herein will not be imposed upon the Beatties Ford customers because CWS failed to give notice of this rate case to those customers. G.S. 62-134(a) requires that a utility proposing a change in rates "shall also give such notice . . . of the proposed changes to other interested persons as the Commission may direct." By our Order of November 29, 1989, the Commission required of CWS that notice "be mailed with sufficient postage or hand delivered by the Applicant to all of its customers affected by the proposed new rates; that said Notice to the Public be mailed or hand delivered no later than 30 days after the date of this Order. . . " CWS did not give notice to the customers of Beatties Ford as ordered. The Commission held an oral argument on this matter on February 1, during which CWS counsel stated,

> [CWS] decided without getting the Commission's approval, as it should have done, to go ahead and send the notice out but not send the notice to the Beatties Ford/Hyde Park customers. . . The feeling of the Company was that the chances were so great that the rate ultimately approved in this case would not affect those customers that the better procedure to follow would be to just exempt them from the case. . . I would argue to the Commission that the Company chose not to send them notice. And I would certainly argue--and I don't think there would be much disagreement on this point--failure to have sent them notice would mean that you can't charge them the increased rates because by statute they have not been informed of it.

CWS decided not to notify the Beatties Ford customers of this rate case. By doing so, CWS assumed the risk that it would still be serving those customers when increased rates were approved, but would not be able to charge those

customers the increased rates due to the lack of notice. CWS felt the likelihood of this happening to be remote, but this is the very event that has now come to pass.

At the oral argument of February 1, the Public Staff expressed concern that other customers might be required to make up the shortfall resulting from the Beatties Ford customers not being charged the increased rates. The Commission has not allowed this. CWS counsel himself recognized at the February 1 oral argument that the lack of notice to Beaties Ford

> would not foreclose, in my opinion, the Commission including the cost and expenses to serve those two subdivisions and simply attributing revenues from those customers even though they would not be paying them because they didn't receive notice. That would--and the rates that are set, that would not seem to me, affect the other customers. It would certainly affect what the Company earned and what it was able to realize from the rate increase. But the Company having made that decision, it would--the penalty would fall on the Company.

The Commission's accounting treatment herein imputes increased revenues from the Beatties Ford customers, even though these customers are not being required to pay increased rates, so that the other customers will not be required to make up the shortfall.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this Finding of Fact is found in the testimony of the customers testifying at the public hearings; of Department of Environment, Health and Natural Resources (DEHNR) witnesses Adams and Higdon; of Public Staff witness Lee; and of Company witnesses Demaree, Daniel and O'Brien. Public hearings were held in Boone, Asheville, Charlotte, Winston-Salem, Wilmington, Carthage, Goldsboro, New Bern, Pine Knoll Shores, and Raleigh. Approximately 120 customers testified at the hearings about quality, service, and rates. Company witness Daniel submitted testimony relative to the Company's actions and plans for dealing with service problems. Following is a discussion of the problems testified to by the customers and of witness Daniel's testimony of activities taken by CWS.

Boone Area
Hound Ears/Powder Horn/Ski Mountain

Five customers testified from Hound Ears. They opposed the rate increase and inquired as to progress in installing water meters. There were no complaints about water quality or service. In rebuttal testimony, Company witness Daniel stated that this system was under a DEH moratorium when purchased because of insufficient water supply for expansion. Witness Daniel testified further that the Company has since spent $150,380 drilling wells in order to meet DEH requirements. At a contract price of $72,365, the Company has also begun installing meters. It anticipates completion of the metering project by mid-spring. This Commission previously ordered placement of the meters by December 31, 1990.

Three customers testified from the Powder Horn water system. None complained about quality of service; they were concerned with the proposed rate

increase and the lifting of the DEH moratorium on the system at a time prior to the Company's ownership. The president of the property owners' association testified that his group was pleased that Carolina Water Service now owned the system. At the time of purchase, the developer was bankrupt and there was a DEH moratorium because of storage tank problems and lack of water. Witness Daniel stated that, at a cost of approximately $100,000, Carolina Water Service has begun constructing a new well and a new storage tank. It has also installed new blow-offs and upgraded well houses and booster stations.

Two of the 1400 water and 1172 sewer customers from the Sugar Mountain system testified. Both opposed the rate increase, but neither related complaints about quality of service or water. Over the past year, according to witness Daniel, the Company has spent over $28,000 in capital improvements for the system.

One of the 140 water customers at Ski Mountain appeared. He opposed the rate increase. Company witness Daniel responded that during the past year the Company replaced a potentially unsafe tank at a cost of $12,294. He added that the Company plans to spend another $7,000 for improvements to the system's ground-level storage tank.

In sum, 11 of the more than 2,000 customers in the Boone area testified. No one complained of service or water quality problems. The Company introduced evidence that it has spent over $300,000 in these systems improving service and correcting conditions created by previous operators.

Asheville Area
Mount Carmel/Lee's Ridge/Bent Creek/Bear Paw/
Wolf Laurel/Wood Haven/Watauga Vista

Twenty-one of the Mount Carmel/Lee's Ridge 312 water and sewer customers testified. They identified various water quality problems, including sewage odor, bad taste, water odor, discoloring, staining, and low pressure. Company witness Daniel indicated that over the past several years Carolina Water Service has spent over $30,000 to correct these problems, including rebuilding iron removal filters and improving flushing procedures and facilities. Yet, he also indicated that because of the Company's consistent inability to satisfactorily resolve the iron problem, and in response to the Commission's order in Docket No. W-354, Sub 69, the Company is now negotiating to sell the system to the Asheville-Buncombe County Water Authority, which is able to provide another source of water. In order to eliminate sewage problems, the Company has already reached an agreement and has implemented a plan to deliver the system's sewage to the Buncombe County Wastewater Treatment Facility.

Of the more than 1,000 customers in the Bent Creek, Bear Paw, Wolf Laurel, Wood Haven and Watauga Vista systems, 16 testified at the Asheville hearing. Two, one each from Bear Paw and Wolf Laurel, had complaints about water quality. The others opposed the proposed rate increase.

Company witness Daniel described CWS's work in these systems. First, at Bent Creek, the Company has improved filtering and flushing capabilities. Second, witness Daniel noted that in response to a customer's complaint at the hearing about water quality at Bear Paw, the Company visited the customer's home and helped flush her hot water heater. The Company has otherwise begun

procedures to reduce system problems with high iron levels there. Third, at Wolf Laurel, partly in response to concerns about water pressure at higher elevations, the Company has installed two additional ground-level storage tanks and drilled a new well. It has also undertaken a feasibility study for metering all mountain systems.

Charlotte Area
Forest Ridge/Forest Crossing/Southwoods/Danby/
Lamplighter Village South/Woodside Falls/Woodside

Seven of the 220 customers from the Forest Ridge/Forest Crossing/ Southwoods systems testified regarding quality of water and water pressure problems. Since the last rate hearing, according to the rebuttal testimony of Company witness Daniel, the Company has increased flushing capability and has worked to reduce discoloration. The Company increased water pressure at one customer's home in direct response to concerns expressed at the February hearing.

Five of the 510 customers from the Danby/Lamplighter Village South/ Woodside Falls/Woodside Village systems made complaints relative to water and service quality. The Company introduced rebuttal testimony that, since the last rate hearings, the Company had hired a consulting engineer and had spent more than $30,000 to reduce odor and hardness. According to the Company, samples taken from this system since the hearing indicate that water quality is within all state and federal guidelines.

Seven of the more than 700 customers in the Steeplechase, College Park, Lamplighter Village East, and Cabarrus Woods/Victoria Park systems criticized service or water quality. The quality complaints, none of which came from Steeplechase, arose from concerns about hardness and iron content. According to rebuttal testimony of witness Daniel, the Company has addressed the problems in these systems. It conducted tests at College Park. The tests showed that water there meets all EPA and state standards. In Lamplighter Village East, Company witness Daniel testified that the Company replaced a gate valve for one customer who had complained about inadequate pressure, and that it conducted tests for suitable pressure, hardness, iron, and manganese content. The tests indicated that the water was within state and federal guidelines. In Cabarrus Woods/Victoria Park, the Company drilled a new well. The well improved water quality. Several additional major capital expenditures, especially for storage tanks, are planned for the Charlotte area in 1990.

Raleigh Area
Kings Grant/White Oak/Willowbrook/Ashley Hills

Of more than 140 water and 305 sewer customers in this area, eleven raised various service complaints at the Raleigh hearing. The four customers from Kings Grant who testified were most concerned with administrative problems, particularly improper billing. In response, according to rebuttal testimony of witness Daniel, the Company has updated records and corrected the customer billing list. Four customers from White Oak testified to problems with water quality, inconsistent meter readings, and rude office personnel. Witness Daniel noted that the system was not in compliance with environmental regulations at the time of Carolina Water Service's purchase, but that several improvements, including rebuilt filters and new pumps, have since brought the

system within regulations. Three persons made comments about water quality or poor service in Willowbrook. According to witness Daniel, the Company promptly sampled the water at the residence of one of the witnesses who complained about quality and found iron and manganese levels within state and federal requirements.

Winston-Salem Area
Abington/Sequoia Place

Five customers from the Abington system complained about hard water. According to witness Daniel, the Company has traced the problem to water coming from one well and has discontinued use of that well except during emergency conditions. This has significantly reduced the hardness problem. No customers from Sequoia Place complained about service problems, although one objected to having to make a long distance call to the customer service office. Witness Daniel testified that the Company has a toll-free number which is listed on customer bills.

Altogether, six of the Company's more than 360 Winston-Salem area customers voiced complaints about quality or service, and witness Daniel testified that the Company has taken steps to resolve these problems.

Wilmington Area
Belvedere

Four customers out of the 231 water and 133 sewer customers at Belvedere testified. Of these, only one offered a service or quality complaint, which was an objection to hard water. Company witness Daniel responded in his rebuttal testimony by indicating that when the system was purchased, the water softeners at both wells were inoperable. They were repaired by Carolina Water Service, and recent hardness tests showed an acceptable level of hardness. Since purchasing the system, the Company has also installed blow-offs and rebuilt well houses. It plans to replace two tanks this year. The cost of these improvements, according to the Company, will be approximately $23,000.

Carthage Area
Woodrun/Whispering Pines

Six of the more than 1500 area customers testified at the Carthage hearing. Three lived in Woodrun; the others reside in the Village of Whispering Pines. The Woodrun residents expressed concerns about both the quality and quantity of their water. Follow-ups by the Company, according to the rebuttal testimony of witness Daniel, revealed that none of those who complained about quality were experiencing problems after the hearing. The quantity concerns involve worries about the Company's ability to meet future needs. Witness Daniel indicated that the Company was hesitant to make capital expenditures, particularly those for future development, because of the likely exclusion of funds spent for future service from rate base.

Three customers from Whispering Pines indicated problems. Two complained about water quality. According to the Company, its follow-up indicated that these customers were no longer experiencing any difficulties. Concern was also expressed about water quantity. Company witness Daniel stated that surveys of future well sites have been conducted in conjunction with the town. Current

wells are adequate to serve 1330 connections, and there are 844 connections now. One Whispering Pines resident wanted the Company to go ahead with earlier plans to construct additional mains linking all of the town's available lots. But, according to witness Daniel, the town is currently unwilling to forward to the utility the cost of such expansion, as provided in North Carolina Utility Commission Rule No. R7-16. Witness Daniel stated that the Company is afraid that, if it constructs the system with its own capital, it will be unable to include such costs in rate base. There was considerable testimony to show that the Company and representatives of the customers were involved in a close working relationship and that the Company was making efforts in cooperation with the customers to solve the water quality problems at the Company's main source of supply.

Goldsboro Area
Foxfire Estates/Rollingwood

Two of the more than 820 customers from the Goldsboro area, one from Foxfire Estates, the other from Rollingwood, expressed concerns about water or service quality. Company rebuttal testimony indicated that Carolina Water Service has increased flushing capability and has addressed concerns about iron by adding an EPA approved sequestering agent at Foxfire Estates. The Company represents that it has spent approximately $26,000 on wells, well house improvements, and a new tank there. A follow-up to the residence of the person who claimed poor quality at Rollingwood revealed that he no longer experienced problems. Witness Daniel testified that the water supply system at Rollingwood was within acceptable limits as of a recent inspection on November 27, 1989.

New Bern Area
Riverbend

There were no service complaints from customers that reside in this service area. Company witness Daniel attributed the lack of criticism to the fact that the Company has recently installed iron filters at each of the system's wells. Also, since its purchase of the system, the Company has installed stand-by power for wells, rebuilt iron filters, increased well production, and made other improvements at a cost of roughly $124,000.

Pine Knoll Shores Area
Brandywine Bay/Pine Knoll Shores

Of 225 water and 136 sewer customers in Brandywine Bay, two witnesses presented testimony relative to water quality and service. One complained about the Company's repair and excavation practices. In response, witness Daniel promised that in the future the Company would provide notice as to excavations and would make any necessary road repairs on a timely basis. Two customers complained about water quality. Although Company witness Daniel stated that these persons had not made any previous complaints, he promised that the Company would address their concerns. He also stated that the water supply at Brandywine Bay meets all state and EPA recommendations. One Brandywine Bay customer praised the Company's quick response to a water problem during a recent snowstorm.

Of more than 2610 water customers in Pine Knoll Shores, only one issued a quality complaint. This witness testified that there was discolored water in

the annual filling of the Beacon's Reach development swimming pool. Witness Daniel's rebuttal testimony indicated that the Company believed the problem resulted from infrequent use. The pool is located at the end of a main and is inactive for up to eight months a year. The Company has installed a blow-off within the main and has made this blow-off a part of the flushing schedule.

Response to Commission's Statements and Last General Rate Order

The Company has also introduced testimony relative to its response to the Commission's concerns as expressed in its most recent general rate case, Docket No. W-354, Sub 69. In regard to complaints about water quality in Cabarrus Woods, witness Daniel indicated in rebuttal testimony that the Company has added softeners, has added a new well, and has completed a new elevated storage tank. No Cabarrus Woods customer testified at the February 1990, Charlotte hearings.

The Commission was also concerned about hardness and odors in the Courtney water system. According to witness Daniel, the Company has since installed water softeners at a cost of $30,000. No resident from Courtney complained about quality problems at the Charlotte hearings.

In the last docket, the Commission noted complaints about discoloration and sewer odors in the Forest Ridge and Forest Crossing systems. Company witness Daniel testified that the Company now adds a sequestering agent to the water in order to remove iron and to reduce discoloration. He also indicated that flushing capabilities, with new blow-offs, and flushing frequency have been improved. As for the sewer odors, witness Daniel stated that the treatment plant has been expanded. He testified that water quality meets state and federal standards.

Also in Docket No. W-354, Sub 69, the Commission ordered the Company to address hardness and odor problems caused by hydrogen sulfide in the Danby water system. Witness Daniel, in his rebuttal testimony, noted that a new chlorination system, at a cost of $27,000, has been installed to deal with the hydrogen sulfide that has since significantly reduced odors. A sequestering agent has also been added to reduce the staining problems. Daniel testified that water quality at Danby meets federal and state requirements.

The Commission also ordered the Company to install filters at Emerald Point in order to reduce hardness. According to witness Daniel, the softeners have been installed at a cost of $45,000, and water hardness has been reduced to 60 ppm. No customers from Emerald Point appeared at the Charlotte hearings.

Finally, the Commission Order, in Docket No. W-354, Sub 69, addressed persistent quality problems at Mt. Carmel and Bent Creek. The principal difficulties in these systems have been high iron levels. Since that last Order, the Company at Bent Creek has rebuilt the iron filters and increased flushing capabilities, at a cost of $20,000. No customer from Bent Creek appeared and complained about water quality at the February 1990 Asheville hearings. Company witness Daniel admitted that iron problems remain in the Mt. Carmel system despite improvements in flushing capability. As a result, the Commission believes that the Company should continue to negotiate with the Asheville-Buncombe Water Authority to purchase water on a bulk basis or to sell the system to the Asheville-Buncombe Water Authority

The Company's general pattern of responsiveness to quality concerns was confirmed by testimony from engineers from the Division of Environmental Health at the Charlotte and Goldsboro hearings. At the Goldsboro hearing, witness Jim Higdon testified that all of the Company's water systems in his Eastern North Carolina territory were in compliance with DEH regulations. He also indicated that the Company consistently made system quality improvements when necessary to ensure continued compliance.

At the Charlotte hearing, Jim Adams, an engineer with the Public Water Supply branch of the Department of Environment, Health and Natural Resources, also testified to the Company's diligence and commitment. Adams indicated that he was a 13 year employee of the health service, that he worked primarily in Mecklenburg and Gaston counties, and that his responsibilities included monitoring water systems to determine if they are in compliance with state environmental and health regulations.

Witness Adams stated that Carolina Water does a "good job" in complying with the state's reporting requirements. He added:

> They do follow-up work that we request they do based on complaints that we receive in our office and information that we share with them and pass along with them to follow up. They monitor, on a regular basis, several times a week, water systems depending on the water system. The ones with problems, usually its more often.

Witness Adams indicated that his division rarely received quality complaints about Carolina Water Service systems. He noted that when they did, he "always had a real good response from them" and his office usually got feedback from the Company the same day. He testified that the Company takes a "somewhat progressive role in trying to look to the future," and that it makes a effort to employ only certified operators in its systems. Witness Adams also noted that the Company was normally "quite receptive to listening to what alternatives" were necessary to solve water quality problems. He testified that the Company had a history of bringing up to state standards those systems that were out of compliance when purchased.

With the exception of the Mt. Carmel service area, the Commission commends CWS on its efforts in satisfying the complaints in this proceeding. The Commission notes that the Company has recognized that improvements or changes in service should be made and has made or is in the process of making these improvements.

The Commission concludes that CWS should continue the service improvements it has undertaken. The Commission further concludes that CWS should make monthly program reports of its efforts in completing these improvements, especially those in Mt. Carmel Subdivision. The first report shall be filed on or before August 31, 1990.

In supplemental testimony, Public Staff witness Lee asked the Commission to withhold implementation of rates in this docket in several service areas until the Company has demonstrated adequate service. Witness Lee identified the systems and their problems as Whispering Pines (hard water), Mt. Carmel (high iron levels), Bent Creek (high iron levels), Forest Ridge/Forest Crossing

(stain and sediments due to high iron levels), Lamplighter Village East (staining caused by high iron levels), Woodside Village (hardness, stains and deposits), and Abington Forest (high iron and manganese levels). After considering the evidence presented by the customers, the Public Staff, and the Company, the Commission concludes that except for the Mt. Carmel water system, it should reject this recommendation and should not withhold implementation of the rates approved in this docket in these systems.

First, the evidence indicated that two customers from Whispering Pines complained about quality at the hearings. A Company follow-up, however, revealed that the customers' problems no longer existed. Second, we have already recommended that the Company continue to negotiate with the Asheville-Buncombe Water Authority for a new source of water for the Mt. Carmel system. Third, at Bent Creek, the Company has rebuilt iron filters and has increased flushing. Because of this and because no customer from Bent Creek appeared to complain about water quality at the hearings, we reject witness Lee's contention that water quality conditions at Bent Creek require a withholding of the implementation of new rates. Fourth, at Forest Ridge/Forest Crossing, the Company has added a sequestering agent, increased flushing, and has expanded sewage treatment capacity. Water quality there now meets all federal and state standards, including those for minerals. Fifth, in Lamplighter Village East, the Company has conducted an extensive renovation of facilities. It plans $25,000 to $30,000 in additional improvements for 1990. Although a few customers from this system complained about quality at the hearings, test results indicated that all metal and hardness levels are in compliance with regulations. Sixth, in Woodside Village, the Company has made improvements costing more than $30,000. The improvements have satisfactorily reduced hydrogen sulfide odors and hardness. Also, tests indicate that the water supply there meets all federal and state health requirements. Finally, in Abington Forest, the Company has discontinued the general use of a well that was discovered to be the source of mineral problems.

Based on the above, the Commission finds no basis on which to deny the rates approved in this Order in any of the service areas discussed herein except the Mt. Carmel water system.

In the last rate proceeding, Docket No. W-354, Sub 69, the Commission denied rate relief in the Mt. Carmel and Bent Creek Subdivisions. The Commission ordered that the existing rates were to remain in effect until certain improvements were made or until the systems were connected to the Asheville-Buncombe Water System.

It appears from the evidence presented that CWS has successfully upgraded the service in Bent Creek Subdivision. However, as noted above, the Mt. Carmel water system still have the same problems as before.

The Commission concludes that the Company should continue 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 also concludes that the existing water rates should remain in effect in Mt. Carmel Subdivision until this system is either connected to the Asheville-Buncombe Water System or the Company has upgraded the system to provide an acceptable quality of water service.

By Order issued on April 7, 1989, in Docket No. W-354, Sub 69, the Commission ordered "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, and the estimated cost of metering each system." A review of the Commission files show that the required reports have not been filed. Neither is there any indication that CWS has requested an extension of time to file this report.

While the Commission has earlier commended CWS on its effort to satisfy the complaints of the customers, the Commission finds here that CWS has not responded to an Order of the Commission as should be expected of a company with CWS's experience and knowledge. This blatant disregard of the Commission Order is intolerable. Therefore, the Commission once again finds that CWS should file a report on the feasibility of metering its unmetered systems.

Also in Docket No. W-354, Sub 69, the Commission required the Company to 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 60 days after the date of this Order." On the matter of the contracts, witness Lee, in his supplemental testimony, testified that the Public Staff had been unable to locate or identify all of the needed contracts. Witness O'Brien, in rebuttal testimony, stated that "All (contracts) are now filed."

The Commission is of the opinion that CWS should contact witness Lee and determine which contracts the Public Staff has been unable to locate or identify. CWS should them provide a copy of any missing contract or assist the Public Staff in identifying any contract that the Public Staff is unable to identify.

The Commission will address the matter of the report of tap-on fee and/or plant impact fees in its discussion for Finding of Fact Nos. 64 and 65.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 10 - 46

The evidence for Findings of Fact Nos. 10 - 46 is found in the testimony and exhibits of Company witnesses Demaree, Stewart, McKnight, Wenz, and O'Brien; Public Staff witnesses Lee, Hering, and Haywood; and prior Orders of the Commission.

The Public Staff and the Company differ on the level of all elements of rate base except the level of advances in aid of construction and excess book value. Many of these differences result from the parties' disagreement over the inclusion of the Beatties Ford systems in this case. As discussed in the Evidence and Conclusions for Finding of Fact No. 8, the Commission has determined that the Beatties Ford systems should be included in this case. As a result, all of the differences regarding elements of rate base resulting from

the Public Staff's inclusion of the Beatties Ford systems are decided in favor of the Public Staff. The Commission, therefore, need only address those rate base differences which remain between the Company and the Public Staff other than those associated with Beatties Ford. The chart below summarizes the rate base differences between the parties as set forth in Schedule II of each parties' proposed order.

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| 1) Plant in Service | $39,942,773 | $39,071,973 | $ (870,800) |
| 2) Debit Balance in Deferred Taxes | 825,598 | 406,919 | (418,679) |
| 3) Accumulated Depreciation | (2,962,730) | (3,007,709) | (44,979) |
| 4) Plant Acquisition Adjustment | (2,355,018) | (2,701,730) | (346,712) |
| 5) Customer Deposits | (97,695) | (100,861) | (3,166) |
| 6) Advances in Aid of Construction | (257,020) | (257,020) | 0 |
| 7) Contributions in Aid of Construction | (17,180,633) | (17,798,850) | (618,217) |
| 8) Excess Book Value | (4,462,809) | (4,462,809) | 0 |
| 9) Deferred taxes | (818,928) | (852,599) | (33,671) |
| 10) Subtotal | 12,633,538 | 10,297,314 | ( 2,336,224) |
| 11) Working Capital Allowance | 406,581 | 394,234 | (12,347) |
| 12) Deferred Charges | 586,140 | 343,278 | (242,862) |
| 13) Total Original Cost Rate Base | $13,626 259 | $11 034 826 | $(2,591,433) |

## Plant in Service

The Company and the Public Staff disagree on the amount of plant in service that should be included in rate base. The Company proposes to include $39,942,773, whereas the Public Staff proposes to include $39,026,973, for a difference of $915,800. It is noted that the $39,026,973 proposed by the Public Staff is less than the amount shown on the foregoing chart due to the exclusion by the Public Staff of its proposed adjustment of $45,000 for the Emerald Point softeners as set forth in Schedule II of its proposed order. Several of the differences between the parties regarding the level of plant in service result from disagreements over issues of unused capacity and the design criteria relied upon in installing such capacity. The Commission will address these two issues generically before addressing each of the specific items of plant in service.

Public Staff witness Lee recommends that the Commission apply the principle of matching revenues and investment. Witness Lee advocates the inclusion in rate base of only investment related to the percent of plant capacity utilized fully at the end of the test year as a percentage of the total capacity of the plant (percentage utilization method). The formula supported by the Public Staff neither allows for capacity not fully utilized at the end of the test year nor takes into account growth that is likely to occur. Also, it does not consider any engineering efficiencies or a utility's obligation to serve.

Carolina Water Service advocates the inclusion in rate base of reasonable capacity margin that anticipates future growth. In rebuttal testimony, Company witness Benjamin McKnight testified that it is virtually impossible for a utility's investment in service capacity to be equal to current customer demand as recommended by the Public Staff. Witness McKnight stated that unused capacity results in part from the fact that utilities must have adequate capacity to meet peak demands. He noted that unused capacity also results from the general policy requirement that a public utility have the necessary capacity to meet reasonably anticipated increases in demand.

Witness McKnight stated that the Public Staff failed to distinguish between reasonable capacity margin and excess capacity. Witness McKnight stressed that well managed utilities always maintain reasonable capacity margins and that the key issue faced by regulators is when capacity margin becomes excess capacity. Witness McKnight stated that plant investment, if prudent and does not result in unreasonable capacity margin, should be included in rate base.

Company witness David Demaree also rejected the percentage utilization method emphasizing that economies of scale are available when evaluating the cost per gallon of sewage treatment plants and elevated storage tanks. Witness Demaree advocated inclusion of prudent capacity margins and recommended a minimum of five years as the growth projection time frame in evaluating the reasonableness of capacity margins. He stressed that most major facilities take at least one year to design, obtain approval, construct and place into service and that most developments have a five to ten year sales plan. In addition, witness Demaree noted that the United States Environmental Protection Agency uses five years as its standard time period for NPDES permits. Witness

Demaree states that to project less than five years into the future would be extremely shortsighted and lead to higher rates for customers.

Based upon a thorough analysis of the evidence presented on the issue of capacity margin to include in rate base, the Commission has determined that the Public Staff's proposed percentage utilization method should be modified as hereinafter set forth. The percentage utilization method as advocated by the Public Staff excludes all capacity margin regardless of whether it is needed for reasonably anticipated growth or is truly excess capacity and ignores the time interval necessary to design and construct facilities. Under the percentage utilization method of the Public Staff, the utility is subjected to economic losses by foregoing the return on and depreciation of plant investment that has been reasonably incurred but excluded from rate base. The Commission agrees with the Company that these losses would hinder the utility's ability to attract capital and thus would raise costs for ratepayers.

The Commission recognizes that the Company has a duty to meet peak demand and to anticipate the demands to be placed upon it in the foreseeable future. The North Carolina Supreme Court addressed this issue in State ex rel. Utilities Commission v. General Telephone Company of the Southeast 281 N.C. 318, 189 S.E.2d 705 (1972):

> ...a public utility is under a present duty to anticipate, within reason, demands to be made upon it for service in the near future. (citations omitted) Substantial latitude must be allowed the directors of the utility in making the determination as to what plant is presently required to meet the service demand of the immediate future, since construction to meet such demand is time consuming and piecemeal construction programs are wasteful and not in the best interest of either the ratepayers or the stockholders.

Id. at 352. The court in General Telephone held that the obligation to invest capital to ensure continuous, reliable service rests in the first instance with the utility's management, which is responsible to its shareholders. Id. at 352-53. See also State ex rel. Utilities Commission v. Haywood Electric Membership Corp., 260 N.C. 59, 131 S.E.2d 865 (1963) (In exchange for franchise from the state, the utility assumes the obligation to meet the growth in demand for utility service within its service area). The percentage utilization method advocated by the Public Staff ignores this duty to anticipate future demands and will lead to shortsighted investment decisions that ultimately will result in higher rates for customers.

The Public Staff argues that the percentage utilization principle should be applied in determining the amount of water and sewer plant to include in rate base, irrespective of the rules established for other utilities that permit inclusion of capacity for reasonably anticipated growth. The Public Staff argues that rules for the other utilities are premised on the concept that such utilities have an obligation to serve all consumers who apply within a geographically defined service area. The Public Staff contends that where a water or sewer company expands beyond the initial boundaries of a franchised subdivision or acquires a new franchise service area, such acquisition is a discretionary decision and not an extension of service arising from the public utility obligation to serve. The Public Staff argues that unless the water or sewer utility receives the full contribution from a third party for all the

facilities needed to serve in these instances, the service extension is "at the risk of the investor."

The Commission finds it must reject this reasoning. Water and sewer utilities are not free to expand anywhere beyond the existing service boundaries, as though they are competitive enterprises, free from regulation. Under G.S. § 62-110, they may only expand into areas contiguous to franchised areas where there is no preexisting alternative service. This type of expansion requires an existing certificate of convenience and necessity, just like the expansion of any other utility. Likewise, water and sewer utilities are not free to acquire new systems without Commission approval under G.S. § 62-110 and 111.

Any expansion by a water and sewer utility, therefore, is with specific Commission authorization and without such authorization, the expansion cannot be made. There is no rule that requires, as a condition precedent to such expansion, that capital be provided cost-free from outside sources. The Commission's water main and sewer line extension rules, sometimes cited by the Public Staff, certainly contain no such requirement. These rules, with respect to tanks, treatment plants, and wells, are permissive. Furthermore, they permit the water and sewer utility to obtain contributions before expansion but provide that the utility reimburse the initial provider of the cost-free capital with tap fees subsequently obtained. There are similar rules for lengthy service extensions by electric utilities that do have a geographically defined service area.

Once the water and sewer utility obtains an addition to its franchised area under Sections 62-110 and 111, the regulatory compact referred to by Company witnesses McKnight and O'Brien becomes effective, and the utility is required to provide service to all within the expanded area. Capital for such service obligation is the responsibility of the franchise holder not the developer. If any deviation from this rule is to apply, this deviation should be adopted before the franchised area is expanded, not after the authorization is obtained and the funds actually have been expended.

Indeed, the Public Staff acknowledges that historically the Public Staff and the Commission have encouraged the type of expansion that has resulted in the expenditures at issue here. The Commission on many occasions has approved Carolina Water Service's expansion into new areas and has cited, as a reason for such approval, Carolina Water Service's demonstrated financial strength and ability to make the capital additions to ensure adequate service. Implicit in these statements is the Commission's recognition that prudent expenditures of capital for expansion would be includable within the Company's rate base so as to be recovered through depreciation expense and so as to permit the investor to earn on the unrecovered balance.

The Commission agrees with the Company that, if there is a reasonable belief that customer demand will increase in the foreseeable future and if significant economies of scale in construction costs exist, cost savings can be attained by building or expanding to an optimum plant size. The Commission recognizes that, due to the length of time generally necessary to install new or expanded water or sewer facilities, a reasonable capacity allowance for system demands resulting from projected connections should be allowed.

A good example of the dangers that would arise if the Commission adopted the specific Public Staff recommendation was illustrated during the cross-examination of Public Staff witness Lee. Under the percentage utilization concept, only a percentage of the utility's investment, based on the ratio of end of test period customers to the total number of customers a plant will serve at full capacity, is includable in rate base. In the hypothetical example, the utility added a 250,000 gallon tank to meet future anticipated growth. Because there were only 285 customers on line at the end of the test year, rather than the 1,250 customers that could be served by the tank at full capacity, only 22.8 percent of the investor-supplied cost was included in rate base.

Under the percentage utilization theory, had the utility installed a much smaller 60,000 gallon tank, 95 percent of the cost would have been included in rate base. If rates are set by reliance on the percentage utilization principle as proposed by the Public Staff, in order to recoup their investment economically, utilities will be forced to make imprudent engineering decisions that, in the long run, will cost the customers more. In the hypothetical example, at the time the development is fully built out, the utility will have constructed four 60,000 gallon tanks instead of one 250,000 gallon tank, all at greater cost per gallon and with a requirement of greater maintenance and operating expense.

In assessing the adjustments to rate base in this case, the Commission concludes that it is appropriate to make an adjustment for a reasonable capacity allowance for system demands. The Commission will include in rate base the investment by the Company in certain facilities which were either constructed or purchased which are determined to have been prudently incurred and do not result in an unreasonable capacity margin. In determining whether capacity margin constitutes a reasonable investment, the Commission has looked at factors such as foreseeable customer growth and benefits resulting to ratepayers from the additional capacity. The Commission has determined that the percentage utilization method advocated by the Public Staff is too rigid in that it is based upon the premise that a utility's investment in service capacity would be exactly equal to current customer demand. Such premise ignores any engineering, construction and maintenance efficiencies which exist in designing and constructing water and sewer plant facilities to meet reasonably anticipated growth.

In assessing its adjustments to certain items of rate base, based upon the evidence of record in this docket, the Commission concludes that it is appropriate, for the purposes of this proceeding, to make a reasonable capacity allowance which incorporates a percentage utilization concept as well as an allowance for engineering, construction, and maintenance efficiencies which exist in the designing and construction of water and sewer facilities to meet anticipated customer growth. In making its rate base adjustments for certain items of plant in this proceeding, the Commission will allow the Company's investment in rate base related to the percent of plant capacity utilized fully at the end of the test year as a percentage of the total capacity of the plant. Any disallowance resulting from such methodology will be reduced by 35 percent which the Commission concludes to be a reasonable capacity allowance based upon the evidence in this proceeding. Such capacity allowance takes into consideration engineering, construction, and maintenance efficiencies which are inherent in meeting reasonably anticipated growth.

Another point of disagreement between the Company and the Public Staff relating to unused capacity determinations is the design criteria for elevated storage tanks. In contrast to his testimony in the Company's last rate case, Public Staff witness Lee argued that the design capacity for elevated storage tanks is 200 gallons per day (gpd). In support of this altered position, witness Lee stated that the state design criteria require one day's use as storage capacity for elevated tanks and that the average residential customer uses 200 gpd. Witness Lee noted that state standards require well design capacity, rather than storage tank capacity, to be 400 gpd.

In rebuttal, Company witness Dale S. Stewart testified that DEHNR recommends that elevated storage tanks meet the Fire Insurance Rating Bureau's requirements or a minimum capacity of 75,000 gallons in a small municipality or one day's supply of water, whichever is greater. Witness Stewart testified that systems must be capable of supplying a minimum 400 gpd per connection and that a one day supply thus would equal 400 multiplied by the number of connections. On redirect examination, witness Stewart distinguished as exceptional situations those instances in which DEHNR has allowed 200 gpd per connection.

Section .02005 of Title 10 of the North Carolina Administrative Code, in the section on rules governing public water supplies, sets forth the minimum design criteria for elevated storage. Subsection (b) states, "The minimum capacity of elevated storage in a small municipality shall be 75,000 gallons or a one day's supply, whichever is greater." One day's supply is not defined under the section on elevated storage. However, Section .002(f)(3) under the Water Supply Design Criteria states, "The combined yield of all wells of a water system shall provide in 12 hours' pumping time the average daily demand as determined in subsection (f)(7)."

The pertinent language of Subsection (f)(7) is, "the well or wells serving residences shall be capable of supplying an average daily demand of 400 gallons per day per connection." Thus, the only definition of one day's supply indicates that it equals 400 gallons per day.

There seems to be some dispute as to how DEHNR now interprets these regulations on the minimum design criteria. Nevertheless, the regulations themselves suggest 400 gallons per day as the minimum design criteria for elevated storage. Carolina Water Service would be remiss in gambling on a lesser criteria for the design of tanks. As expert engineering witness Stewart stated:

> It seems to me that if a one day supply in one part of the Green Book is interpreted to be 400 gallons per day in this case in terms of the well, it doesn't make any sense to me that a one day supply with respect to storage would be different from that. One day supply is a one day supply. If the 200 gallons per day is to be considered, I think that one of the things that I would emphasize is that there are no systems that I'm aware of on a regular basis that only use 200 gallons per day or less in terms of a day supply. It is consistently higher than that. (Tr. Vol. XXIV, p. 70.)

The 400 gallon per day is the minimum design criteria. Wise planning suggests that greater capacity than the minimum is appropriate in many

circumstances. For example, where there is lawn watering or car washing over weekend periods in areas where there are the maximum connections for the installed elevated storage, the tanks often become depleted so that pressure is reduced and fire protection capabilities are diminished. Also, the state subsequently may deny expansion or refuse to permit the addition of future anticipated connections if the demand is higher than expected. As witness Stewart stated, "If you would get into a project or get into a situation of committing to service only to have them deny you that ability [to rely upon 200 gpd], I think it would be prudent planning to go ahead and base it on the 400 gallons per day as a minimum." Tr. Vol. XXIV, p. 69. Witness Stewart also stated, "What I've tried to point out in my testimony is that whether 200 or 400 is the minimum, good engineering practice says you also evaluate the other factors with respect to that particular situation." Id. Stewart also stated on redirect examination that where there is doubt or confusion as to which to use, the safest for the Commission to use is the published standard.

DEHNR witness Adams testified that DEHNR encourages water utilities to build with the specific anticipated needs of the subdivision in question in mind. This need includes both growth potential and peak demand.

Carolina Water Service has constructed its tanks by reliance upon the 400 gallon per day minimum criteria. There is no evidence that reliance upon the 400 gallon per day is imprudent. The Public Staff and the Commission itself accepted this design criteria in the past. There is no suggestion that the Company was imprudent, only that the 200 gallons per day minimum is possibly permissible under current DEHNR interpretations. This is no basis for penalizing the Company for its reliance on a standard of 400 gallons per day.

Furthermore, with the uncertainty that seems to exist, as to what the criteria is or should be, the Commission finds that Carolina Water Service would have been remiss in constructing tanks with less than the 400 gallons per day capacity. It is far more advisable from the customer's perspective to plan so as to err on the side of over-capacity instead of under-capacity.

A review of the testimony and exhibits presented by the Public Staff and the Company and the rules of the North Carolina Department of Environment, Health and Natural Resources, therefore, persuades the Commission that the proper capacity measurement criteria to determine whether or not investment in elevated storage tanks and sewage treatment facilities is to be disallowed for rate base purposes is 400 gpd. The Commission recognizes that valid disagreement may exist regarding what the minimum requirement is since the rules are not entirely clear on this point.

As David Demaree acknowledges in his rebuttal testimony for the Company, the DEHNR standards allow for occasional exceptions to the elevated storage capacity requirements. Nevertheless, no evidence has been presented that would warrant such an exception in this case.

It is important to note that Public Staff witness Lee admitted in his testimony that in the Company's previous rate case the Public Staff and Company agreed to use the 400 gpd requirement for elevated storage tanks. The Company justifiably has relied upon this standard in adding plant since that case. The Public Staff clearly thought that this standard was correct less than two years ago and has presented no convincing evidence demonstrating that the standard

has changed. The Commission, therefore, finds no reason to penalize the Company by using a different gpd number in designing and installing tanks.

Having addressed some of the excess capacity issues that pertain to many of the rate base disagreements between the Company and the Public Staff, the Commission will now examine each of the specific plant in service rate base adjustments. The Company proposes to include in rate base investments in numerous plant additions, many of which the Public Staff has recommended either be reduced or entirely eliminated from rate base. This difference in plant in service is composed of the following items:

| Item | Amount |
|---|---|
| Inclusion of Beatties Ford | $ 880,401 |
| Cabarrus Woods: | |
| Elevated Storage Tank | (156,384) |
| Wastewater Treatment Plant | (342,997) |
| Well | (45,000) |
| Well | (83,000) |
| Well | (20,586) |
| Well | (25,842) |
| Water Softeners | (22,000) |
| Lift Station | (138,000) |
| Emerald Point Softeners | (45,000) |
| Hound Ears Meters | (72,365) |
| Wolf Laurel Well and Tank | (100,000) |
| Brandywine Bay: | |
| Elevated Storage Tank | (205,000) |
| Wastewater Treatment Plant | (287,915) |
| Danby Wastewater Treatment Plant | (209,000) |
| Queens Harbor - Water and Sewer System | (66,605) |
| Riverpointe - Water and Sewer System | (32,375) |
| Sherwood Forest - Water Mains | (22,421) |
| TET Utility - Sewer System | (7,661) |
| Zemosa Acres | 93,700 |
| Transportation Equipment | (7,750) |
| Total | $ (915,800) |

Inasmuch as the Commission has concluded to include the Beatties Ford system, no further discussion for this item is warranted.

## Cabarrus Woods Elevated Tank

With regard to the 250,000 gallon elevated storage tank in Cabarrus Woods, Public Staff witness Lee recommends exclusion of $156,384 as excess plant of what he claims to be the Company's $216,959 investment. Because the tank was not fully utilized at the end of the test year, the Public Staff, using a 200 gpd capacity standard, determined the percentage utilization of the tank. The Public Staff multiplied the resulting percentage by the Company's total investment and recommends that the Commission include only the resulting $60,575 in rate base. During cross-examination, Public Staff witness Lee espoused the view that a utility should not invest in a plant to serve a new area unless developers advance funds to cover the entire cost of the plant.

In rebuttal, Company witness David Demaree advocated inclusion of Carolina Water Service's $164,780 investment in rate base. The total cost of the tank was $367,459. Witness Demaree testified that the Company had paid for 59% of the tank and that developers had contributed 41%. Carolina Water Service negotiated with the developers and obtained the best terms possible. The Company had installed the tank in 1988 to serve customers and anticipated growth in Victoria Park, Stonehedge and Cabarrus Woods Subdivision. Under the 400 gpd standard, witness Demaree calculated that Carolina Water Service had paid for 368 single family equivalents. At the end of the test year, the tank was serving 349 single family equivalents. Witness Demaree estimated that the tank would serve the 368 single family equivalents paid for by the Company within the very first year of growth and that the tank would be fully utilized in 1994. The Company's growth projections are set forth on Demaree Rebuttal Exhibit 1. Historical growth rates for Victoria Park, Cabarrus Woods and Stonehedge were relied upon to project growth through June 30, 1994.

Company witness Demaree also testified that the Public Staff in calculating the amount of Company investment to include in rate base had based its utilization percentage on the wrong investment amount. The Company had received and booked $52,179 in net water tap fees related to the elevated tank. According to witness Demaree, the Public Staff failed to subtract this amount from the Company's total investment of $216,959. Correction for this leaves a total Company investment that it proposes of $164,780 in rate base and the Commission so concludes.

As discussed earlier, the Commission will apply a percentage utilization method which allows for a reasonable capacity allowance. In making this assessment, the Commission will use the 400 gpd standard for elevated storage tank capacity.

Having thoroughly examined the evidence presented by the Public Staff and the Company regarding investment in the Cabarrus Woods elevated storage tank, the Commission is persuaded that a portion of the Company's $164,780 investment in the tank should be included in rate base. As Public Staff witness Lee acknowledged on cross-examination, existing customers clearly benefit from elevated storage tanks. With an elevated storage tank in place, fire protection can be provided more readily. This lowers annual fire insurance premiums for customers. In addition, an elevated storage tank will help reduce fluctuations in pressure. The tank will enable the Company to meet more adequately service demands during peak periods. The elevated tank also will provide greater reserve capacity so that service disruptions from main breaks and construction will be reduced. The Commission itself reached these same conclusions in evaluating this plant addition in its order in Docket No. W-354, Sub 69.

The Public Staff's position that developers must contribute the entire cost of plant to serve a new area is without merit. As witness Demaree pointed out in rebuttal testimony, neither the Commission's rules nor economic reality supports this position. The unrebutted evidence is that there were no additional contributions to be obtained. Commission Rule R7-16 states that, with regard to a main extension to serve a new subdivision, the utility shall require a developer to advance funds for installation of mains. Nevertheless, the rule states that such advances "will be subject to refund by the utility as customers are added" and that the utility, with Commission approval, may

include the cost of other facilities in the advance. The rule clearly indicates that a utility may have an investment in its source of supply storage and treatment facilities.

The Commission agrees with the Company that the Commission's precedent and rules allow a utility to invest in plant at a reasonable level to serve new customers. Indeed, under Carolina Water Service's customary practice, the Company obtains a contribution from developers up front. Carolina Water Service subsequently receives tap fees but usually does not flow these through to the developer. Carolina Water Service's practice results in more cost free capital than that envisioned by the rules.

It is economically unrealistic to assume, as the Public Staff does, that developers will provide all funds necessary for capacity to serve new areas. As indicated by Company witness Demaree, the Company often has no clear opportunity to obtain contributions in advance of construction. Witness Lee has made no allegation that additional contributions were available here. Moreover, even when funds are provided by developers, it may prove difficult for a utility to plan and fulfill its service obligations with such a restricted source of capital. The Commission recognizes that the utility bears the ultimate responsibility for meeting the needs and demands of its customers and that a policy penalizing the utility for making investment to meet these demands would be counterproductive. If a utility has only minimal investment in a system and the system requires an extraordinary investment to comply with a law such as the Safe Drinking Water Act, the utility will have little economic incentive to remain with the system. For the foregoing reasons, the Commission deems it inadvisable to exclude plant in service merely because it was financed by capital provided by the utility instead of by third parties.

The evidence in this proceeding reflects that the tank was serving 349 single family equivalents at the end of the test year. Under the 400 gpd standard, the Cabarrus Woods elevated storage tank is capable of serving 625 single family equivalents. By using the ratio of the customers on line at the end of the test year to the total number of customers which can be served by this tank, the Commission concludes that the appropriate reduction in rate base for this tank under its percentage utilization method would be $72,767. However, as discussed elsewhere herein, the Commission further concludes that this reduction should be offset for a reasonable capacity allowance of 35 percent which results in a total reduction in the amount to be included in rate base for this item of $47,299. Therefore, the amount that should be included in rate base for the Cabarrus Woods elevated storage tank is $117,481 ($164,780 - $47,299).

Cabarrus Woods Sewage Facilities

Another area of disagreement between the Public Staff and Company involves the sewage treatment plant expansion and a sewer lift station in Cabarrus Woods. Public Staff witness Lee has advocated the removal of $342,997 from rate base for the wastewater treatment expansion in the Cabarrus Woods Subdivision and the removal of $138,000 for the sewer lift station in Cabarrus Woods. Witness Lee justified the proposed removals by stating that contracts relating to the Cabarrus Woods expansion require developers to make a contribution in the form of tap fees to cover the cost of expanding the sewer plant facilities. In his testimony, witness Lee argued that the pre-expansion

plant had adequate capacity to handle customers on line at the end of the test year and that any cost related to expansion required for existing customers already should have been recovered.

Regarding the wastewater treatment plant expansion, witness Demaree's rebuttal testimony revealed that the plant expansion cost $626,597. The developer had invested $283,600 and the Company had paid $342,997 (55 percent of the plant). Witness Demaree testified that the Company had received and booked $114,794 in net sewer tap fees related to the facility so that $228,203 of the Company's investment should be included in rate base. According to witness Demaree, the original 150,000 gallon capacity plant was sufficient for 375 single family equivalents, and the new plant, with 300,000 gpd capacity, will be able to treat an additional 750 single family equivalents. Since 55 percent of the new plant was paid for by the Company, witness Demaree testified that 412 additional single family equivalents may be served from the Company's investment. Therefore, according to witness Demaree, a total of 787 single family equivalents would be served from the Company's investment.

Witness Demaree testified that the Cabarrus Woods sewage treatment system serves a total of 489 single family equivalents. The original 150,000 gallon capacity plant would have been too small to meet this need. Witness Demaree testified that in 1992 the plant will be serving enough customers to utilize the Company's 55 percent investment in plant. He estimated that in 1994 the plant will be serving 978 single family equivalents and capacity for only 147 additional connections with sewer. Growth projections for Victoria Park, Cambridge, and Stonehedge Subdivision are detailed on Demaree Rebuttal Exhibit 3.

Witness Demaree faulted the Public Staff's calculation of its $342,997 adjustment to rate base related to the Cabarrus Woods wastewater treatment plant. Witness Demaree noted that the Public Staff, in making this calculation, had failed to take into account the $114,794 in net sewer tap fees that related to the facility which were received and booked by the Company. The Public Staff's recommended adjustment would thus exclude from rate base more than the Company's investment. The Commission concludes that the Company's investment in this plant is $228,203.

The evidence in this proceeding reflects that the Cabarrus Woods sewage treatment plant expansion is serving 489 single family equivalents. Using the 400 gpd standard, the sewage treatment facilities are capable of serving 1,125 single family equivalents. By using the ratio of the customers on line at the end of the test year to the total number of customers which can be served by these facilities, the Commission concludes that the appropriate reduction in rate base for these facilities, under its percentage utilization method, would be $129,003. However, as discussed elsewhere herein, the Commission further concludes that this reduction should be offset for a reasonable capacity allowance of 35 percent which results in a total reduction in the amount to be included in rate base for this item of $83,852. Therefore, the amount that should be included in rate base for the Cabarrus Woods sewage treatment facilities is $144,351 ($228,203 - $83,852).

Witness Demaree's rebuttal testimony also revealed that the Cabarrus Woods lift station was constructed to carry sewage from the Steeplechase sewage

treatment plant and to serve customers in the Cambridge Subdivision. The Company invested $138,000 in the lift station and collected $250,000 from the developers. Witness Demaree testified that the Company made this investment because it was using the lift station to bring wastewater from the 140 Steeplechase customers to the Cabarrus Woods plant and felt that the cost of the station should be shared. Company witness O'Brien testified that the wastewater treatment plant at Steeplechase Subdivision was not meeting state environmental standards and would have to be upgraded at a substantial cost. Further, the Commission has noted in prior cases the customer dissatisfaction with odors from the Steeplechase plant. Taking the plant out of service will alleviate that problem. According to witness Demaree, using the lift station to take sewage from Steeplechase to Cabarrus Woods will eliminate the need to install a force main on a stand alone basis. As a result, the Company will save $86,089. Witness Demaree stressed that since the Company would have had to invest the bulk of the $138,000 in any case, the $138,000 should be allowed in rate base.

Regarding the sewer lift station, the Commission is persuaded that the station is necessary for the Company to provide sewage service to the customers in both Steeplechase and Cambridge Subdivision. The Company has built the sewer lift station to meet the demand of current customers. The lift station will alleviate the need to install a force main at a cost of $86,000. By constructing a lift station, the Company has prudently engaged in least cost planning and should not be penalized for such actions. The Commission, therefore, finds that the $138,000 investment should be allowed.

## Wells

Another rate base difference between the Company and the Public Staff relates to wells drilled in or near Cabarrus Woods. The Public Staff has recommended the removal of a $45,000 investment in a well that witness Lee testified was associated with expansion of the Victoria Park and Stonehedge Subdivisions. Witness Lee also testified that a contract, which he had assumed related to Stonehedge Subdivision required that wells be installed to serve the subdivision at the cost of the developer.

Company witness Demaree testified in rebuttal testimony that the well at issue (well No. 1) was drilled to supply service to the Cambridge Subdivision and that it is not in any way related to the service of the Stonehedge or Victoria Park Subdivisions. According to witness Demaree, the Cambridge water system will not be interconnected with the Cabarrus system. Witness Demaree testified that the Cambridge system soon will be serving 50 customers and that well No. 1 was drilled to comply with state regulations which require that two wells be in place once the fiftieth customer is on line.

The Commission has analyzed the conflicting evidence presented by the Public Staff and the Company regarding well No. 1. We are persuaded that the Public Staff has misunderstood the anticipated use for the contested well. The well was drilled to meet a current need in the Cambridge Subdivision. Contracts relating to the Stonehedge and Cabarrus Subdivisions have no bearing on the well's installation. The well was drilled to comply with state regulations. The Commission finds that this well is used and useful and concludes that the Company's $45,000 investment in the well should be included in rate base.

The Public Staff also has recommended removal of $83,000, $20,586, and $25,842 related to three wells drilled in or near the Cabarrus Subdivision. A portion of this adjustment was for two dry wells drilled in the Cabarrus Subdivision. The testimony of Public Staff witness Lee indicates that he believed that the wells were drilled to meet a need in Stonehedge Subdivision and that the developer should have paid for the cost of the wells.

In rebuttal testimony, Company witness Demaree testified that the two dry wells and the third successful well were drilled to serve customers in the Cabarrus Subdivision. Witness Demaree stated that the wells were drilled in response to a moratorium placed on the Company by the Department of Environmental Health. Although Cabarrus had 349 single family equivalents on line at the end of the test year, witness Demaree testified that the Company only had capacity to serve 288 single family equivalents. The Company initially drilled the first two wells in search of water but was unable to obtain any. The Company later successfully drilled the third well on land supplied free of charge by the developers of Stonehedge Subdivision. Demaree testified that the Company paid for the entire cost of the wells because the developers who had substantially contributed to the sewage treatment plant and elevated storage tank refused to contribute more funds for the well.

The Commission has carefully weighed the arguments of the Public Staff and the Company regarding inclusion of the three Cabarrus wells and has determined that the investment in all three should be included in rate base. The Public Staff apparently has misunderstood the nature of the functioning well.

The Commission deems significant the events surrounding the drilling of the functioning well. In the Company's previous rate case, Docket No. W-354, Sub 69, the Commission explicitly ordered the Company to install a well to serve the Cabarrus Subdivision. The Company has presented persuasive evidence that construction was necessary to meet the needs of the existing customers within the Cabarrus Subdivision and that the well reasonably anticipates future growth in the subdivision. In addition, there is uncontradicted evidence that the Company made a good faith effort to secure funds for the well from developers but was unable to do so. It would be unfair to exclude from rate base the cost of the well which the Commission ordered the Company to install.

The Commission finds that the two dry wells drilled by the Company were unforeseeable but necessary steps in installing the well to serve the Cabarrus Subdivision. Disallowance of the costs of drilling these wells would, in effect, penalize the Company for complying with the Commission's mandate to meet the needs of the Company's current customers. Therefore, the Commission concludes that the entire $129,428 investment covering all three Cabarrus wells should be included in rate base.

Cabarrus Woods Water Softeners

Another point of disagreement among the parties involves treatment of investment in water softeners for the Cabarrus Subdivision. The Public Staff has recommended that the Commission exclude from rate base the Company's $22,000 investment for water softening equipment installed in this subdivision because the developers should have paid the cost of installation.

In rebuttal testimony, Company witness Demaree stressed that the Commission had ordered the Company to install the softeners on the well being drilled in the Cabarrus area or that an additional supply of water be located. Witness Demaree testified that because the water is extremely difficult to locate in the Cabarrus area, the Company felt that the most economical solution was to install water softeners.

Based upon the evidence presented, the Commission is convinced that the $22,000 investment in the water softening equipment should be included in rate base. In response to testimony presented in the Company's previous rate case, the Commission explicitly ordered the Company to install water softeners in the Cabarrus Subdivision or else find another water source. The water softeners were necessary for providing an adequate water supply and merely constitute an additional cost of the source of supply. It would be unfair to penalize the Company for acting under Commission order to improve its water supply by excluding the cost of the improvement from rate base. Moreover, the Commission has already determined that the cost of the Cabarrus well should be included in rate base and sees no reason to treat the cost of softening equipment for the well differently.

Emerald Point Water Softeners

The Company has sought to include in rate base a $31,190 investment for water softening equipment at Emerald Point Subdivision. Company witness Demaree testified that the Commission had ordered the Company to install the softeners if the developer refused to install them. The Company presented testimony that the developer did indeed refuse to install the equipment. Recognizing the cost of a potential lawsuit, witness Demaree testified that the Company convinced the developer to split the $45,000 cost of installing the water softening equipment. The Company advocates inclusion of $31,190 in rate base for the softening equipment ($45,000 cost minus CIAC of $22,500 plus CIAC tax of $8,690). In contrast, the Public Staff recommends that the Commission exclude the entire $45,000 cost from rate base on the theory that the developer was responsible for installing the equipment.

The Commission has carefully reviewed the evidence presented by the Public Staff and the Company and finds that the Company's $31,190 investment should be included in rate base. By settling the case with the developer, the Company avoided the high costs that a lawsuit would have entailed. The Company acted prudently in negotiating a settlement under which the developer would pay for one half of the cost of the plant. This Commission previously recognized the Company's dispute with the developer regarding installation of the softening equipment and ordered the Company to install the softeners if the developers refused to do so. It would be inequitable now to penalize the Company for obtaining only part of the cost of the mandated equipment when the developers refused to pay for its installation. The Commission, therefore, finds it appropriate to include $31,190 in rate base for the Emerald Point softening equipment. However, the Commission has determined that the amount which is included by the Company for the softener in its total amount for plant in service is $45,000 rather than the $31,190 which it proposes. Accordingly, to correct this oversight, the Commission finds it appropriate to reduce the total level of plant in service proposed by the Company by $13,810.

## Hound Ears Meters

Another rate base issue involves the cost of meters for the Hound Ears Subdivision. Public Staff witness Lee recommended that the $72,365 cost of these meters be excluded from rate base on the grounds that they were not installed yet and would not be used and useful by the close of hearing.

Company witness O'Brien observed that the Commission had ordered meters to be installed in Hound Ears Subdivision in the Company's last rate case and that, as of two months prior to hearing in this rate case, CWS had begun installing the meters. He anticipated the job would be complete by the end of 1990. In rebuttal testimony, Company witness Wenz went even further. He stated that all the meters would be installed by the time of the Order in this proceeding and that the "expenditure is known, fixed, and measurable." Yet on cross-examination he admitted that the dollar figure for the meters could change. He also conceded that there was a possibility that the Company's expected completion date for this project -- a date on which he and witness O'Brien differed in their testimony -- could be delayed if unforeseen events happened. Witness Wenz testified that the Company wanted to put the cost of these meters in rate base in this case even though they were not actually operating and were not being used at the time he testified.

The evidence demonstrates that the Hound Ears meters are not used and useful by the close of hearing. Moreover, some uncertainty exists as to both the final cost and completion date of the meters. Accordingly, the Commission concludes that the $72,365 cost of the Hound Ears meters should not be allowed in rate base as proposed by the Company.

## Wolf Laurel Well and Tanks

The next items of disagreement between the Public Staff and the Company relate to the well and tanks installed in the Wolf Laurel Subdivision. The Public Staff has recommended that the Commission disallow the $100,000 cost of installation of the well and tanks. Public Staff witness Lee testified that the well and tanks were being installed to serve a new section of Wolf Laurel Subdivision and that pursuant to the contract with the developer in the subdivision, the developer must install this plant at no cost to the utility.

The Company urges inclusion of the entire cost of the well and tanks in rate base. Witness Demaree, in his rebuttal testimony, stressed that the new well was drilled under order of the North Carolina Department of Human Resources because the number of existing customers in the Wolf Laurel Subdivision exceeded the number allowable under DHR rules. Wade C. Knox, Environmental Engineer of DHR, informed the Company by letter dated May 26, 1989, "the total number of approved connections to the water system was...360.... There are presently in excess of 360 connections to the system." Demaree Rebuttal Exhibit 11. Witness Demaree emphasized that it was the Company's responsibility to add the well and that the well was drilled on free land.

According to witness Demaree, DEHNR also required the Company to replace existing concrete tanks as soon as possible. According to DEHNR's May 26, 1989, letter, the Company was instructed that "[t]his project should proceed as soon as possible." Witness Demaree noted that the Company had acquired the

system, which was severely degraded and that the customers were receiving substandard service. He also stressed that the Company had acquired the system for $50,000 and had paid $100,000 to upgrade it.

Having carefully weighed the evidence, the Commission concludes that the cost of the well and tanks in the Wolf Laurel Subdivision should be included in rate base. The Company has presented persuasive evidence that this additional equipment was necessary to serve existing customers and was the responsibility of the Company and not the developer. The Company installed the equipment under order of DEHNR. The Company's investment per customer in the Wolf Laurel Subdivision is only $375, including upgrading, as compared to the Company's overall investment of about $550 per customer.

The Commission acknowledges that there are many water systems in North Carolina operated by owners with limited financial resources and utility training and expertise. In many cases, these owners have little incentive or desire to provide adequate service. Acquisition of these systems by professional utility owners such as Carolina Water Service provides a solution to the threat to service that exists in small water systems. The Commission reiterates its wish to encourage such acquisitions in cases such as this. To exclude the Company's $100,000 investment in the well and storage tanks at Wolf Laurel Subdivision would instead penalize the Company for correcting the deplorable situation that existed in that subdivision. The Commission, therefore, finds that the entire $100,000 should be allowed in rate base.

## Brandywine Bay Elevated Tank

The next disagreement between the Company and the Public Staff regarding plant in service involves inclusion in rate base of the Company's investment in the elevated storage tank constructed in the Brandywine Bay Subdivision. The Public Staff has recommended that $205,000 of the Company's $250,000 cost basis in the tank be excluded from rate base. The Public Staff reduced the investment amount by determining percentage utilization of the tank using a 200 gpd design capacity standard. In determining the percentage utilization, the Public Staff compared the number of customers on line at the end of the test year (225) to the maximum number of single family equivalents that the tank could serve (1,250).

The Company challenged the Public Staff's exclusion on several grounds. The Company received a $200,000 contribution in aid of construction from Walmart to build the tank. In rebuttal testimony, Company Witness Demaree stressed that growth must be considered in evaluating unused capacity. Witness Demaree stated that a 400 rather than a 200 gpd standard should be used. He emphasized that the Company had used the 400 gpd standard in designing the tank. Witness Demaree also noted that because it is extremely difficult to obtain zoning for an elevated tank after a development is almost completed, it is better to build an elevated tank before houses are constructed and purchased especially if one will be needed shortly to meet residential customer needs. The Company was advised by DEM to begin construction of a tank as indicated by CWS Cross-Examination Exhibit 4.

Witness Demaree stated in his rebuttal testimony that using a 400 gpd standard, 73% of the tank would be utilized by June 30, 1994. The historical growth experience and the method relied upon for projecting future growth were

set forth in Demaree Rebuttal Exhibit 12. The 27% of remaining capacity margin would equal $67,500 of original cost. However, witness Demaree noted that the Company would collect tap fees within the next five years that would net $90,044. Therefore, the entire capacity margin would be paid for by tap fees within five years.

Having reviewed the evidence and arguments of the Public Staff and the Company regarding treatment of the investment in the Brandywine Bay elevated storage tank, the Commission is persuaded that $146,000 of the Company's investment in the Brandywine Bay elevated tank should be allowed in rate base. No argument has been made that the elevated tank was unnecessary. DEH wrote the Company a letter (Witness Lee Cross-Examination Exhibit 4) on December 19, 1988 stating: "Currently the Brandywine Bay system of water supply is restricted to not more than 229 service connections. As Brandywine Bay appears to be a popular location for new home construction over the past four years, we recommend that you proceed immediately with plans to provide the elevated storage so as not to restrict development." The elevated tank provides current customers with several benefits including reduction in pressure fluctuation, greater emergency reserve capacity, and more readily available fire protection.

In concluding that $146,000 should be allowed in rate base for this elevated storage tank, the evidence in this proceeding indicates that the tank was serving 225 customers at the end of the test year. Using the 400 gpd standard that the Commission has found to be appropriate in this proceeding, this facility is capable of serving 625 single family equivalents. By using the ratio of the customers on line at the end of the test year to the total number of customers which can be served by this facility, the Commission concludes that the appropriate reduction in rate base for this tank under its percentage utilization method would be $160,000. However, as discussed elsewhere herein, the Commission further concludes that this reduction should be offset for a reasonable capacity allowance of 35 percent which results in a total reduction in the amount to be included in rate base for this item of $104,000. Accordingly, the amount that should be included in rate for the Brandywine Bay elevated storage tank is $146,000 ($250,000 - $104,000).

Brandywine Bay Sewage Treatment Plant

The Company also has urged the Commission to include the $408,738 cost for expansion of the Brandywine Bay sewage treatment plant in rate base. The Public Staff has recommended that the Commission allow only $120,823 of this amount in rate base.

Public Staff witness Lee testified that although the correct design capacity for wastewater treatment plants is 400 gpd, the state allows reevaluation of design capacity based on historical usage data. The Public Staff employed such an historical usage figure, rather than a 400 gpd standard, in determining the capacity currently used in the Brandywine Bay sewage treatment plant.

The Public Staff estimated that Brandywine Bay sewer customers use an average of 150 gallons of water per day. The Public Staff multiplied this number by the 136 end of test year customers to get 20,400 gallons per day. The Public Staff then subtracted the 20,400 from the 150,000 gallon per day capacity of the plant to arrive at 129,600 gallons of unused capacity. Using a

400 gpd standard, the Public Staff calculated that there were 324 potential additional connections to the plant. The Public Staff then added the 324 to the existing 136 end of test year customers to arrive at the total capacity of 460 single family equivalents. The Public Staff then recommended allowing 29.56 percent of the cost of the facility by dividing the number of end of test year customers by the 460 single family equivalents maximum capacity of the plant.

In rebuttal testimony, Company witness Demaree argued that the Public Staff's methodology and calculation were incorrect. Witness Demaree testified that, because sewage treatment plants are specifically designed to handle a certain amount of infiltration, historical water usage is not an accepted method to determine sewage treatment capacity. Witness Demaree testified that the Public Staff's formula is erroneous because it does not allow for infiltration or high-usage and completely ignores peak-flow months.

On cross-examination of Public Staff witness Lee, the Company introduced a letter (Lee Cross-Examination Exhibit 3) in which the Company had requested a reduction of the 400 gpd design capacity requirement for the Parks Farm sewer treatment plant based upon the average monthly flow for the plant. The Division of Environmental Management (DEM), by letter dated December 20, 1988, rejected the Company's request. The DEM letter stated in part:

> The Division bases any request for flow reduction on the highest average month not on the average for all months for the period of record. This figure is certainly in excess of actual water consumption rates, but it is used to allow a measure of safety in the design of wastewater treatment facilities. This allows for infiltration/inflow, surge protection, etc. (Lee Cross-Examination Exhibit 3 (emphasis added)).

Witness Demaree faulted the Public Staff for suggesting that since the plant by the Public Staff's calculation is processing less than design capacity, the Commission should deduct an amount from rate base. Witness Demaree argued that it is wrong for the Public Staff to change the rules after the plant has been constructed, permitted, and has begun operation under a 400 gpd design.

Witness Demaree also challenged the Public Staff's failure to account for growth in its methodology. He argued that it is economically impractical to build a plant designed only for customers on-line at the end of the test year. Witness Demaree testified that the plant will be fully utilized within five years.

Having thoroughly weighed the evidence presented by both parties, the Commission concludes that $239,420 of the Company's investment in the Brandywine Bay sewage treatment plant expansion should be allowed. The Commission is persuaded that, in assessing sewage treatment plant capacity, allowance for infiltration or high usage must be recognized. As evidenced by Lee Cross-Examination Exhibit 3, the state will not normally grant capacity reductions, especially when such reductions do not allow for infiltration and high usage.

The Brandywine Bay sewage treatment plant was constructed, permitted, and began operating under a 400 gpd design. Reliance upon the 150 gpd usage to calculate the existing usage of capacity attributes to the Company knowledge it could not possibly have had when it made the plant expansion. It would have been imprudent to assume usage of 150 gpd when the undisputed design criteria is 400 gpd. It would be inherently unfair to reevaluate the unused capacity under a lesser standard as the Public Staff advocates. Furthermore, the 150 gpd is the measurement of water flowing into homes, not wastewater flowing into the plant. The prudence of the decision to construct the expansion must be judged by examining facts known at the time the expansion was made. The Company is not free to eliminate part of the plant after construction if usage proves to be less than anticipated at the time of construction.

If the Commission were to permit the adjustment advocated by the Public Staff, to be nondiscriminatory, it would have to reexamine on a regular basis every sewage facility in the state. The Commission would then have to analyze the change in flow to determine and apply a percent utilization. This process would be both impractical for the Commission and unfair to the utilities who constructed their facilities under a specific design standard. The Commission, therefore, rejects the Public Staff's reevaluation of capacity using an historical usage figure.

In approving the transfer of the Brandywine Bay system to the Company, the Commission explicitly acknowledged the need for the expansion of the facility, and Public Staff witness Lee concurred in this acknowledgement. The Commission recognizes that the cost of the sewage treatment plant was higher than originally expected because the State required the Company to construct a 30-day holding pond for effluent. The Company should not be penalized for this unanticipated rise in costs.

In concluding that $239,420 should be allowed in rate base for this sewage treatment facility, the evidence in this proceeding indicates that the facility was serving 136 customers at the end of the test year. Using the 400 gpd standard that the Commission has found to be appropriate in this proceeding, the facility is capable of serving 375 single family equivalents. By using the ratio of the customers on line at the end of the test year to the total number of customers which can be served by this facility, the Commission concludes that the appropriate reduction in rate base for the plant under its percentage utilization method would be $260,489. However, as discussed elsewhere herein, the Commission further concludes that this reduction should be offset for a reasonable capacity allowance of 35 percent which results in a total reduction in the amount to be included in rate base for this item $169,318. Accordingly, the amount that should be included in rate base for the Brandywine Bay sewage treatment plant is $239,420 ($408,738 - $169,318).

Danby Wastewater Treatment Plant

An additional plant adjustment to rate base recommended by the Public Staff involves the Danby wastewater treatment plant expansion. In his testimony, Public Staff witness Lee urged the Commission to disallow the Company's $209,000 investment in the plant expansion from rate base. Witness Lee testified that, based upon the number of customers at the end of the test year, approximately $300,000 in developer tap-on fees should have been paid.

In rebuttal, Company witness Demaree testified that $250,000 of the $459,000 total cost of the 500,000 gpd facility was collected from developers. Witness Demaree stressed that the Company had located and installed a used plant at a substantial cost per gallon savings to the Company. The Company submitted an exhibit that showed that the construction costs of a new 200,000 gpd plant would be $235,000 and that the construction costs of a new 500,000 gpd treatment plant would be $416,000. Witness Demaree testified that the costs of yard piping, electrical equipment, a blower building, and all other necessities to tie the new plant to existing facilities would have to be added to the new plant construction costs estimated by Davco. Witness Demaree stated that as a rule of thumb the prices should be doubled to calculate accurately the entire costs of installing a new plant. Witness Demaree thus estimated that the cost of installing a new 200,000 gpd tank would be approximately $450,000 and concluded that the cost of installing the 500,000 gpd used plant was equal to the cost of a new 200,000 gallon plant.

According to Witness Demaree, the 200,000 gpd new plant would only serve approximately 500 single family equivalents which represented the approximate number of customers on-line at the end of the test year. Witness Demaree testified that the Company needed a larger plant at that point in time to reflect anticipated growth.

A thorough examination of the evidence regarding the Danby sewage treatment plant expansion persuades the Commission that $128,577 of the Company's entire $209,000 investment should be allowed in rate base.

In concluding that $128,577 should be allowed in rate base for this sewage treatment facility, the evidence in this proceeding indicates that the facility was serving 510 customers at the end of the test year. Using the 400 gpd standard that the Commission has found to be appropriate in this proceeding, the facility is capable of serving 1,250 single family equivalents. By using the ratio of the customers on line at the end of the test year to the total number of customers which can be served by this facility, the Commission concludes that the appropriate reduction in rate base for the plant under its percentage utilization method would be $123,728. However, as discussed elsewhere herein, the Commission further concludes that this reduction should be offset for a reasonable capacity allowance of 35 percent which results in a total reduction in the amount to be included in rate base for this item of $80,423. Accordingly, the amount that should be included in rate base for the Danby wastewater treatment plant expansion is $128,577 ($209,000 - $80,423).

## Excess Plant

The parties also disagree as to the amount of purchase price that should be included in rate base for four other systems: Queens Harbor, Riverpointe, Sherwood Forest, and TET Utility. The Company recently purchased these systems which have not been included in rate base prior to this proceeding. According to Public Staff witnesses Lee and Hering, using its percentage utilization method that it proposes, the Commission should only include the percentage of plant capacity that is actually used at the end of the test year. Carolina Water Service, on the other hand, proposes that all of its investments producing a reasonable capacity margin that will accommodate future growth should be included in rate base.

The Public Staff determined a ratio of utilization by dividing the number of current customers by the number of customers that the system was designed to serve. This procedure was said to indicate "excess capacity." The percentage was then multiplied by the purchase price of each system in order to determine the amount of "non-excess" plant that could be included in rate base. The results are displayed in the following chart:

| Item | Company (Purchase Price) | Public Staff | Difference |
|---|---|---|---|
| Queens Harbor | $ 70,000 | $ 3,395 | $ (66,605) |
| Riverpointe | 35,000 | 2,625 | (32,375) |
| Sherwood Forest | 26,500 | 4,079 | (22,421) |
| TET Utility | 9,327 | 1,666 | (7,661) |
| Total: | $ 140,827 | $ 11,765 | $(129,062) |

The Company's position is that this methodology is contrary to sound regulatory policy. As indicated by the chart above, it argues that the full purchase price should be included in rate base. First, the purchase price for each of the systems was substantially less than the net original cost. Company witness Demaree's rebuttal testimony indicated that the Company paid approximately $140,000 for systems that cost over $1.2 million to construct. The following chart quantifies this difference:

| System | Net Original Cost | Purchase Price |
|---|---|---|
| Queens Harbor | $419,372 | $70,000 |
| Riverpointe | ~~$795,417~~ | $35,000 |
| Sherwood Forest | $ 85,000 | $26,500 |
| TET Systems | $122,534 | $ 9,327 |

Second, the prices for these systems were negotiated at arm's length and directly reflected the fact that the facilities were not fully utilized. Company witness Demaree added that, even if the smallest system (wells, mains, treatment plants, etc.) was designed to serve only the existing customers, it could not have been built for the amounts that Carolina Water Service paid for these systems. The Company also maintains that acceptance of the Public Staff's analysis would encourage small, less efficient systems, while deterring investment by companies able to accomplish economies of scale. It would also force certain economic loss on utility shareholders, since the Company could never buy a system not fully built out without having a part of its investment denied in rate base until it is fully built out, regardless of how small the purchase price.

After considering the contentions of both parties, the Commission concludes that $56,935 of the $140,827 purchase price for all four systems should be included in rate base.

The Commission has indicated that, in making its adjustments to rate base, it would consider factors such as anticipated customer growth and benefits resulting to ratepayers from additional capacity. In applying these criteria to the sales transactions at issue here, it is apparent that the full purchase

prices should not be included in rate base. As previously discussed, by using the ratio of customers on line at the end of the test year to the total number of customers which can be served by each of these four systems, the Commission concludes that the appropriate reduction in rate base for the purchase price for these four systems under its percentage utilization method would be $129,062, which is identical to the reduction proposed by the Public Staff. However, as discussed elsewhere herein, the Commission further concludes that such reduction should be offset for a reasonable capacity allowance of 35 percent which results in a total reduction in the amount to be included in rate base for these four systems of $83,892. Accordingly, the amount that should be included in rate base for these four systems is $56,935 ($140,827 - $83,892).

On a system-by-system basis, the Commission's adjustments are as follows:

Queens Harbor Subdivision

The evidence in this proceeding reflects that the Company paid $70,000 for a complete water and sewer system designed to serve approximately 206 customers in Queens Harbor Subdivision. The Company purchased this system in June 1987 when it had five customers. By June 1989, this system had 10 water and sewer customers. The Company is not expecting any additional customers in the near future.

The Commission concludes that the appropriate reduction in rate base for Queens Harbor system under its percentage utilization method would be $66,605. However, this reduction should be offset for a reasonable capacity allowance of 35 percent which results in a total reduction in the amount to be included in rate base of $43,294. Accordingly, the amount that should be included in rate base for Queens Harbor is $26,706 ($70,000 - $43,294).

Riverpointe Subdivision

Public Staff witness Hering testified that the Riverpointe systems are similar to Queens Harbor. The Riverpointe water system also has multiple wells, treatment equipment and water mains to serve 200 customers. The sewer system consists of a 100,000 gallon per day treatment plant and mains to serve 200 customers. These systems currently serve 15 customers.

The Commission concludes that the appropriate reduction in rate base for Riverpointe system, under its percentage utilization method would be $32,375. However, this reduction should be offset for a reasonable capacity allowance of 35 percent which results in a total reduction in the amount to be included in rate base of $21,044. Accordingly, the amount that should be included in rate base for Riverpointe system, is $13,956 ($35,000 - $21,044).

Sherwood Forest Subdivision

Public Staff witness Hering noted that the Commission made an adjustment for overbuilt mains in the last rate case (W-706, Sub 3) for the prior owner of Sherwood Forest Subdivision. Since the Docket No. W-706, Sub 3, rate case, additional mains have been added to the system. According to witness Hering, the mains can now serve 950 customers but only 186 customers are on the system.

The Company did not agree with the Public Staff's adjustment but did not offer any testimony to contradict the facts that were presented.

The Commission concludes that the appropriate reduction in rate base for the Sherwood Forest system under its percentage utilization method would be $22,421. However, this reduction should be offset for a reasonable capacity allowance of 35 percent which results in a total reduction in the amount to be included in rate base of $14,574. Accordingly, the amount that should be included in rate base for Sherwood Forest system is $11,926 ($26,500 - $14,574).

TET Subdivision

Public Staff witness Hering testified that the TET sewer system can serve 28 customers while only five are currently being served. The sewer system consists of a 9,000 gallon per day treatment plant and mains to serve all possible customers. As with the other systems, there is no evidence that any specific near-term growth is expected for this system.

The Commission concludes that the appropriate reduction in rate base for TET system, under its percentage utilization method would be $7,661. However, this reduction should be offset for a reasonable capacity allowance of 35 percent which results in a total reduction in the amount to be included in rate base of $4,980. Accordingly, the amount that should be included in rate base for TET is $4,347 ($9,327 - $4,980).

Other Items

In its original filing in this docket, the Company booked all the plant owned by the prior utility at Zemosa Acres. The Public Staff and the Company are now in agreement that only the mains, service lines, and meters were acquired. Accordingly, the Company has since reduced plant in service and its purchase acquisition adjustment account by $93,700 to reflect this agreement which does not represent a dollar difference between the parties.

The final difference between the parties is a difference in the amount to include for the vehicle of John Cunningham, an operator of unregulated sewer plants. Inasmuch as the Commission has concluded to allow 50 percent of the salary of John Cunningham in the cost of service in this case, the Commission also finds it appropriate to include 50 percent of the cost of his vehicle in this case which is $7,750.

Based upon the foregoing, the Commission concludes that the proper level of plant in service to be included in rate base is $40,168,215.

Debit Balance in Deferred Taxes

The parties differ on the level of debit balance in accumulated deferred income taxes that should be added to rate base. The Company calculates the balance to be $825,598; the Public Staff, $406,919. Carolina Water Service has increased rate base by $418,679 as a pro forma increase to accumulated deferred income taxes (ADIT). The Company made this adjustment to reflect the income tax liability on CIAC of $1,084,100. Public Staff witness Haywood removed the $418,679 from the debit balance of accumulated deferred income taxes. She

stated that the Company received this CIAC in 1987, 1988, and 1989 for the Hound Ears, Danby, and Cabarrus systems. She stated that the Company has stated that no income taxes on this CIAC have been paid. The Public Staff also stated that the $418,679 relates to contributed property not booked by the Company.

Company witness O'Brien addressed the ADIT issue on rebuttal. Witness O'Brien stated that the $418,679 related to $1,084,100 in fees paid by developers in the Cabarrus and Danby Subdivisions directly to contractors who had installed plant for the Company. Between 1987 and 1989, $660,500 was received from developers, Beta, EVI, and Squires who are developing in the Cabarrus area. These funds were paid by the developer directly to contractors as partial payment for work performed in constructing the Cabarrus elevated tank, the Cabarrus wastewater treatment plant, the Cabarrus lift station, the Danby wastewater treatment plant, and the Hound Ears wastewater treatment plant. The amount of $423,600 was received from developers in the Danby area. Firstmark provided $300,000 and Crosland provided $123,600 between 1987 and 1988. These funds were used to pay contractors for a portion of the Cabarrus elevated tank, the Cabarrus wastewater treatment plant, the Danby elevated tank, and the Danby wastewater treatment plant. Consequently, all of the $1,084,100 was money paid by developers directly to contractors for plant.

Witness O'Brien testified that subsequent to the discussions in discovery with the Public Staff, the Company has paid the $418,679 in taxes. Witness O'Brien asserted payment has been made in the form of estimated quarterly tax payments, although the payment has not been identified as related specifically to the contributions in the Cabarrus and Danby areas.

Witness O'Brien stated that the Company desired to take the position with the IRS that taxes are due on contributed property based upon the fair value of the property received. Because the Commission, in its order in Docket No. W-354, Sub 69, had treated portions of the Cabarrus and Danby plant as plant that should be excluded from rate base, the Company took the position that this plant was not yet used and useful and, therefore, had no value. Witness O'Brien stressed that Carolina Water Service disagrees with the Commission's treatment of plant in Docket No. W-354, Sub 69, and strongly believes that the plant is used and useful because it is on line providing water or sewer service. However, to the extent that the Commission removed the plant from rate base, the Company would like to take advantage of this disallowance by arguing to the IRS that receipt of funds to finance the plant should not give rise to federal income tax expense.

The Commission has carefully weighed the conflicting evidence in this proceeding presented by the parties regarding this issue and has determined that uncertainty exists as to the level of the tax liability and whether the said taxes have been paid. Therefore, the Commission will not make an adjustment to the debit balance in accumulated deferred income taxes to increase rate base in the amount of $418,679 at this time.

## Accumulated Depreciation

The next difference between the Company and the Public Staff involves the proper level of accumulated depreciation. The Company calculates the level as $2,962,730; the Public Staff, $3,007,709; for a total difference of $44,979.

A difference in the amount of $19,618 arises due to the inclusion by the Public Staff of the Beatties Ford system. Having concluded that the Beatties Ford system should be included in this proceeding, no further discussion is warranted. The remaining difference between the parties of $25,361 involves a disagreement on the level of certain items including accumulated depreciation of the Genoa system at the time it was acquired by the Company. A further discussion of this difference is included in the discussion of the Genoa system under Acquisition Adjustments that follows.

The Commission concludes that the proper level of accumulated depreciation to be included in rate base is $3,007,709.

## Acquisition Adjustments

The Company has calculated the plant acquisition adjustment to be $2,355,018. The Public Staff has calculated the plant acquisition adjustment to be $2,701,730 which results in a difference of $346,712. The Public Staff has made a number of adjustments to remove from rate base the price Carolina Water Service has paid to sellers from whom it has acquired operating systems that the Company has never before sought to include in rate base. In each instance, the Public Staff has recommended that all or part of the price paid by the Company be excluded from rate base. A summary of the differences between the parties in this area is as follows:

| Utility | Amount |
|---|---|
| Ashley Hills | $ (16,638) |
| Belvedere | (78,215) |
| Kings Grant | (6,851) |
| Watauga Vista | (17,076) |
| White Oak | (48,896) |
| Vander Water | 645 |
| Zemosa Acres | (117,252) |
| Genoa Water | (7,511) |
| Beatties Ford | (54,918) |
| | $(346,712) |

As a general proposition, when a public utility buys assets that have previously been dedicated to public service as utility property, the acquiring utility is entitled to include in rate base the lesser of the purchase price or the net original cost of the acquired facilities in the hands of the transferor at the time of transfer. The theory behind this proposition is that the investor in utility property should only be entitled to recover his own investment. Also, public utility ratepayers normally should only be responsible for reimbursing an investor once for the cost of public utility property through depreciation expense recovered through rates and through payment of a return on the unrecovered investment.

The following is a discussion of each of the adjustments at issue between the parties.

## Ashley Hills

Public Staff witness Hering testified that the sewer plant serving Ashley Hills/Amber Acres had been contributed by the developers, Parrish and Weathers, to Thomas L. Bailey. Then, on May 4, 1984, Parrish and Weathers filed a complaint proceeding to recover the utility from Mr. Bailey. In this complaint, Docket No. W-771, Sub 1, item 9 states: "Complainants submit that they contributed the plant to Mr. Bailey. . . .".

This shows that even though Parrish and Weathers later reacquired the utility plant through a court proceeding, there was no rate base, since they had previously contributed the plant.

The Company challenged witness Hering's proposed adjustment in cross-examination and in rebuttal testimony. CWS maintained that even though a developer expressed the intention of recovering the cost of a utility system through lot sales, rather than through utility rates, this did not mean the system should have zero rate base because the developer may not have actually made full recovery through lot sales. CWS established that witness Hering did not know the extent to which Parrish and Weathers had recovered the cost of the Ashley Hills sewer system through lot sales. The Company also argued in rebuttal that the developers did receive some compensation from Mr. Bailey in exchange for the utility system, and that the developers made system improvements after deeding the system over to Mr. Bailey.

The Company's evidence is insufficient to establish any dollar amount of rate base for the Ashley Hills sewer system. The evidence shows that the system was contributed by the developers to Mr. Bailey. The compensation that CWS says was received by the developers -- that "Mr. Bailey was to operate the sewage treatment plant in compliance with the law and to bear the cost of doing so" -- does not rise to the level of a dollar amount appropriate for inclusion in rate base. After all, Mr. Bailey was entitled as a franchise holder to recover his costs of operating the system in compliance with the law through rates. The evidence shows that the developers contributed the system, and presumably intended to recover their costs through lot sales. Whether they actually recovered their utility system investment through lot sales, or are still doing so, is irrelevant at this point for regulatory purposes. Once a developer indicates he is contributing a utility system's cost to a utility company, this contribution cannot be undone by subsequently examining how the developer's finances turned out. Cost recovery through means other than rate base treatment is a risk the developer bears when he decides to make the contribution.

Company witness O'Brien testified that a 70,000 gpd treatment plant had been added to the Ashley Hills system. However, testimony in Docket No. W-846, Sub 8, revealed that this addition was not yet operational and no one knew when it would be operational. Mr. Thurston Debnam, managing part of Amber Associates, also testified that they were paying for the package treatment plant and contributing it to Parrish and Weathers. Thus, there is no basis for placing in rate base the cost of the 70,000 gpd plant addition referred to by the Company.

As for other improvements, witness O'Brien stated in Docket No. W-880, "the Public Staff required Parrish and Weathers to make improvements over the past two years and they were in fact made." As quoted from Finding of Fact No. 8 of Docket No. W-880:

> Witness Tweed testified that he has required witness Parrish to make certain improvements to the system over the past 2 years and that the repairs had been made. (Emphasis added.)

When asked whether this could refer to expense items instead of capital improvements, witness O'Brien testified, "You can't tell for sure." The Company has not shown there were any capital improvements (which would be rate base items) subsequent to the contribution of the original system, and has not shown any dollar amount even if there were capital improvements.

Based on the foregoing, the Commission concludes that the $17,000 purchase price of the Ashley Hills system, less the 1989 amortization, should be removed from rate base.

Belvedere

The franchise order for the prior owner of the Belvedere system states, in Finding of Fact No. 8, Docket No. W-809, that:

> The initial cost of the applicant's utility system will be recovered through the sale of lots and through the tap-on fees, thus there is no need for the Applicant to seek recovery of such investment through customer rates.

The Commission having previously determined that there would be zero rate base for the cost of the Belvedere water and sewer system, it was incumbent upon CWS to show a change of circumstances or some new evidence supporting rate base treatment of part of the utility systems. The Company has not shown any such evidence. The Company did not cite any evidence of the dollar value of capital improvements made since the initial system costs were contributed. Instead, CWS argued that the prior owner could not have recovered his cost through lot sales because it is in bankruptcy, and could not have recovered his cost through tap fees since the system is not built out.

The Commission agrees with CWS that the evidence indicates it is unlikely that the prior owner recovered all its costs related to the Belvedere utility systems. However, as discussed above, this is irrelevant to the regulatory issue the Commission must decide. Because the prior owner indicated that it would not seek to recover the system costs through rates, there is no rate base for the initial cost of these systems. A zero rate base system cannot acquire rate base simply by virtue of being purchased by a new owner. While the prior owner may have failed to recover the costs for the utility systems through lot sales, and then sold these systems to CWS for $80,000 to recoup some of its losses, this would not undo the fact that the utility systems were contributed initially and therefore have zero original cost rate base.

Based on the foregoing, the Commission concludes that the $80,000 purchase price for the Belvedere system, less the 1989 amortization, should be removed from rate base.

## Kings Grant

This is another system where the prior owner stated that he would recover his capital investment in the utility system not through rates, but through other means, indicating that the cost of the system was contributed and the utility had zero rate base. Public Staff witness Hering testified that the seller, W.P.M. Associates, is recovering its cost through the sale of lots. Witness Hering based this on testimony from the original franchise hearing, Docket No. W-878, in which the developer said that this was his preferred method. The developer also did not request a tap fee and said that "if it becomes a necessity, I'll come back and try to make arrangements for that." Up until the time that the system was sold, a tap fee was never requested.

Company witness O'Brien testified that the prior owner probably intended to recover the cost of the utility system in part through sale to CWS, and this justified including the purchase price in rate base. On cross-examination, he stated that he did not have any documentation or specific evidence that the developer of Kings Grant Subdivision either did or did not recover the cost of the utility system through lot sales.

Once again, the evidence that the prior owner intended to recover his cost through lot sales, and not by including the cost in rate base, is undisputed. This evidence supports the Commission in finding that the prior owner contributed the cost of the system to the utility he was operating. The prior owner's decision to contribute the system cost cannot be undone by the Company's conjecture that he may have subsequently sought to recover part of the cost by sale of the system to CWS. When the original cost of utility plant to the first utility company owner is zero by virtue of contribution, the cost for that same plant remains zero for subsequent utility company owners.

Based on the foregoing, the Commission concludes that the $7,000 purchase price of the Kings Grant system, less the 1989 amortization, should be removed from rate base.

## Watauga Vista

Public Staff witness Hering testified that the original developer included the cost of the water system in the price of the lots. The second developer has stated that there is a $1,750 fee as part of the purchase contract for each lot. Originally, only $150 of this was booked by the water utility; the other $1,600 was retained by developer. Witness Hering contended that because the customers were already paying for the water system once through their lot purchases, it would be unfair to have them pay for the utility plant again through rate base treatment.

On cross-examination, witness O'Brien admitted he had no information to contradict the Public Staff position that both the first and second developers were recovering utility plant cost through the purchase price of lots. On rebuttal, he testified that CWS, not the developer, had been receiving tap-on fees from customers since CWS took over the system.

The Commission does not believe the evidence of the Company justifies inclusion of the purchase price of this system in rate base. Witness Hering testified that, of the $1,750 charged by the second developer for utility plant recovery, only $150 was flowed to the utility as a tap fee. Tap fees generally relate to the cost of tapping a customer's service lateral into the utility's main, setting a meter box, and installing a meter; especially for a utility like CWS that has a separate plant impact fee. The nature of tap fees is such that the cost they relate to may not arise until a new customer comes onto the system. The fact that CWS is recovering tap fees from new customers does not mean it has an existing investment that is unrecovered. The evidence indicates that any unrecovered cost that may exist for the Watauga Vista water system was incurred by the developers, and that such investment was contributed to the utility by the developers because they arranged to recover their cost through lot sales. If the developers had not recovered all their cost at the time of the sale to CWS, the system still had zero rate base due to the clear evidence that the prior owners did not intend to recover their capital costs through rate base treatment.

Based on the foregoing, the Commission concludes that the $17,500 purchase price of the Watauga Vista system, less the 1989 amortization, should be removed from rate base.

White Oak

Public Staff witness Hering testified that the White Oak water and sewer systems were contributed by the developer. Witness Hering testified though that both phases were contributed based on the following language from the final Order (Docket No. W-354, Sub 66) dated June 27, 1988, which transferred these systems to CWS:

> Whether or not White Oak had the opportunity to write off its utility investment for tax purposes prior to sale of its systems has no bearing upon the ratemaking treatment to be afforded by this Commission to the investment of CWS in said system. White Oak has represented to the Commission in previous dockets that the utility plant would be contributed by the developer. If the developer at any point decided that it would no longer contribute property to White Oak then White Oak should have come before the Commission requesting approval of a tap-on fee to cover its cost or requesting authority to be relieved of its responsibility to serve the remaining undeveloped area. Furthermore, because the developer has not written off its investment for tax purposes does not mean that it did not recover the cost of the utility system through lot sales.

Company witness O'Brien conceded that the utility system costs related to Phase I of the subdivision were contributed. He also agreed that the developers of the Phase II water and sewer system "intended to contribute the facilities and expense them for tax purposes." However, he stated that despite the intentions of White Oak developer, the Tax Reform Act changed circumstances and the facilities were not contributed. This was conjecture. Witness O'Brien offered no evidence from the White Oak developer or elsewhere that these facilities were not contributed. The fact that the developers intended to contribute the utility systems is the controlling circumstance here, and subsequent changes in the tax laws neither undo this original intent, which

resulted in an original cost rate base of zero, nor demonstrate that the developers' intent necessarily changed. There is no valid reason for the Commission to change its finding from Docket No. W-354, Sub 66, that these systems were contributed to the prior utility.

Based on the foregoing, the Commission concludes that the $50,000 purchase price of the White Oak System, less the 1989 amortization, should be removed from rate base.

Vander

Public Staff witness Hering testified that he reduced the purchase price of the Vander system by $26,652 to represent the net original cost of $18,730 at time of acquisition. At the hearing, Company witness O'Brien agreed with this adjustment but the Company failed to offset its adjustment by the 1989 amortization of $645. The Commission agrees with this adjustment because ratepayers should not have to pay more than once for the same net original cost of utility property used to provide them with service. Further, rate base should be increased by $645 to allow for the omission in the Company's amount of this adjustment.

Zemosa Acres

According to witness Hering, the Company booked all the plant owned by the prior utility at Zemosa Acres Subdivision, and the contract for sale of this system to CWS that was filed with the Public Staff indicated that all the prior owner's utility facilities and real estate had been sold to CWS. However, at the hearing the Company agreed that they in fact had only purchased the mains, meters, and services. The other utility property was not needed because CWS obtained water on a wholesale basis from the county rather than pumping from wells as the prior owner did.

The Public Staff and the Company are now in agreement that only the mains, service lines, and meters were acquired. The Company, in its latest filings has reduced plant in service and PAA by $93,700 to reflect this agreement. The Public Staff had not yet reflected this agreement at the time of its last filing. This does not result in a dollar difference between the parties.

The discussion of remaining difference of $24,136, less the 1989 amortization of $584, follows.

The Company and the Public Staff while in agreement over the plant items to be included at the time of acquisition, are not in agreement on the net original cost of these items. Witness Hering testified that he took the cost of mains, services, and meter boxes from prior rate cases, recorded the amount of tap-on fees as had been done by the Commission in prior dockets, and calculated depreciation to arrive at a net original cost at the date of purchase of $20,864. The principal difference between the parties was the amount of tap-on fees. (This also affected the level of accumulated depreciation). Witness Hering imputed tap-on fees for all customers at the time of sale; witness O'Brien just recorded the tap-on fees the prior owners showed they had actually received.

The Commission agrees with witness Hering's methodology and therefore his adjustment for the Zemosa Acres system. CWS should not benefit from the prior owner's discriminating against customers by charging some, but not others, the tap-on fee. Where the prior owner was authorized by this Commission to charge a tap fee, the Commission will adjust the rate base as if the authorized fee had been charged. If the prior owner failed to collect tap fees which it had both the right and duty to collect, it has effectively made a contribution of the costs to which such tap fees relate. This adjustment to impute tap fees is consistent with past Commission practice.

With respect to the amount of accumulated depreciation that is to be used, witness Hering testified that he calculated the depreciation for each year after adding any additions and subtracting the appropriate level of tap fees, based on the customers at the end of each year. Witness O'Brien testified that he used $56,915, which was the accumulated depreciation booked for all the assets of Zemosa. The Commission has already agreed with witness Hering's approach to tap fees, and consequently agrees with his calculation of accumulated depreciation for Zemosa Acres.

Based on the foregoing, the Commission finds that the weight of the evidence supports exclusion of $24,136 of the $45,000 purchase price from rate base, less the 1989 amortization, and so concludes.

Genoa

The Company and the Public Staff disagreed on the level of certain items used to determine the net original cost of the Genoa system at the time it was acquired by CWS. Public Staff witness Hering testified that his adjustment reflected the level of plant, accumulated depreciation and plant acquisition adjustment from Genoa's last rate case (Docket No. W-312, Sub 6) brought forward to the time of acquisition. To bring these items forward to the time of the acquisition by CWS, witness Hering used a 10% depreciation rate. In contrast, CWS brought these items forward by using a 2% depreciation rate.

The Public Staff used the 10% rate to depreciate the Genoa utility plant because that was the rate last approved by the Commission for Genoa. CWS used the 2% rate because that is CWS's composite rate. In rebuttal, CWS witness O'Brien stated that the 10% rate applied only to Genoa's pumping equipment,and since CWS acquired the entire system and not just pumping equipment, it would be more approprite to use a 2% depreciation rate. However, on cross-examination, he agreed that 10% depreciation on pumping equipment only resulted in a $2,000 depreciation expense in Genoa's last rate case and that there was an additional $4,000 depreciation expense included in that rate case. Witness O'Brien could not say whether the additional $4,000 in depreciation expense related to a 10% rate for nonpumping equipment or not.

The Commission has several concerns about using the 2% depreciation rate for the Genoa system prior to June 1987, when it was acquired by CWS. The first concern is that 10% was found to be a reasonable depreciation rate in the prior docket. This rate was, therefore, a component of the rates that the customers of this system were paying. It would be unfair to the customers to go back now and reduce the level of accumulated depreciation that has been paid in through rates. The other concern is that CWS proposes to apply their approved depreciation rate for a period of time when the utility plant in

question was owned by a different utility with a different approved depreciation rate.

The Commission has analyzed both positions and, because of the concerns previously mentioned, finds the 10% rate to be reasonable for use in calculating the net original cost at the time of acquisition. This results in a net original cost of $116,942 allowable in rate base, calculated as follows:

| | |
|---|---|
| Plant | $ 354,392 |
| Accumulated Depreciation | (40,473) |
| Plant Acquisition Adjustment | (21,027) |
| Contributions | (175,950) |
| Net Original Cost | $ 116,942 |

Based on the foregoing, the Commission concludes that the $150,000 purchase price of the Genoa system should be reduced by an acquisition adjustment of $7,697, less the 1989 amortization of $186. Further, accumulated depreciation should also be adjusted by $25,361 as noted in the Commission's discussion under the Accumulated Depreciation section of this Order.

The remaining difference between the parties is due to the Beatties Ford system. As the Commission has concluded to include the Beatties Ford system in this case, no further discussion is warranted.

Customer Deposits

The parties differ on the level of customer deposits. The Company includes $97,695. The Public Staff includes $100,861. Because the difference of $3,166 relates solely to Beatties Ford, the Commission establishes the level at $100,861.

Contributions in Aid of Construction

The Company calculates contributions in aid of construction as $17,180,633; the Public Staff $17,798,850. This difference of $618,217 results from the Beatties Ford difference of $535,597, a disagreement over the calculation of the Wolf Laurel management fees which results in a difference of $3,450, and a adjustment by the Public Staff to include $79,170 in tap-on fees for the Carronbridge Subdivision.

The difference regarding the inclusion of Beatties Ford has previously been decided and, therefore, no further discussion is warranted for this item.

Public Staff witness Lee's calculation of the management fees is based upon the assumption that there were 52 new connections in the Wolf Laurel Subdivision since the Company acquired the system. The Company's calculation is based on the premise that there were 29 new connections. Company witness Wenz testified that although the Company's application stated that there had been 52 new connections, in fact, there had been only 29. The Commission concludes that the Company has presented uncontradicted evidence that the number of new connections listed on the application is incorrect and that the correct number of new connections is 29. The Commission concludes that in

calculating contributions in aid of construction, the correct number of new connections in Wolf Laurel Subdivision should be used rather than the incorrect number on the application relied upon by the Public Staff. The Commission, therefore, adopts the Company's position regarding this item.

Contributions in aid of construction have been adjusted by the Public Staff to include $79,170 in tap-on fees paid during the test year by Belk Investments to CWS for Phase I of Carronbridge Subdivision. Belk Investments paid these tap fees in order to connect to the Beatties Ford sewage treatment plant. The Commission finds and concludes that these tap-fees should be considered as CIAC.

Based on the foregoing, the Commission concludes that the proper level of contributions in aid of construction for use in this proceeding is $17,795,400.

## Deferred Taxes

The parties differ on the level of deferred taxes. The Company calculates the level as $818,928. The Public Staff calculates the level at $852,599. The difference arises from the parties disagreement over the Beatties Ford adjustment. Because the Commission has concluded to include this item, the Commission determines the correct level of deferred taxes to be $852,599.

## Working Capital Allowance

The Company and Public Staff differ on the level of working capital allowance. The Company adds $406,581; the Public Staff adds $394,234 for a difference of $12,347. This difference arises from the parties disagreement over the level of operating revenue deductions and the exclusion of Beatties Ford. The Commission has determined that Beatties Ford should be included in this proceeding under Evidence and Conclusions for Finding of Fact No. 8. As discussed elsewhere herein this Order, the Commission has established the appropriate level of operating revenue deductions to be included in this proceeding. Based on the foregoing, the Commission concludes that the proper level of working capital allowance is $425,333.

## Deferred Charges

The remaining difference of $242,862 relates to the unamortized balance in the deferred account and is shown in the following table:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Beatties Ford allocation | $ (4,674) | $ -0- | $ 4,674 |
| Tank painting costs | 149,433 | 123,509 | (25,924) |
| Relocation costs | 13,542 | 8,699 | (4,843) |
| Misc. deferred charges | 136,093 | 11,676 | (124,417) |
| Rate case costs | 228,730 | 147,232 | (81,498) |
| Hugo costs | 63,016 | 52,162 | (10,854) |
| Total | $586,140 | $343,278 | $(242,862) |

The first difference relates to Beatties Ford. The Commission finds that the difference related to Beatties Ford's inclusion to be appropriate based on the discussion elsewhere herein.

The second difference concerns the different starting points utilized by the Public Staff and the Company related to the amortization process for tank painting and relocation fees. Witness Wenz presented testimony stating that different amortization methods applied by the Company and the Public Staff cause variances. He further stated that the Company's amortization methodology assumes that costs are incurred evenly throughout the year for tank painting and relocation costs. Thus, the Company utilizes the half year depreciation methodology, which is consistent with the depreciation of an asset.

Methods utilized by the Commission to reflect the amortization of deferred charges for the year in which costs were incurred have been handled differently in various cases. For example, in Southern Bell Telephone and Telegraph Company, Docket No. P-55, Sub 926, the Commission approved the amortization methodology proposed by Southern Bell. This methodology allowed for the amortization of one-third of the Hugo costs, an entire year for the year in which costs were incurred. The remaining amortization portion was deferred over two remaining years.

The Commission understands that if costs for an entire year are reflected in operating expenses, then accordingly, an entire year of the unamortized deferred portion should also be reduced from the remaining rate base. The Commission realizes that this methodology was not contested by the Company in its last general rate case, Docket No. W-354, Sub 69. Therefore, the Commission is unaware of any reason for any inconsistency related to the methodology utilized in the last proceeding. Therefore, the Commission agrees with the Public Staff's amortization methodology and finds the appropriate levels of deferred charges for tank painting and relocation costs are $123,509 and $8,699, respectively.

The variance between the Company and the Public Staff for miscellaneous deferred charges is a result of the Company's inclusion of water testing fees of $142,600 amortized over a five-year period. The Company included in deferred charges an amount of $114,080 for water testing fees and an amortized expense of $28,520. In this adjustment the Company utilized a whole year for both the expense and the unamortized rate base portion of $114,080 as shown as Wenz Rebuttal Exhibit #2. The Company utilized the same methodology as the Public Staff.

Witness Wenz also discussed the fact that neither the Company nor the Public Staff had originally included the unamortized portion of the VOC tests in rate base. The Public Staff treated the cost of these tests the same as regular testing fees. Witness Demaree stated that most of the costs related to VOC testing will not be incurred until sometime in 1991. Witness Lee also allowed for VOC testing expenses in this proceeding. In addition, the Commission notes that this water testing cost should not be included in deferred charges at all. These are regular tests and should not be allowed to be included in deferred charges. Witness Lee has already made allowances in the Public Staff's calculation of recommended testing fees for all subdivisions. The Commission also notes that an $8,325 expense was incurred by

the Company for water testing. Of this amount, $5,550 was included in deferred charges by the Company.

Based on the foregoing, the Commission finds that water testing and VOC testing should not be included in deferred charges as an addition to rate base. Therefore, rate base should be reduced by a total of $119,630 for VOC testing.

Another area of difference between the parties concerns the tank painting of a sewer treatment plant. The Company reflects that this charge occurred in 1989 whereas the Public Staff reflects that it occurred in 1987. Neither party offered any testimony concerning this matter. The Commission has no reason to believe that the time that this occurred is other than that shown on the Company's exhibit, and, therefore, the Commission concurs with the Company. Accordingly, the Commission concludes that the proper level of miscellaneous deferred charges to include in rate base is $14,842.

Regulatory Costs

The next difference between the parties with respect to deferred charges relates to regulatory costs. The Company advocates inclusion of $228,730 as regulatory costs, and the Public Staff advocates $147,232 for a difference of $81,498. The differences between the parties arise from a disagreement as to when the amortization should begin, differences as to the total amount of costs recoverable with respect to several of the cases, the amortization period over which the costs should be recovered, and the classification of certain costs.

The parties differ over the treatment of the costs for the Company's last general rate case, Docket No. W-354, Sub 69. The Company budgeted $102,392 as rate case expense in that case, and the Commission authorized amortization of that amount over a three-year period. The Company has now determined that the actual rate case expense in that case was 127,847 and seeks to increase the authorized amortization associated with the Sub 69 rate case costs. Public Staff witness Haywood asserted that an allowance for additional expenses related to a prior rate case would constitute retroactive ratemaking.

In this regard, the Commission agrees with the Public Staff that it would be improper to go back in time and allow these additional regulatory costs. The Commission has already authorized recovery of a level of rate case expenses associated with the Sub 69 rate case that was believed, based on the evidence at the time, to be a fair and representative level. Just because the rate case costs turned out to be higher than the Commission found to be reasonable is not sufficient reason to undermine the finding of reasonableness in the earlier proceeding. If the Commission were to true-up past expenses to guarantee utilities exact recovery, the past procedure of setting rates prospectively for a representative level of expenses would be negated. The Commission's decision on this item is consistent with the treatment of additional Sub 39 rate case costs in the last general rate case proceeding.

The parties likewise differ over the beginning point of the amortization of the rate case costs for Sub 69 and the period over which these costs should be recovered. The Public Staff begins amortization on January 1, 1987, the beginning of the test year, and advocates amortization over three years. The Company advocates amortization beginning in February 1989, the time that the

rates approved went into effect, and argues that the amortization period should be two years.

The Commission agrees with the Company on the beginning of the amortization period. To assume amortization of the rate case expense begins on January 1, 1987, eliminates any possibility that a large percentage of the costs can be recovered. The Commission addressed this issue in its order in the Company's last rate case and determined that amortization should begin at the time the rates are approved to go into effect. The Commission reaffirms its decision in this case.

Public Staff witness Haywood testified that a three-year amortization period has been previously accepted in rate proceedings for this Company. Additionally, the Public Staff noted that if the Company comes in for another rate proceeding before that time period has elapsed, then the recovery of costs incurred is realized through the unamortized balance in the deferred account. Since the Company will not be harmed by utilizing a three-year amortization period, and in order to be consistent with past decisions on this matter, the Commission concludes that a three-year amortization period is appropriate in this proceeding.

Based on the foregoing, the Commission concludes that the appropriate level of unamortized costs for Sub 69 to be included in this case is $37,923, and the level of rate case amortization expense for Sub 69 is $18,961.

Another item of difference was the appeal costs for Sub 69. Public Staff witness Haywood testified that while the $57,650 for the Company's appeal of Sub 69 appeared to be "an extremely large fee for an appeal," she accepted the amount due to lack of comparative data. However, after she testified, Company witness Wenz was asked about a late-filed exhibit showing invoices for legal services from the law firm of Hunton & Williams to CWS. Witness Wenz admitted that he had taken two of the invoices for December 1988 and January 1989 and allocated 25% of the invoice costs to the Sub 69 appeal, even though the Commission's order for Sub 69 was not issued until February 1989.

The Commission finds that the allocation of $10,777 to appeal costs on the December 1988 and January 1989 invoices is a result of misallocation on the Company's part. Based on the dates on the invoices, the 25% of the invoices in question really relate to Sub 69 rate case expense, not appeal expense. The proper level of legal costs incurred for the Sub 69 rate case has already been decided by the Commission in the Sub 69 Final Order, as spoken to above. Therefore, the amount of legal expense misallocated by CWS to the Sub 69 appeal should be deducted from unamortized deferred charges. Therefore, the Commission concludes that the proper level of unamortized Sub 69 appeal costs is $37,498, after deducting one year's amortization expense of $9,375. This level of amortization expense is based on a five year amortization period.

The next difference between the parties with respect to the deferred charges involves the recovery of the costs incurred by the Company in Docket No. M-100, Sub 113. With these costs, the issue again is the beginning point of the amortization period. The Public Staff advocates that amortization should begin on January 1, 1987. The Company indicates that amortization should begin on February 7, 1989, at the time the Company's rates were first changed after it incurred the costs in this docket.

Consistent with its ruling on the Sub 69 costs, the Commission again reaffirms its position that amortization of these regulatory expenses should begin on the date that the Company's rates are first altered so as to begin to recognize recovery of these costs. Any other procedure results in an inability of the Company ever to recover the full amount of these costs. The amortization period approved for recovery of these costs in Sub 69 was five years. Based on the foregoing, the Commission concludes that the appropriate level of unamortized costs related to M-100, Sub 113 is $9,071, and that the appropriate level of related amortization expense is $2,474.

The parties differ as to the amount of the cost to be recovered for this case, Docket No. W-354, Sub 81. The Company has updated the final estimate to $243,791.20 from its original estimate of $138,258.26. Although the Public Staff was critical of the level of the original estimate, no adjustment was made to said level. The Public Staff did not accept the Company's updated estimate.

The following is a chart summarizing both the initial and revised estimate the Company made to calculate the regulatory expense for this docket:

| Sub 81 | Final Estimate | Initial Estimate |
|---|---|---|
| Water Services Personnel | $ 74,972.00 | $ 39,119.00 |
| Legal Fees | 100,000.00 | 60,000.00 |
| Customer Notices | 26,782.67 | 20,000.00 |
| Travel | 16,956.27 | 15,000.00 |
| Outside Witnesses | 20,700.00 | -0- |
| Audit and Filing Fee | 4,139.26 | 4,139.26 |
| Other | 241.00 | -0- |
| Total | $243,791.20 | $138,258.26 |

The updated estimates for customer notices, travel, and audit and filing fees total $47,878. These are expenses over which the Company has almost no control. The Commission concludes that these expenses should be recovered from the Company's customers.

The Public Staff expressed concern with the high level of the Company's rate case legal expenses. A late filed exhibit filed in response to Commission inquiry at the hearing shows that the bulk of these costs were estimated at the time of the hearing. Hence, like all estimates, the Company's projected legal costs are subject to the risk that the estimate may be too high or low. The Commission is concerned with the level of the proposed legal expenses, and the lack of evidence to support said costs. After a careful review of this matter, the Commission concludes that $50,914 is the appropriate level of legal expenses to be recovered from customers for the current proceeding. The Commission notes that this level is substantially greater than that allowed in the Company's last general rate case. This increased amount is found to be appropriate in recognition of the complexity of this case. The Commission will continue to monitor these costs in future general rate cases. Likewise, the Commission is concerned with the revised estimate of water service personnel costs. The Company's updated estimate increases the projected level of this item by nearly 92%. The record simply does not justify this increased level of costs. Based on the foregoing, the Commission concludes that the proper level

of water services personnel costs to be included in this proceeding is $39,119, as initially projected by the Company.

The Public Staff excluded the Company's rate case costs associated with outside witnesses. Generally, the Public Staff asserts that these costs were unnecessary. The Commission disagrees. The outside witnesses testified on important matters in this case, and provided added expertise to the Company's case. The Commission concludes that these costs should be recovered in this proceeding.

The Company has provided no support for the $241 of other costs and therefore these costs must be rejected. Therefore, the Commission concludes that the appropriate level of costs to be recovered for this rate case is $158,611. Annual amortization of this amount based on a 3 year amortization period is $52,870 and the unamortized balance to be included in the Company's rate base is $105,741.

Hugo Costs

The next difference between the parties with respect to deferred charges involves the amount that should be included in rate base representing the deferred portion of the cost incurred by the Company in restoring service after damages caused by Hurricane Hugo. The Company has included $63,016 for Hugo costs; the Public Staff $52,162, for a difference of $10,854. The differences between the parties arise because the Company seeks to include as a portion of the Hugo costs overtime paid to supervisors and the pay to employees from out-of-state affiliated companies. Also, the inclusion of Beatties Ford by the Public Staff results in a different level of Hugo costs.

The Public Staff seeks to disallow $5,558 for the North Carolina supervisory overtime, $5,500 for out-of-state supervisory overtime, and $5,126 for out-of-state regular pay, for a total of $16,184.

With respect to the overtime paid to North Carolina supervisory employees, Public Staff witness Haywood states that, based on Company policy, supervisors are not paid overtime, and therefore, the Public Staff feels that North Carolina ratepayers should not have to pay rates which reflect decisions made by management that go against company policies. Witness Haywood states that these overtime payments are really bonuses that should be paid by the stockholders. She states that Company employees are normally given time off as a compensation for overtime.

Witness Wenz for the Company testified in rebuttal that although the Company does not generally pay overtime, the Company felt compelled to make such payments in this case because of the tremendous effort put forth by all levels of personnel in the aftermath of Hugo. He stated that an exception was made to the normal overtime policy. Witness Wenz testified that all of the Company's employees performed over and above any reasonable expectations. One supervisor logged 146 overtime hours in a 10 day period. Witness Wenz testified that this is an extraordinary amount of time and would not be expected under any normal circumstances.

The Commission has analyzed the issue with respect to the overtime pay for North Carolina supervisors. The Commission agrees with the Company that this

overtime payment is an appropriate increment to be included in the cost of the Hugo expense. The Public Staff does not question the necessity of the work performed. Obviously, the customers benefited substantially from the willingness of the Company's employees to work nearly around the clock to restore service and to assist customers in recovering from the emergency. The Commission finds no fault with the Company in deviating from its customary policy in paying overtime to supervisors in order to restore service in an emergency. The Commission commends the Company's supervisory employees for their response in this emergency. This Commission deems that it would be sending an inappropriate signal to the Company if it chose to disallow the overtime paid to the employees in meeting this emergency.

With respect to the adjustment to remove the cost of labor brought in from out-of-state, Public Staff witness Haywood argues that the salaries of these employees are included in rates paid by ratepayers in other states. She argues that Carolina Water Service should not be allowed also to include in rates established for North Carolina ratepayers any pay for these employees.

In rebuttal, Company witness Wenz stated that these employees came from Louisiana, Illinois, Mississippi, Virginia, South Carolina and Maryland to assist in restoring service to the Charlotte area customers. Witness Wenz stated that to the extent that these employees were not in their home states providing service in those jurisdictions, the ratepayers in those other states should be reimbursed. The record also shows that North Carolina employees contributed to the clean up effort in other states.

Since the Hugo clean up costs were incurred subsequent to the end of the test period, an adjustment would need to be made to reduce the cost of service by the regular pay of North Carolina employees performing clean up services in other states. This adjustment was not made by the Company, only the opposite one including in the cost of service out-of-state regular pay devoted to clean up operations in North Carolina. This inconsistency compels the Commission to accept the Public Staff's position on this matter regarding out-of-state regular pay.

The Commission agrees with the Company to include the out-of-state overtime pay. There is no evidence in the record that these charges have been recovered from other jurisdictions or that overtime pay is normally built into rates in these other jurisdictions.

Based on the foregoing, and the Commission's decision to include Beatties Ford as spoken to elsewhere, the Commission concludes that the amount of unamortized deferred charges related to Hugo costs is 67,226. The annual amortization of Hugo costs, over a six year amortization period, is $13,445. Additionally, the Commission's total deferred charges for all the items discussed above is $404,509.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 47

The parties differ on the level of revenues. The Company calculates total net revenues of $5,076,520; the Public Staff calculates total net revenues of $5,298,878. The Company calculates service revenues of $5,032,659, miscellaneous revenues of $124,886 and uncollectables of $81,025. The Public Staff calculates service revenues of $5,252,739, miscellaneous revenues of

$129,613 and uncollectables of $83,474. The differences between the parties result from the difference on the treatment of the Beatties Ford system. The Commission has concluded that Beatties Ford should be included. Therefore, the total net revenues under present rates for use in this case are $5,298,878.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 48 - 55

The evidence for Findings of Fact Nos. 48 - 55 is found in the testimony and exhibits of Company witnesses Wenz, O'Brien and Demaree and Public Staff witnesses Lee, Haywood and Hering.

The Company contends that a reasonable level of intrastate operating revenue deductions after accounting, pro forma, end of period adjustments is $4,588,949. The Public Staff's testimony supports operating revenue deductions of $4,516,803. There is a difference of $72,146 between the amounts recommended by the Company and the Public Staff.

Many of the differences in the accounts comprising operating revenue deductions result from the parties' disagreement over the inclusion of the Beatties Ford system in this case. As discussed in the Evidence and Conclusions for Finding of Fact No. 8, the Commission has determined that the Beatties Ford system should be included for the purposes of this case. As a result, all of the differences regarding operating revenue deductions resulting from the Public Staff's inclusion of the Beatties Ford system are decided in favor of the Public Staff. The Commission, therefore, need only address those operating revenue deduction differences that remain between the Company and the Public Staff after consideration of the Beatties Ford issue. The chart below summarizes the differences between the parties regarding operating revenue deductions, before income taxes.

| Item | Public Staff (With Beatties Ford) | Public Staff (Without Beatties Ford) | Company | Difference Between Company and Public Staff (Without Beatties Ford) |
|---|---|---|---|---|
| OPERATION & MAINTENANCE | | | | |
| 1) Operations Salaries and Wages | $931,967 | $ 918,467 | $1,053,772 | $135,305 |
| 2) Purchased Power | 633,360 | 614,643 | 614,475 | (168) |
| 3) Purchased Water | 52,080 | 52,080 | 52,058 | (22) |
| 4) Maintenance and Repair | 583,894 | 554,498 | 584,264 | 29,766 |

| Item | Public Staff (With Beatties Ford) | Public Staff (Without Beatties Ford) | Company | Difference Between Company and Public Staff (Without Beatties Ford) |
|---|---|---|---|---|
| 5) Maintenance Testing | 99,185 | 94,888 | 99,578 | 4,690 |
| 6) Chemicals | 92,795 | 89;179 | 89,211 | 32 |
| 7) Transportation Expense | 136,064 | 130,270 | 140,897 | 10,627 |
| 8) Operating Expense Charged to Plant | (252,141) | (250,012) | (263,421) | (13,409) |
| 9) Outside Services - Other | 140,775 | 135,124 | 135,174 | 50 |
| 10) Water Services Charges-O&M | 122,394 | 117,481 | 117,525 | 44 |
| GENERAL EXPENSES | | | | |
| 11) Salaries | 201,018 | 194,038 | 194,038 | -0- |
| 12) Office Supplies & Other Office Expenses | 111,716 | 107,232 | 112,205 | 4,973 |
| 13) Regulatory Commission Expense | $ 63,623 | $ 62,468 | $ 194,140 | $131,672 |
| 14) Uncollectible Accounts | -0- | -0- | -0- | -0- |
| 15) Pension & Other Employee Benefits | 262,564 | 258,682 | 281,132 | 22,450 |
| 16) Rent | 91,272 | 87,916 | 87,997 | 81 |
| 17) Insurance | 7,771 | 179,111 | 179,195 | 84 |
| 18) Office Utilities | 123,259 | 118,311 | 122,740 | 4,429 |

| Item | Public Staff (With Beatties Ford) | Public Staff (Without Beatties Ford) | Company | Difference Between Company and Public Staff (Without Beatties Ford) |
|---|---|---|---|---|
| 19) Meter Reading | 1,960 | 1,906 | 1,985 | 79 |
| 20) Misc. | 53,635 | 50,820 | 50,872 | 52 |
| 21) Water Services Charges - GA | 122,394 | 117,481 | 117,525 | 44 |
| 22) Other Operating Expenses | (10,352) | (10,352) | (2,561) | 7,791 |
| 23) Interest on Customer Deposits | 6,495 | 6,234 | 6,234 | -0- |
| 24) Depreciation - net | 304,151 | 300,695 | 449,151 | 148,456 |
| 25) Taxes - Other than Income | 388,158 | 374,784 | 390,262 | 15,478 |

Operations Salaries

The first expense item upon which the parties disagree is operations salaries. Carolina Water Service offered testimony of witnesses O'Brien and Wenz to support its payroll expense request. The Public Staff offered the testimony of witnesses Lee and Haywood. In its filing, the Company requested pro forma payroll expense of $1,082,960. This expense level was obtained by annualizing actual September 15, 1989 payroll. The Public Staff's pro forma payroll level was $931,967, including Beatties Ford, and $918,467 excluding Beatties Ford. In its final position, the Company included an end of period level of operator salaries of $1,053,772.

The Public Staff, during the course of discovery, obtained an organizational chart from the Company used within the operations area to permit visualization of the management structure. The Public Staff was unable to identify more than 43 manager/operators from the organizational chart dated as of December 12, 1989. Public Staff witness Lee stated that the 49 manager/operators at September 14, 1989, had decreased to 43 in January 1990. Witness Lee stated that the 43 compared to 42 operators employed in September 1988. Witness Lee stated that Carolina Water Service had added only four systems since September 1988, had a low system per operator ratio and that 43 operators should be sufficient to service the Company's systems.

Company witness Wenz addressed the Public Staff payroll adjustment on rebuttal. Witness Wenz stated that the payroll expense level should be $1,053,772. Witness Wenz testified that the chart relied upon by Public Staff witness Lee was not prepared to show the level of payroll and failed to include all the operators who were on the payroll. Also, the chart omitted operators who had left the Company but whose positions had not yet been filled by the time the chart was prepared.

The Commission has analyzed the evidence presented by the parties on the issues relating to the pro forma payroll expense for operators. The Commission determines that the level requested by the Company is appropriate. The Commission cannot accept the adjustments advocated by the Public Staff. It is apparent that the Public Staff has relied upon inappropriate information to determine the level of field employees at December 12, 1989. The chart omits employees who actually were on the payroll at December 12, 1989. David Hetterich left the Company on November 27, 1989, prior to the date the chart was prepared. His replacement, Kevin Mullineaux, did not start to work until January 3, 1990, after the chart was prepared. Reliance upon the chart in this instance omits the entire salary for a position that has existed for some time, and will continue to exist while the rates established here will be charged, simply because the position was vacant on the date the chart was prepared.

The December 12, 1989, organizational chart relied upon by the Public Staff includes two employees, Ned Worstall and Charles Gillespie, who are not operators at all as the Public Staff assumed. Mr. Gillespie is general laborer, who paints, cuts grass and performs general maintenance. Mr. Worstall is a full time meter reader. The chart contains three operators whose primary responsibilities involve operations in South Carolina and Tennessee. The chart was not prepared to compute payroll expense and provides inadequate information upon which to determine the level of employees even at the date the chart was prepared, much less for a representative level of end-of-period employees. The Public Staff made no effort to determine why the level of employees on the chart differed from the level relied upon by the Company at September 15, 1989.

Q. Well, is it your view that there are fewer employees, adding them all together, let's set aside the management, let's take the operators and the part-time people, is it your view after analyzing the data that the Company has fewer people on line all told, top to bottom, aside from the management folks, January, 1990, that existed end of June, 1989?

A. I can only address the operators that were presented to me. (Tr. Vol. XVIII, p. 9.)

The Commission determines that there is no basis to find that the September 15, 1989, level of employees is excessive. No employee has been identified who is not needed. The Public Staff has failed to support its position that the Company can or does provide service with fewer employees than were on the payroll at September 15, 1989. With the growing demand for more highly qualified operators to meet higher standards, the Commission would be sending the wrong signal by disallowing salary expense at this time.

Another area of difference between the Company and the Public Staff involves the payroll expense that should be allocated to outside operation of

sewage treatment plants under contract with owners of nonregulated systems. The Public Staff has excluded the full salary of Mr. John Cunningham who is an operator in the coastal region of the state. The Public Staff, likewise, has removed one-fourth of the salary of Joe Lawrence. The Public Staff reasons that Mr. Lawrence's duties are split equally between operations and supervision and that if the entire duties of Mr. Cunningham are devoted to the operation of the contract sewage treatment plants, then one-fourth of Mr. Lawrence's salary should be allocated to operation of the contract sewage treatment plants also. One basis for the Public Staff's adjustment is that on the December 12, 1989, organizational chart, Mr. John Cunningham is listed under sewage contract treatment plant operations. Public Staff witness Lee also testified on cross examination that it is his belief that more than 1.5 operators are necessary to operate the contract sewage treatment plants.

Company witness Wenz addressed these adjustments on rebuttal. Witness Wenz stated that in the Company's last case, Docket No. W-354, Sub 69, based on a similar dispute, the Commission determined that 1.5 employees should be allocated to operation of the contract plants. In this case, the Company has allocated 100% of Jeff Pruitt's salary, benefits, payroll taxes and vehicle to operation of these plants. In keeping with the decision made in the last case, the Company has also allocated 50% of John Cunningham's salary and benefits. Witness Wenz stated that the December 12, 1989 organizational chart was not prepared with the accuracy needed to compute payroll costs. The number of contract sewage treatment plants operated by the Company has decreased slightly from the last case. Witness Wenz testified that the 1.5 employee allocation incorporated in the filing was appropriate. Also, because only 1.5 operators should be allocated to the plants, only 3/16 of the salary of Mr. Lawrence, the manager, should be allocated. The 3/16 allocation for the manager payroll expense equals $5,625.

The Commission has analyzed the testimony on this issue. The Commission thoroughly addressed this issue in the Company's last case and ruled that only 1.5 field operators should be required to operate the 12 contract sewage treatment plants in the Pine Knoll Shores area at that time. The Commission notes that as of the close of the test year in this case, the number of contract sewage treatment plants operated by the Company had slightly decreased. If any change has occurred since the last case, this change would indicate that fewer payroll costs should be allocated to operation of the contract sewage treatment plants, not greater. In the last case, the Commission found:

> 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 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 hearing:

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 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.

N.C.U.C. Docket No. W-354, Sub. 69, Order Approving Partial Rate Increase and Requiring Improvements, (February 2, 1989) 79 N.C.U.C.R. 482, 519.

There is nothing in the record in this case that indicates that the Public Staff adjustment is based on any more analysis or first-hand information than was the recommendation in the last case.

Q. Do you have any testimony today that anything has changed with respect to Mr. Cunningham's duties to change him from part-time contract operator to full-time operator?

A. I have the organizational chart that was presented by the Company as we requested that shows on the Exhibit 3 - on page 2 of Exhibit 3 provided by the Company, it has on that operator - Jeff Pruitt, contract sewer plant. It has a system number that is designated and corresponds with the booking entries made on Utilities, Inc.'s, ledger. It also has there John Cunningham, contract sewer plant operator and the system number that corresponds with entries made on Utilities, Inc., for the management fees.

Q. So that's the basis of your adjustment, that chart?

A. That along with my argument last year that when you compare the ratio of systems for operators that the Company is claiming it needs in its other areas versus what it was claiming you could operate those systems on the coast, then I feel that my adjustment last year was more appropriate than what the Commission allowed, and I feel that what I recommended this time is more appropriate than what the Company is proposing. (Tr. Vol. XVIII, p. 17.)

The Commission, therefore, reaffirms the decision it entered in Docket No. W-354, Sub 69, and will allocate only one-half of the salary and benefits of

Mr. John Cunningham to the contract plants. It will, likewise, allocate only 3/16 of the salary and expenses of Joe Lawrence, Mr. Cunningham's manager, to the contract sewage treatment plants.

The next difference between the parties arises from the Public Staff's adjustment to eliminate the salary of Clyde McCall from the test year payroll expense. Witness Lee testified that Mr. McCall, who was hired on August 7, 1989, had been hired as a project manager. According to Public Staff witness Lee, a project manager's time is devoted primarily to projects that will be capitalized, so that the salary should not be included in the test year operating and maintenance expense.

Company witness Wenz offered rebuttal testimony on the issue of the appropriateness of including Mr. McCall's salary in the test year in this case. Witness Wenz testified that Mr. McCall was hired to replace Mr. Lee Kiser, who left the Company on May 24, 1989. Mr. Kiser's salary was included in the last case. Witness Wenz testified that Mr. McCall will be undertaking the same duties as Mr. Kiser, the employee whose position he took. A percentage of Mr. McCall's salary has been capitalized for test year purposes. This is accomplished by a pro forma adjustment to the "operating expenses charged to plant" expense category.

After examining the testimony on this issue, the Commission determines that the adjustments proposed by the Public Staff to eliminate Mr. McCall's salary from operation and maintenance expense should be denied. There is no testimony to contradict the assertion advanced by the Company that Mr. McCall has taken Mr. Kiser's job and will undertake the same duties.

The Commission determines that the appropriate level of salaries and wages is $1,067,272, after inclusion of Beatties Ford.

Customer Growth

The Company and the Public Staff initially disagreed on the customer growth adjustment as applied by the Company. In its final position, the Company accepted the methodology employed by the Public Staff for customer growth to chemicals and purchased power. As spoken to further below, the Company's final position includes customer growth to four additional accounts, repairs and maintenance, transportation, office supplies and other office expenses, and office utilities. In calculating its cost of service, the Public Staff has removed from many accounts a greater level of customer growth than initially proposed by the Company. The Commission concludes that this is inappropriate and has made the proper adjustment. For example, this mechanical difference results in the $168 difference in purchased power.

The differences between the Company and the Public Staff regarding expenses for maintenance and repair, office supplies, transportation and office utilities, (items 4, 7, 12 and 18 above) result in whole or in part from the parties' disagreement over the customer growth adjustment included in the Company's final position. The Company, in its direct case, proposed to make adjustments to expense items to bring the test year expense level to an end of period level through application of a growth adjustment based on the growth in number of customers during the test year.

Witness Lee testified that maintenance and repair expenses do not vary directly with customer growth. He testified that transportation expense is related to the number of field employees rather than customers.

In rebuttal testimony, Company witness Wenz advocated that the growth adjustment be limited to expense categories of power for pumping, chemicals, maintenance and repair, transportation expense, office supplies, and the telephone component of utilities expense. Witness Wenz recommended a total growth adjustment of $48,416. Witness Wenz testified that the Company's decision to advocate a growth adjustment resulted from an examination of the Commission's order in the last Mid South rate case, Docket No. W-720, Sub 94. In his rebuttal testimony, witness Wenz limited the growth adjustment to items that had been approved for such an adjustment in the Mid South case. Witness Wenz testified, "The Commission has previously recognized that maintenance and repair, transportation, office supplies, and telephone are variable expenses that increase as customers increase." Tr. Vol. XXII, p. 161.

Company witness Wenz stated that as more customers use the system, pumps will wear out faster, more sludge will be hauled, more customer service time is spent on the phone, more postage and forms are consumed for billing, etc.

The Commission has analyzed in detail the recommendations by the parties with respect to the growth adjustment. Before resolving these differences, the Commission deems it appropriate to discuss the theory behind making a growth adjustment to expenses. In establishing the rates that will be charged as a result of the cost of service approved in this case, the Commission will divide the gross level of revenues approved by the number of end of test year customers and end of test year consumption. By establishing rates on this basis, the Commission will, in effect, determine revenues as of the last month in the test year in order to bring the revenues to a go-forward level.

Because the expenses used to establish the revenue requirement are unadjusted test year expenses, they are set at levels as of the mid-point of the test year, December 31, 1988. If expense levels have been increasing throughout the course of the test year and are anticipated to increase at a similar rate during the period when the rates approved in this case will be in effect, failure to adjust the test year expenses will result in a mismatch between revenues and expenses. The failure will also build in attrition and accelerate regulatory lag. The purpose of a growth adjustment, therefore, is to bring expenses as well as revenues to a go-forward level and to match revenues and expenses at the same point in time.

Public Staff witness Lee does not argue that expense levels did not increase during the test year or that expenses will not increase during the period rates approved in this case will be in effect. Rather, Public Staff witness Lee argues that a growth adjustment calculated by reliance on the test year growth in customers is imprecise because many of the expense categories do not vary directly with the growth in customers.

The Commission will address witness Lee's argument. First, the Commission notes that regardless of whether expenses vary directly with growth in customers, if expenses increase and are anticipated to continue to increase, it is still appropriate to make a growth adjustment. Furthermore, the Commission is unpersuaded by witness Lee's logic that expenses do not increase at least at

the rate of increase in customers. Although water testing may depend on the number of wells as opposed to the number of customers on a system, obviously as the number of customers increase the more wells the Company will need to provide service to the additional customers. Witness Lee argues that transportation expense varies with the number of employees rather than with the number of customers. However, the more customers that the Company adds, the more meters there are to be read.

The Public Staff cross-examined Company witness Wenz on rebuttal on communications expense. Witness Wenz stated on redirect examination that the Company relies on toll free numbers for customers to reach the Company's employees. As customers increase, the number of toll free calls increase and the Company's communication expense increases.

The Commission is convinced that there are increases in the overall level of Company expenses and that it would be highly inappropriate to leave so many expenses at the December 31, 1988, level.

The Commission further concludes that the appropriate way to grow the expenses to an end of period level is through the customer growth adjustment. However the customer growth adjustment should be adjusted to reflect the methodology proposed by the Public Staff and accepted by the Company for the accounts grown by the Public Staff. This method gives proper weighting to systems added during the test period. Based on the foregoing, the Commission concludes that the proper customer growth adjustment for repairs and maintenance, office supplies, utilities, and transportation is $35,221.

Office Supplies and Utilities

The differences between the Company and the Public Staff regarding the expenses for office supplies and office utilities have been discussed above. Consistent with these decisions, the Commission finds that $115,871 should be allowed for office supplies and $126,962 should be allowed for office utilities.

Maintenance and Repair

The parties disagree on the level of maintenance and repair expense. The Company asserts that the proper level of this expense is $584,264. The Public Staff, on the other hand, contends that, setting aside the Beatties Ford difference, only $554,498 should be included for maintenance and repair expense. The differences between the parties regarding the level of maintenance and repair expense primarily stem from the Public Staff's removal of $26,801 related to the Company's growth adjustment and the disallowance of certain Hugo expenses discussed earlier.

As discussed above, the Commission has determined that repair and maintenance expense should be increased by the growth adjustment. Similarly, in the Evidence and Conclusions for Findings of Fact Nos. 10-46, the Commission adopted its position in regards to Hugo costs. Based on the above decisions, the Commission concludes that the appropriate level of end of period maintenance and repair expenses is $608,367, which includes the effects of including Beatties Ford.

## Transportation

The parties disagree over the appropriate level of transportation expense. The Company states that $140,897 should be allowed as transportation expense, and the Public Staff contends that, setting aside the Beatties Ford difference, only $130,270 should be included in rates as transportation expense. The Public Staff reached its $130,270 figure by taking the Company's pro forma application transportation expense of $144,896 and dividing it by the number of operators as of June 30, 1988 (35) to get an average cost per operator of $4,140. The Public Staff then deducted the average cost of #1 contract sewer plant operator ($4,140), the average cost of #2 contract sewer plant operator ($4,140). The Public Staff also removed the Company's customer growth adjustment to transportation, as discussed above.

The Company calculated the transportation expense by dividing the per book test year expense ($138,602) by the number of vehicles owned (51) to get the average cost per vehicle ($2,718). The Company then subtracted the average cost for #1 contract sewer operator ($2,718), 50 percent of the average cost for sewer operator #2 ($1,359), and added customer growth ($6,372) to the test year expense ($138,602) to get a total pro forma transportation expense of $140,897.

The Commission has carefully examined the calculations and arguments of both the Company and the Public Staff. Consistent with its decision above, the Commission concludes that transportation expense should be adjusted for 1.5 operators, as proposed by the Company. However, this adjustment to transportation expense for the 1.5 operators should be calculated based on the methodology proposed by the Public Staff. This methodology was accepted by the Commission in the Company's last general rate case. As discussed above, the Commission has determined that transportation expense should be increased by the customer growth adjustment found to be reasonable herein above. The Commission, therefore, concludes that the proper level of transportation expense is $143,273.

## Maintenance Testing

The next expense item about which the parties disagree is the maintenance testing expense. The Company has calculated that $99,578 should be included for maintenance testing, whereas the Public Staff recommends allowance of $94,888 without Beatties Ford for this expense item. The discrepancy between the final maintenance testing figures of the parties results from their differences regarding Beatties Ford and calculation of water testing fees.

The Company has calculated that $53,809 should be allocated for water testing expense. Exhibit 15 to David Demaree's rebuttal testimony demonstrates the calculations made by the Company in arriving at the $53,809 figure. The Company calculated that coliform testing would require $17,136 per year. In addition, the Company estimated that inorganic chemical testing which is required once every three years would amount to $4,399 per year. Radiological testing which is required every four years would require $3,984 per year according to the Company's calculations. The Company also calculated that the volatile organic chemical (VOC) testing which is required every five years would cost $28,290 per year.

The Public Staff calculated that water testing would amount to $50,675 per year and rounded this figure up to $52,500 to allow for miscellaneous testing.

The Commission has thoroughly examined the evidence presented by both parties regarding maintenance testing.

After adjusting for Beatties Ford, the Commission concludes that the appropriate level of water testing fees to be $55,352. This amount is based on the Company's methodology for coliform testing and inorganic testing and on the Public Staff's methodology for radiological testing and VOC testing. In addition, the Commission concludes that the Public Staff's inclusion of miscellaneous testing is unsupported by evidence of record, and therefore should not be included in the Company's cost of service.

When the water testing fees found to be reasonable above are added to test period sewer testing fees, adjusted for Beatties Ford, the Commission derives an appropriate end-of-period maintenance testing expenses of $104,577.

Capitalized Operating Time

The next point of disagreement between the Company and the Public Staff relates to the appropriate level of capitalized operating time. The Public Staff believes that $252,141 in operating expenses should be charged to plant, whereas the Company would charge $263,421 to plant. Both the Company and the Public Staff have agreed that as operating payroll costs increase the contra-expense should increase proportionally. The Public Staff methodology to allocate said expenses is more exact than that of the Company, and was approved in the last general rate case. The Commission accepts this methodology for use in this proceeding. Consistent with the Commission's decision in regards to operator salaries, the Commission determines that $205,804 of operating expenses should be charged to plant.

Regulatory Commission

The differences related to regulatory commission expense arise from disagreements between the parties that the Commission discussed earlier in its Evidence and Conclusions for Finding of Fact Nos. 10-46. The Commission, therefore, determines that the proper level of regulatory expense is $83,680.

Pension and Employee Benefits

The differences related to the appropriate level of pension and employee benefits arise from disagreements between the parties regarding operations payroll and Beatties Ford. Because the Commission has accepted the position of the Company regarding the level of operations payroll, and the Public Staff's position on Beatties Ford, the Commission determines that the appropriate level of pension and employee benefits expense is $285,014.

Other Operating Expense

The parties differ on the proper level of other operating expense. The Public Staff contends that $10,352 should be removed from this expense category, whereas the Company advocates the removal of only $2,561 from this category. The $7,791 difference between the parties relates to the Public

Staff's proposed disallowance of $1,675 for flowers, $3,718 for coffee and grocery items, $1,214 for a Company picnic and $1,184 in bank deficiency charges.

Public Staff witness Haywood testified that the expenses for flowers, grocery items and the Company picnic should be disallowed because they are not necessary for the provision of water and sewer service and provide no benefit to the rate payers. Witness Haywood argued that shareholders should bear the cost of these items.

Witness Haywood testified that she had also made an adjustment to decrease bank service charges by 50%. According to witness Haywood, one-half of the bank expense apparently resulted from deficiency charges. Witness Haywood argued that the deficiency charges resulted from management's inability to maintain sufficient funding and should be disallowed.

In rebuttal testimony, Company witness Wenz stressed that the charges for flowers, grocery items and an office picnic were minimal. According to witness Wenz, the manner in which a utility treats its employees has a direct bearing on how the employees treat the customers. Witness Wenz testified that as a result of the Company's fair treatment of its employees the Company's customers receive extraordinary service from the Company's employees.

Regarding the deficiency charges, witness Wenz argued that the deficiency charges were not a result of management's inadequacy but rather were a result of management's expertise. Witness Wenz testified that in order to avoid a deficiency charge under the Company's loan agreement with the bank, the Company must maintain a minimum cash balance of $150,000.

The Commission has carefully reviewed the adjustments proposed by the Public Staff to other operating expenses. The Commission concludes that the costs related to coffee and groceries are proper utility business expenditures to be included in the Company's cost of service in this proceeding. In contrast, the Commission concludes that the costs related to the picnic and flowers should not be included in the Company's cost of service and, therefore, should not be supported by the Company's customers. Likewise, the Commission concludes that deficiency charges should not be included in the Company's cost of service. The Commission notes that the allowance for working capital provides the Company adequate recognition of the cost of any compensating bank balances. Based on the foregoing, the Commission concludes that the proper level of other operating expenses is ($6,634).

## Depreciation Expense

The Public Staff and the Company disagree about the appropriate level of depreciation expense. The Public Staff has calculated the expense to be $304,151 and the Company has calculated the expense to be $449,151. The Public Staff has accepted the Company's methodology in determining the appropriate test year depreciation. Similarly, for the purposes of this case, the Company agreed to use the Public Staff's composite depreciation rates for water and sewer plant, respectively.

One of the differences between the Public Staff and the Company in calculating depreciation expense relates to the method used to calculate

offsets to plant depreciation. The Public Staff uses a composite rate, including automobiles and computers, to calculate these offsets. The Company, on the other hand, uses the utility plant only composite rates. The other difference, besides Beatties Ford, between the Company and the Public Staff regarding calculation of depreciation expense results from differences between the parties regarding items in rate base.

The Commission has thoroughly examined the calculations of the parties and the arguments presented in support thereof and has determined that the proper level for depreciation expense is $434,514. The Commission is persuaded that since the items that offset plant depreciation relate solely to the acquisition of utility plant, these offsets should be calculated using the utility plant only composite rate, as proposed by the Company. In addition, the depreciation expense approved herein is based on the plant found to be reasonable under Evidence and Conclusion for Findings of Fact Nos. 10 - 46, and also the inclusion of Beatties Ford.

Taxes Other Than Income

The next item of disagreement between the Company and the Public Staff relates to taxes other than income. The differences between the parties related to this expense item result from their differences regarding payroll and revenues and Beatties Ford. Consistent with the Commission's decision in regards to these matters, the Commission finds that the proper level of taxes other than income is $403,636.

State and Federal Income Taxes

The last two differences between the Company and the Public Staff concern the proper levels of state and federal income taxes. These differences arise from the parties' disagreement over revenues and expenses. The Commission has not accepted the position of the Company or the Public Staff on the levels of cost of service that dictate the level of income tax expense. The Commission, therefore, determines that the appropriate levels of state and federal income taxes to be used in this proceeding under present rates are ($22,551) and ($101,865) respectively, based on the Commission's decision on the appropriate level of revenues and expenses.

The Commission determines that the appropriate level of total operating revenue deductions is $4,741,687.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 56 - 59

The evidence relied upon to support Findings of Fact Nos. 56 - 59 is contained in the testimony of Company witnesses O'Brien and Erickson and Public Staff witness O'Donnell.

In his initial testimony, witness O'Brien determined a weighted cost of capital of 11.50 percent. Witness O'Brien relied upon the Montclair method, which historically has been used to determine the cost of capital before this Commission for water and sewer companies. Witness O'Brien used a hypothetical capital structure of 50 percent debt and 50 percent equity. The cost of debt was assumed to be 10.25 percent, which is the cost of debt for Utilities, Inc., the parent company of the Applicant. The overall return under the Montclair

method was determined to be 11.50 percent by increasing the 26 week average yield on 5-year U.S. Government notes by a 3 percent premium or risk factor. To determine the equity return under the Montclair method, the Company subtracted the weighted cost of debt from the overall return to get a 12.75 percent equity return.

The 11.5 percent overall return yielded revenues greater than the Company requested. Witness O'Brien testified that the cost of Baa debt currently is 10 percent and that a 3-6 percent premium for equity is appropriate. Witness O'Brien stressed that securities of Carolina Water Service are less attractive to investors than those of larger companies because there is no market for Carolina Water Service's shares and, thus, no liquidity. Witness O'Brien stated that revenues for companies like Carolina Water Service are earmarked primarily for operating costs and taxes and that the stockholder must put cash into the Company or lend his credit so service may be maintained.

Public Staff witness O'Donnell recommended an overall return of 11.16 percent. Witness O'Donnell calculated a cost of common equity range for Utilities, Inc., of 12.25 percent to 12.75 percent and selected 12.5 percent. Witness O'Donnell determined cost of equity through application of the discounted cash flow (DCF) formula.

Because the common stock of Carolina Water Service is not publicly traded, witness O'Donnell had to perform the DCF on other companies as a proxy for Carolina Water Service. Witness O'Donnell obtained a "cross section of the water utility industry." Witness O'Donnell calculated the dividend yield by dividing the latest known dividend by the average of each company's week ending stock price over a 26 week time period from August 25, 1989, to February 16, 1990. This calculation produced a dividend yield of 6.6 percent.

Witness O'Donnell measured the growth component of the DCF in four ways. He measured the historical growth in dividends per share, earnings per share, and book value per share from 1978 to 1988 by employing a least squares regression. He also measured historical growth using a 10 and 5 year compound rate of change for the three measures of growth. Finally, witness O'Donnell used the Value Line forecasted compound annual rates for changes in earnings per share, dividends per share and book value per share for five of the 13 companies. This gave witness O'Donnell a growth rate of 5.65 percent to 6.15 percent.

Public Staff witness O'Donnell used the Utilities, Inc., capital structure of 59.7 percent debt and 40.3 percent equity for Carolina Water Service and the Utilities, Inc., embedded cost of debt of 10.25 percent to arrive at the 11.16 percent overall cost of capital.

Company witness Edward W. Erickson presented testimony in rebuttal to the cost of capital testimony sponsored by the Public Staff. Witness Erickson testified that if the DCF is used in this case, the rate of return on equity should be at least 15 percent and the overall weighted average cost of capital should be 12.20 percent. Witness Erickson testified that the DCF is a better technique than the Montclair method and that the 13 comparable water utilities relied upon by witness O'Donnell were perhaps the best companies available for DCF purposes, even though the degree of comparability was questionable.

Company witness Erickson testified that a flaw in Public Staff witness O'Donnell's DCF is that witness O'Donnell used a current dividend or "$D_0$" in determining dividend yield rather than the expected dividend or "$D_1$." Company witness Erickson also testified that witness O'Donnell relied too heavily on measurements of growth in earnings per share and book value per share in determining the growth component of the DCF formula. The DCF calls specifically for growth in dividends per share.

Company witness Erickson testified that the value for "g" should be 7.3 percent derived from the other three growth estimation methods other than Value Line. Witness Erickson asserted that the dividend yield should be increased from 6.6 percent to 6.7 percent to adjust for the fact that Southwest Water Company has no dividend history. Using $D_1$ as the numerator in the dividend yield fraction brings the 6.7 percent to 7.2 percent. Adding 7.3 percent for growth gives a 14.5 percent cost of equity capital before adjustment to recognize the additional risks to Carolina Water Service.

Witness Erickson testified that Carolina Water Service has greater financial risk than any of the comparable companies under the Public Staff analysis because of the pro forma 59 percent debt component in the capital structure. This is higher than the debt in the 5 Value Line "comparable companies." The high debt ratio results in greater financial leveraging and greater risk. Carolina Water Service's illiquidity is an additional financial risk not shared by any of the comparable companies. Neither the stock of Carolina Water Service nor Utilities, Inc., is publicly traded.

According to Company witness Erickson, Carolina Water Service has greater business risk than the other comparable companies. Both Utilities, Inc., and Carolina Water Service are smaller than the other companies with lower total revenues. Carolina Water Service is the smallest company within the group by any standard of measurement. Both Utilities, Inc., and Carolina Water Service have a small customer base. Carolina Water Service has no geographical diversity to avoid the adverse impact of severe drought and other weather related variables, such as Hurricane Hugo. Carolina Water Service has less business diversification.

Company witness Erickson testified that Carolina Water Service faces greater business risk from the potential increases in the cost to comply with new environmental regulations, such as the Safe Drinking Water Act. Carolina Water Service has a smaller cost and revenue base over which to spread fixed and operating costs of compliance. Also, Carolina Water Service operates smaller individual systems. Carolina Water Service has many small source supply points. Each must meet the new standards.

These increases in business and financial risk, according to Company witness Erickson, cause the cost of equity of Carolina Water Service to be 10 to 20 percent higher than the 14.5 percent the unadjusted DCF yields. Witness Erickson found that the cost of equity should be at least 16 percent, and he used 15 percent for purposes of determining the overall cost of capital.

The Commission has analyzed carefully the cost of capital testimony in this case and determines that the overall cost of capital for Carolina Water Service for use in this case is not less than 11.54% percent. The cost of equity is not less than 13.45 percent. Both the Company and the Public Staff

agree that it is appropriate to determine the cost of capital by reliance upon a capital structure of 59.7 percent debt and 40.3 percent equity. The capital structure of Carolina Water Service is 100 percent equity, and it is appropriate to use a pro forma capital structure that more closely resembles the capital structure for utilities capitalized in a more traditional manner. The capital structure of Utilities, Inc., is close to the traditional model, and the Commission deems it appropriate for use of this capital structure in this case.

Both parties likewise agree that the pro forma cost of long term debt should be 10.25 percent, the average embedded cost of debt for Utilities, Inc. Therefore, the Commission concludes that the appropriate cost of long term debt for the Company in this proceeding is 10.25 percent.

In deriving the 13.45%, the Commission has adopted the yield component of the DCF model advocated by the Public Staff, i.e., 6.6%. With respect to the dividend growth rate variable appropriate for inclusion in the model, the Commission believes that Public Staff witness O'Donnell's growth rate is too low and that the dividend growth rate variable recommended by witness Erickson is too high. After having carefully considered all of the evidence of record in this regard, the Commission concludes that the proper dividend growth rate for use herein is 6.85%. This rate of 6.85% is within the range of growth rates advocated by the witnesses and is reasonable for purposes of this proceeding. Finally, the Commission concludes that the 13.45 percent return on common equity herein found reasonable is fair both to the Company and its 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 Carolina Water 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.

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 herein found fair by the Commission.

SCHEDULE I
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
DOCKET NO. W-354, SUB 81
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
For the Twelve Months Ended June 30, 1989

| Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating Revenues: | | | |
| Service Revenues | $5,252,739 | $1,497,467 | $6,750,206 |
| Miscellaneous Revenues | 129,613 | 6,440 | 136,053 |
| Uncollectables | (83,474) | (24,110) | (107,584) |
| Total Operating Revenues | $5,298,878 | $1,479,797 | $6,778,675 |
| Operating Revenue Deductions: | | | |
| Operation & Maintenance, and General Expenses | 4,022,463 | -- | 4,022,463 |
| Depreciation & Amortization | 434,514 | -- | 434,514 |
| Operating Taxes other than Income | 403,636 | 71,275 | 474,911 |
| State Income Taxes | (22,551) | 98,596 | 76,045 |
| Federal Income Taxes | (101,865) | 445,375 | 343,510 |
| Amortization of ITC | (1,005) | -- | (1,005) |
| Interest on Customer Deposits | 6,495 | -- | 6,495 |
| Total Operating Revenue Deductions | $4,741,687 | $ 615,246 | $5,356,933 |
| Net Operating Income for Return | $ 557,191 | $ 864,551 | $1,421,742 |

SCHEDULE II
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
DOCKET NO. W-354, SUB 81
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Twelve Months Ended June 30, 1989

| Item | Amount |
|---|---|
| Plant in Service | $40,168,215 |
| Add - Debit Balance in Deferred Taxes | 406,919 |
| Less - Accumulated Depreciation | (3,007,709) |
| Plant Acquisition Adjustment | (2,608,030) |
| Customer Deposits | (100,861) |
| Advances in Aid of Construction | (257,020) |
| Excess Book Value | (4,462,809) |
| Contributions in Aid of Construction | (17,795,400) |
| Deferred Taxes | (852,599) |
| Add - Deferred Charges | 404,509 |
| Working Capital Allowance | 425,333 |
| Total Rate Base | $12,320,548 |
| | |
| Rates of Return | |
| Present | 4.52% |
| Approved | 11.54% |

SCHEDULE III
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
DOCKET NO. W-354, SUB 81
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Twelve Months Ended June 30, 1989

| Item | Ratio % | Original Cost Rate Base | Embedded Cost Income | Net Operating Income |
|---|---|---|---|---|
| | | Present Rates - Original Rate Base | | |
| Long-term Debt | 59.7 | $ 7,355,367 | 10.25 | $ 753,925 |
| Common Equity | 40.3 | 4,965,181 | (3.96) | (196,734) |
| Total | 100.0 | $12,320,548 | 4.52 | $ 557,191 |
| | | Approved Rates - Original Cost Rate Base | | |
| Long-term Debt | 59.7 | $ 7,355,367 | 10.25 | $ 753,925 |
| Common Equity | 40.3 | 4,965,181 | 13.45 | 667,817 |
| Total | 100.0 | $12,320,548 | 11.54 | $1,421,742 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 60

The evidence supporting this finding of fact is found in the testimony and exhibits of Public Staff witness Haywood, in the testimony and rebuttal direct of Company witness O'Brien, and in the Commission Orders and Company filings in Docket Nos. W-354, Sub 69 and Sub 81, and M-100, Sub 113.

The Public Staff recommended that the Company be required to refund the amounts collected in the deferred account related to the Tax Reform Act of 1986 (TRA-86). In the Company's last rate case, Docket No. W-354, Sub 69, this was a much debated issue; however, based on an opinion of the Court of Appeals of North Carolina, 92 N.C. App. 545 (1989), reversing certain Commission Orders in Docket No. M-100, Sub 113, the Commission deferred its ruling as to whether a refund would be made. The Public Staff appealed the decision of the Court of Appeals, and the N.C. Supreme Court reinstated the original Commission Orders.

Company witness O'Brien testified and stated in his rebuttal testimony that the amount in the deferred account should not be refunded but instead should be transferred to retained earnings to offset earnings deficiencies. In addition, witness O'Brien requested the Commission to recognize the actual tax savings before requiring the Company to make a refund. He discussed several reasons why water and sewer companies should be distinguished from other utilities with respect to refunds due to TRA-86.

On cross-examination, Company witness O'Brien stated that the M-100, Sub 113, guidelines for tax savings that were applied to other utilities should not be applied to CWS or other water companies. He agreed that one consideration he used to distinguish water companies, failure to earn a full return, had been rejected with respect to Nantahala Power & Light. (Tr. Vol. 24, P. 213.) Another factor he suggested could distinguish water companies was their capital intensity. (Tr. Vol. 24, pp. 156, 213-214.) Yet there was no evidence that water companies are more capital intensive than natural gas or electric companies. The Commission does not find the Company's reasons for treating it differently from nonwater utilities to be persuasive. The Commission believes that the most recent test year data available at the implementation of TRA-86 on which rates were set is the most reliable data to use in evaluating whether the company overcollected the tax component in rates. This methodology is consistent with the rate reductions and/or refunds, for natural gas, electric, and telephone companies in Docket No. M-100, Sub 113, and for CP&L specifically in Docket Nos. E-2, Subs 526 and 537. In its October 20, 1987, Order in Docket No. M-100, Sub 113, this Commission required electric, natural gas, and telephone companies to file tariffs for approval reflecting the tax savings of TRA-86 and stated such "tariff reductions should reflect the Public Staff's methodology of applying test-period tax savings to applicable test-period units or revenues." Rather than require immediate rate reductions and refunds, the Commission required water and sewer companies to continue deferral accounting for tax overcollections and to accrue interest at 10% on the amounts placed in the deferred account. That Order further stated that the balance in the deferred account would be considered in each water and sewer company's next general rate case. The tariff reductions did not apply to water and sewer companies subject to the provisions of that Order, because the revenue impact for the majority of those companies was generally small. However, the Commission feels that the revenue impact of the tax savings for CWS is significant and that said savings should be returned to the Company's customers. Based on the evidence presented at the hearings, the Commission remains unconvinced that it should deviate from its methodology in calculating tax savings.

The Commission has already determined in Docket No. M-100, Sub 113, that the TRA-86 changes must be applied to the same data on which the rates were

set. The Company is then placed in the same position as if the 34% federal income tax rate had been applied in the test year.

Based on the foregoing, the Commission concludes that the Company's rates should be reduced for the one year period after the date of this Order by $331,686. This amount is the Company's current estimate of the TRA-86 tax savings and related interest. The Company and Public Staff should work together to verify this number. Should the Public Staff conclude that this number is too low, then the Public Staff should file recommendations with the Commission concerning any additional rate reduction or refunds related to TRA-86 tax savings and interest.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 61

The evidence for this finding of fact is found in the testimony of Company witness O'Brien, Public Staff witnesses Lee and Haywood, Pine Knoll Shores/ Atlantic Beach/Brandywine Bay witness Perkerson and the public witnesses.

Several customers expressed concern that the existing uniform rate structure requires them to subsidize service costs in other areas. Public Staff witness Lee indicated that it is the Public Staff's position in this docket that the Commission should reevaluate the question of whether it is reasonable and equitable for customers of less costly systems to subsidize higher cost systems. Witness Lee further indicated that reevaluation would require the Company to provide new and additional information before the Commission could determine the desirability of separate rates. On cross-examination, witness Lee indicated that although he was not necessarily opposed to uniform rates, he wanted specific data that would allow a determination of whether the subsidies are reasonable. Similarly, Public Staff witness Haywood testified that the Company could isolate the systems for accounting purposes and thereby supply the appropriate data.

Company witness O'Brien testified that there may be some subsidization among CWS's various systems, but that it is allocated in a manner that is entirely reasonable and that customers statewide are paying appropriate prices for service. He noted that it is entirely likely that nonuniform rates could lead to dramatic swings in customer rates in selected subdivisions over time and this would not be in line with sound regulatory practice. Witness O'Brien emphasized that uniform rates have been in effect for CWS for many years. He cited the Commission's conclusions in a previous CWS rate case, Docket No. W-354, Sub 39, which partly relied on statements from Public Staff witness Lee that individual systems could be supported faster and more reliably when backed by the unified entity. Witness O'Brien also testified that the Commission again approved a uniform rate structure for CWS in the Company's last general rate case, Docket No. W-354, Sub 69.

Company witness O'Brien next testified that the Public Staff had too readily discounted the cost of providing system-separate information or changing accounting systems. He testified that the Company does not keep separate ledgers for rate purposes presently and that to create this sort of information would cost at least $100,000. The Public Staff indicated that the work done to set out the rate base in Beatties Ford is evidence of the Company's ability to break out costs. The Company agreed it can do this, but the question is whether the costs lead to a benefit worthy of the costs.

Company witness O'Brien testified that the Company's existing accounting system was based on a desire to accommodate the previous Orders of the Commission which have approved the uniform rate structure. In sum, it is the Company's position that it is unnecessary to require it to record separate system costs before determining whether to maintain the existing uniform rate structure.

The Commission has considered all the statements made by customers and other evidence and determines that it is appropriate at this time 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 69, and it rejected suggestions that the uniform rate structure be changed. The Commission reasoned that

> 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 alternate rate structure at this time.

The Commission is of the same opinion in this proceeding.

Although the present record does not justify any change in past practice, the Commission is of the opinion that the matter deserves more investigation. The Public Staff has brought this issue up in the last two rate cases of CWS, and customers in Pine Knoll Shores and other areas have raised the same issue. CWS indicated that keeping system-separate data would be very expensive and time consuming. Witness O'Brien stated in his direct testimony that breaking out the Beatties Ford Subdivision had taken approximately one man-month. It would appear, however, that CWS has in fact separated out the expenses for not only Beatties Ford, but also all the subdivisions it has applied to transfer in Docket No. W-354, Subs 86, 87, and 88, namely, Robin Lakes, Foxfire, South Haven, Rollingwood, Lakewood, Southern Plaza, Rita Pines, Raintree, Hickory Hills, Bellwood, and Riverbend Plantation Subdivisions. CWS may have also separated information for Mt. Carmel Subdivision since there was some evidence that CWS had negotiated for the sale of this system.

In light of the continued interest in cross subsidization presented by various customers and the Public Staff, the Commission is of the opinion that the issue of system-separate information should be more fully investigated. The Commission cannot adequately address the reasonableness of the subsidization resulting from uniform rates without system-separate information. The Commission, therefore, institutes Docket No. W-354, Sub 89, the purpose of which will be to investigate the reasonableness of requiring CWS to begin keeping system-separate information for CWS's various utility systems. The Commission will set a hearing and filing dates by further order. Such information, if ordered, will enable the Commission to decide the issue of keeping uniform rates or going to system-separate rates, should that issue arise in future CWS general rate cases.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 62

The evidence for Finding of Fact No. 62 is found in the official records of the Commission, including the Commission Orders in Docket Nos. W-354, Sub 79 and 81, and the Company's verified application in Docket No. W-354, Sub 79.

On August 7, 1989, the Company filed an application in Docket No. W-354, Sub 79, for authority to acquire the franchise and assets of the water system serving the Powder Horn Mountain Subdivision from Wachovia Bank & Trust Company, N.A., and for approval of rates. The Commission by Order dated September 12, 1989, declared the matter to be a general rate case, suspended the proposed rates, and scheduled a public hearing.

The Commission subsequently granted the Company temporary operating authority to provide water service in the Powder Horn Mountain Subdivision and approved interim rates in the amount of $15.50 per month. On November 8, 1989, the Commission issued an order cancelling the public hearing and consolidating the docket with the general rate case proceeding in Docket No. W-354, Sub 81.

On January 5, 1990, the Commission issued an Order approving the Company's application for transfer. In addition, the Commission ordered that the interim rates would remain in full force and effect until the Commission approved final rates for the water system in the consolidated general rate case docket.

The Public Staff has urged the Commission to exempt the Powder Horn Mountain Subdivision from uniform rates. Public Staff witness Haywood argued in her testimony that uniform rates are not necessarily beneficial to ratepayers and may be unreasonably discriminatory.

Having carefully reviewed the record in the consolidated dockets, the Commission concludes that the rates approved herein shall apply to the Powder Horn Subdivision. As discussed in the Evidence and Conclusions for Finding of Fact No. 61, the Commission has determined that uniform rates are warranted in this case and believes that the rates approved herein are justified. As noted above, the Commission has approved the transfer of the Powder Horn Mountain system to the Company and sees no reason why the uniform rates approved herein should not apply to this system.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 63

The evidence for Finding of Fact No. 63 is found in the record of Docket No. W-354, Sub 74, including the Commission Orders and the Company's application in that docket.

On July 27, 1989, the Company filed an application in Docket No. W-354, Sub 74, for a certificate of convenience and necessity to furnish water utility service in the Raintree Subdivision and for approved rates. By Order dated April 25, 1990 in Docket No. W-354, Sub 74, the Commission granted the Company a franchise to provide water utility service in the Raintree Subdivision and approved rates. As a result, there is no need to address further the issues raised regarding the provision of water service to the Raintree Subdivision.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 64 AND 65

The evidence for these Findings of Fact is found in the testimony of Public Staff witness Lee and the official records of the Commission, including the Company's application in this docket and the Company's contracts on file with the Commission.

The parties differ over certain elements of rate design that should be adopted in this case. The Company proposed to include in its rate schedules language allowing different, nonuniform water tap-on fees for the Hound Ears, Sherwood Forest and Wolf Laurel Subdivisions. Similarly, the Company proposed the inclusion of language allowing different sewer tap-on fees for the Hound Ears and Corolla Light Subdivisions.

The Public Staff opposed inclusion of the proposed language regarding tap-on fees in the Hound Ears, Sherwood Forest, Wolf Laurel and Corolla Light Subdivisions. Public Staff witness Lee testified that such language is unnecessary since the existing approved schedule of rates allows tap-on fees and impact fees to vary from the uniform fees if Company contracts approved by the Commission provide differently.

Regarding rate design, the Public Staff also urged the Commission to require the Company to file a report listing the subdivisions and tap-on fees that the Company believes to be approved for each subdivision. In addition, the Public Staff recommended that the final schedule of rates contain a detailed listing of the tap-on fees and impact fees per subdivision and by phase of subdivision. Witness Lee testified that the Public Staff receives numerous inquires each year regarding the applicable connection fees for particular service areas and that gathering the information to answer these inquires are time consuming for both the Public Staff and the Company personnel. He indicated that a compiled listing of all tap-on fee and impact fees would be of value to both the Public Staff and the Company.

Company witness O'Brien testified that an examination of the Company's contracts on file with the Commission for the Wolf Laurel, Hound Ears, Sherwood Forest, and Corolla Light Subdivisions would reveal that these contracts do not specify the amount of tap-on fees for these subdivisions but state that the amount of tap-on fees shall be determined by the Commission. Witness O'Brien pointed out that the language in the rate schedules allowing for nonuniform tap-on fees as set forth by contract would not apply to these subdivisions since the contracts related to the subdivisions do not set the amount of tap-on fees, and if the Company desires nonuniform tap-on fees for these subdivisions, language indicating this deviation must be specifically set forth in the Company's tariffs. There is no dispute between the parties over the amount of the non-uniform tap-on fees for the subdivisions at issue.

The Commission has carefully weighed the evidence regarding rate design and concludes that inclusion of tap-on fee language which allows different water tap-on fees for Hound Ears, Sherwood Forest, and Wolf Laurel Subdivisions and language allowing for different sewer tap-on fees for Hound Ears and Corolla Light Subdivisions, as proposed by the Company, should be included in the final rate schedules.

However, the Commission also accepts the Public Staff's recommendation that the Company submit a report detailing tap-on fees and impact fees in each subdivision by phase of subdivision. Said report should be filed no later than August 1, 1990.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 66

Based on the Commission findings hereinabove, concerning the Applicant's rate base, depreciation, and operating expenses, the Commission concludes that the Applicant should be allowed to increase its water service revenues by $975,937 and its sewer service revenues by $521,530 in order to achieve an overall rate of return of 11.54%, which is fair and reasonable. Consistent with Finding of Fact No. 60, these rates should be reduced for one year by approximately $331,686 for the flow through to customers of TRA-86 tax savings and interest.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Water Service be, and is hereby, allowed to adjust its water and sewer rates and charges so as to produce, based upon the adjusted test year level of operations, an increase in water revenues of $975,937 and of sewer revenues of $521,530.

2. That the rate increase approved in Ordering Paragraph No. 1 above, be, and hereby is, reduced by approximately $331,686 for the period of one year in order to flow through tax savings and associated interest related to TRA-86.

3. That the Schedule of Rates, attached hereto as Appendix A, is hereby approved for water and sewer service rendered by Carolina Water Service. Such rates shall become effective for service rendered on and after the effective date of this Order. Such schedule of rates is deemed filed by the Commission pursuant to G.S. § 62-138.

4. That Carolina Water Service, to the extent it has not already done so, shall undertake and complete the improvements to service and water quality mandated in the Evidence and Conclusions for Finding of Fact No. 9 of this Order.

5. That a copy of Appendices A and B, attached hereto, shall be delivered by CWS to all its customers, except those in Beatties Ford/Hyde Park East and Mt. Carmel/Lee's Ridge Subdivisions; and said Appendices shall be delivered in conjunction with the next billing statement.

6. That a copy of Appendices A and C, attached hereto, shall be delivered by CWS to all its customers in Mt. Carmel/Lee's Ridge Subdivisions; and said Appendices shall be delivered in conjunction with the next billing statement.

7. That CWS shall file the attached Certificate of Service, properly signed and notarized, within 10 days of completing the requirement of Ordering Paragraph Nos. 5 and 6 above.

8. That Carolina Water Service shall undertake a feasibility study of metering its remaining unmetered customers. This study shall be filed with the Commission by August 1, 1990, 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. In the event such study is not filed with the Commission by August 1, 1990, as herein provided, the Commission will institute a show cause proceeding in order to determine any appropriate sanctions or penalities to be imposed.

9. That the Company shall submit a report detailing its tap-on fees and its impact fees applicable in each subdivision. If said fees vary within subdivision, the report shall indicate said fees by phases of subdivision. Said report shall be filed on or before August 1, 1990.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of June 1990.

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

APPENDIX A
PAGE 1 OF 4

FINAL SCHEDULE OF RATES
DOCKET NO. W-354, Sub 81
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA

WATER RATE SCHEDULE

METERED WATER RATES
Residential:

(A) Base Facility Charge: $9.00 per dwelling unit. This $9.00 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: $8.00 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: $2.60 per 1,000 gallons for all metered water usage. ($2.00 for untreated irrigation water in Brandywine Bay).

(D) Flat rate for unmetered single-family residence: $18.75

Flat rate for unmetered commercial customer: $18.75/single family equivalent.

Commercial and Other:

(A) Base Facility Charge:

| | |
|---|---|
| 5/8" x 3/4" meter | $ 9.00 |
| 1" meter | 22.50 |
| 1 1/2" meter | 45.00 |
| 2" meter | 72.00 |
| 3" meter | 135.00 |
| 4" meter | 225.00 |
| 6" meter | 450.00 |

(B) Commodity Charge: $2.60 per 1,000 gallons

AVAILABILITY RATES: $2.00 monthly charge per customer.

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 Hound Ears Subdivision, $950 in Sherwood Forest Subdivision, $925 in Wolf Laurel, however, no water impact fee in these Subdivisions).

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 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 is off by the utility for good cause: $22.00

If water service is discontinued at the 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 and on file with this Commission.

## SEWER RATE SCHEDULE

Residential:

Flat rate per month per dwelling unit: $25.10

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:

Based on water usage as follows: (subject to a minimum rate of $25.10/month. Customers who do not take water service will pay $25.10/single family equivalent.)

(A) Base Facility Charge:

| | |
|---|---|
| 5/8" x 3/4" meter | $ 9.00 |
| 1" meter | 22.50 |
| 1 1/2" meter | 45.00 |
| 2" meter | 72.00 |
| 3" meter | 135.00 |
| 4" meter | 225.00 |
| 6" meter | 450.00 |

(B) Commodity Charge: $3.90/1,000 gallons

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 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 FEES: $1,000 for single family customers
$1,456 in Brandywine Bay

Multifamily or commercial customers: to be negotiated on the basis of equivalence to a number of single family customers, but not less than $1,000, payable by developer or builder.

TAP AND 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 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 customers with cut-off notice.

This charge will be waived if customer also receives water service from Carolina Water Service.

OTHER MATTERS

BILLS DUE: On billing date.

BILLS PAST DUE: 21 days after billing date.

FINANCE CHARGE FOR LATE PAYMENTS:

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, Corolla Light, Powderhorn and Belvedere where bills shall be rendered quarterly. Availability charge in Carolina Forest and Woodrun will be billed semi-annually.

* Unless provided differently by contract approved by and on file with the Commission.

DOCKET NO. W-354, SUB 81

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 Providing Water and Sewer Utility Service in Its Service Areas In North Carolina | ) | NOTICE TO THE CUSTOMERS OF CAROLINA WATER SERVICE, INC., OF NORTH CAROLINA |

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 increase approved has been reduced for a period of one-year in order to flow through to customers the tax savings and related interest associated with the Tax Reform Act of 1986. The rates are fully described in Appendix A, attached hereto.

The Commission issued its decision following hearings in Boone, Asheville, Charlotte, Winston-Salem, Wilmington, Carthage, Goldsboro, New Bern, Pine Knoll Shores, and Raleigh 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.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of June 1990.

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

DOCKET NO. W-354, SUB 81

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 Providing Water and Sewer Utility Service in Its Service Areas In North Carolina | ) | NOTICE TO THE CUSTOMERS IN MT. CARMEL/LEE'S RIDGE 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 Boone, Asheville, Charlotte, Winston-Salem, Wilmington, Carthage, Goldsboro, New Bern, Pine Knoll

Shores, and Raleigh 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 has ordered the Company to take appropriate steps to correct these problems.

These problem systems include Mt. Carmel/Lee's Ridge Subdivisions. The Commission ordered that the Company's existing water rates shall remain in effect in these subdivisions until the improvements ordered by the Commission have been made.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of June 1990.

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

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notices to the Public issued by Order of the North Carolina Utilities Commission in Docket No. W-354, Sub 81, and said Notices to the Public were mailed or hand delivered by the date specified in the Order.

This the _____ day of _____ 1990.

By: _____
Signature

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required public notices were mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-354, Sub 81.

Witness my hand and notarial seal, this the ____ day of _____ 1990.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires _____
Date

DOCKET NO. W-354, SUB 82
DOCKET NO. W-354, SUB 86
DOCKET NO. W-354, SUB 87
DOCKET NO. W-354, SUB 88

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Water and Sewer Utility Franchise Serving Beatties Ford Park and Hyde Park East Subdivisions in Mecklenburg County to the Charlotte Mecklenburg Utility District (Owner Exempt From Regulation)<br><br>Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Water Utility Franchise to Provide Water Utility Service in Robin Lakes, Foxfire, South Haven, Rollingwood, Lakewood, Southern Plaza, and Rita Pines Subdivisions in Wayne County, North Carolina, to the Southeastern Wayne Sanitary District (Owner Exempt From Regulation)<br><br>Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Water Utility Franchise to Provide Water Utility Service in Raintree, Hickory Hills, and Bellwood Subdivisions in Wayne County, North Carolina, to the Eastern Wayne Sanitary District (Owner Exempt From Regulation)<br><br>Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Water and Sewer Utility Franchise to Provide Water Utility Service in Riverbend Subdivision, in Craven County, North Carolina, to the City of New Bern (Owner Exempt From Regulation) | ORDER DETERMINING REGULATORY TREATMENT OF GAIN ON SALE OF FACILITIES |

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 18-19, 1990

BEFORE: Commissioner Ruth E. Cook, presiding, Chariman William W. Redman, Commissioners Sarah Lindsay Tate, Robert O. Wells, Julius A. Wright, Charles H. Hughes, and Laurence A. Cobb

APPEARANCES:

For the Applicant:

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

For Heater Utilities, Inc., and the Carolina's Chapter of the National Association of Water Companies:

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

For the City of Charlotte:

H. Michael Boyd, Deputy City Attorney, City of Charlotte, 600 East 4th Street, Charlotte, North Carolina 28202

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

Lorinzo L. Joyner, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter was initiated by the filing of an application by Carolina Water Service, Inc. of North Carolina (Carolina Water Service, CWS, Company or Applicant) on April 10, 1990, to relinquish its certificate and for the approval of regulatory treatment in the matter of the application by CWS for authority to transfer the water and sewer utility franchise serving the Beatties Ford Park and Hyde Park East (Beatties Ford) subdivisions in Mecklenburg County to the Charlotte Mecklenburg Utility District (CMUD) (owner exempt from regulation). CWS requested that the Commission address the issue of regulatory treatment of the gain on the sale of CWS's facilities used to provide service to the Beatties Ford area. On May 3, 1990, the Commission issued an Order approving the transfer of ownership of the water and sewer utility serving Beatties Ford to CMUD. The Commission also ordered that the issue of who shall retain the gain on the sale be deferred until the next general rate case of CWS or until CWS provides the Commission with additional financial information and requests a hearing on this issue.

On May 17, 1990, the Applicant requested a hearing as referred to in the Commission's May 3, 1990, Order. In anticipation of such hearing, CWS requested the Commission to issue a schedule that set forth dates upon which testimony from the Applicant and other parties might be due. On May 23, 1990, the Commission issued an Order which set a hearing to address the issue of who shall retain the gain on the sale of the Beatties Ford system. The Order also required the filing of testimony and other information in support of the Company's position in this matter.

On May 24, 1990, CWS filed an application to relinquish certificate and to seek approval of regulatory treatment for the sale of the Genoa, Raintree, and Riverbend systems to Wayne County sanitary districts and the City of New Bern (owners exempt from regulation), respectively.

On June 5, 1990, a letter from New Bern City Manager Walter B. Hartman was received expressing the City's support for the Riverbend transfer. The letter was placed in the official file.

The Orders approving the transfers and setting a hearing on regulatory treatment of the gains on the sale of the three systems discussed in the previous paragraph were issued on June 7, 1990. The City of Charlotte petitioned the Commission for leave to intervene in the above-captioned matter so that the City could fully participate in the proceedings before the Commission.

In accordance with the Commission's May 23, 1990, Order requiring the filing of testimony, Mr. Patrick O'Brien of CWS filed testimony on June 15, 1990.

In response to the petition filed by the City of Charlotte, the Commission issued an Order on June 26, 1990, which stated that the petition filed by the City of Charlotte for leave to intervene in the above-captioned matter was hereby granted.

On June 29, 1990, the Public Staff filed the testimony and exhibits of William E. Carter, Jr., Director of the Accounting Division. Testimony and exhibits of Earl L. Lineberger, Jr., on behalf of the City of Charlotte, were also filed on June 29, 1990. A petition for leave to intervene and a motion to accept prefiled testimony of William E. Grantmyre and Jerry Tweed, on behalf of Heater Utilities, Inc., and the Carolinas Chapter of the National Association of Water Companies were also filed, respectively.

A notice of intervention related to the above-captioned matter was filed by the Attorney General's office on July 6, 1990.

The Public Staff filed a motion on July 9, 1990, requesting that the Commission adopt certain procedures to be adhered to during the hearing of the above-captioned dockets.

On July 11, 1990, the Commission issued an Order allowing in these dockets the June 29, 1990, petitions for leave to intervene and motion to accept the prefiled testimony of Jerry Tweed on behalf of the Carolina Chapter of the National Association of Water Companies.

On July 11, 1990, the Commission also issued an Order allowing in these dockets the June 29, 1990, petition for leave to intervene and motion to accept the prefiled testimony of William E. Grantmyre on behalf of Heater Utilities, Inc.

A Public Hearing was held on July 18-19, 1990, as scheduled by the Commission. Mr. William P. Cunningham, State Representative, testified on behalf of the citizens located in Beatties Ford.

CWS presented the testimony and exhibits of Patrick J. O'Brien, Vice President and Treasurer of CWS.

The City of Charlotte presented the testimony of Earl L. Lineberger, Jr., Chief Engineer for CMUD.

Heater Utilities, Inc., presented the testimony of William E. Grantmyre, President and House Counsel for Heater Utilities, Inc.

On behalf of the Carolinas Chapter of the National Association of Water Companies, Jerry Tweed, Vice-President, presented testimony.

The Public Staff presented the testimony and exhibits of William E. Carter, Director of the Accounting Division.

Based upon the foregoing, the evidence adduced at the hearing, and the entire record in this matter, the Commission makes the following:

FINDINGS OF FACT

1. Both CWS's stockholder and the ratepayers of CWS share in the risks associated with the utility property used and useful to provide water and sewer service to the ratepayers.

2. The City of Charlotte has annexed the Beatties Ford (Trinity Park) and Hyde Park East subdivisions in Mecklenburg County. CWS presently provides water and sewer service to the Beatties Ford subdivision and sewer service to Hyde Park East subdivision. The City of Charlotte is obligated by law to provide water and sewer service to these annexed subdivisions. If the Charlotte Mecklenburg Utility District ("CMUD") is unable to acquire the water distribution and sewer collection systems of CWS in these subdivisions, CMUD will contract for the installation of a basic water and sewer system within these subdivisions, as required by law. The total of the minimum expenses which a CWS customer would be required to pay for CMUD water/sewer service is $3,606. The total estimated costs of installing water and sewer systems in the subject subdivisions which would permit all of CWS's customers to be CMUD customers, plus the costs of connecting the residences to the parallel CMUD system, are as follows:

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|---|---|
| Total Water | $ 603,050 |
| Total Sewer | $1,829,000 |
| Total Water and Sewer | $2,432,050 |

3. CMUD and CWS have reached a tentative agreement whereby CMUD will pay $850,000 for the water distribution and sewer collection systems of CWS in the subject subdivisions.

4. If CMUD acquires the subject water and sewer systems of CWS, the customers on the systems will pay substantially lower water and sewer rates, will receive fire protection, and will enjoy generally enhanced water service.

5. Sale of the other CWS systems at issue in this proceeding (Genoa, Raintree, and Riverbend) will result in advantages to the customers in these

systems. For example, the acquiring governmental entities are exempt from taxes (including taxes on contributions in aid of construction) and have lower cost of capital, significant economies of scale, fire protection, and generally enhanced water service.

EVIDENCE FOR FINDINGS OF FACT NOS. 1-5

Whether CWS's remaining ratepayers or its shareholders should keep any gains on the potential sales of property used in regulated utility operations is the issue that was addressed by witnesses testifying for parties at the hearing which began on July 18, 1990. The evidence for this finding is found in the testimony and exhibits of Company witness O'Brien, witness Lineberger for the City of Charlotte, witness Grantmyre for Heater Utilities, Inc., witness Tweed for the Carolinas Chapter of the National Association of Water Companies, and witness Carter for the Public Staff.

Company witness O'Brien testified that the shareholders of the utility, who own the divested facilities, should incur the entire economic impact of either a gain or a loss on the disposition of a system, including the water and sewer systems at issue in this proceeding. Witness O'Brien further testified that the private investment utility customers, who do not own the facilities nor bear the associated economic risks, should not participate in any gains, nor should they be burdened by a divestment loss.

Public Staff witness Carter disagreed with witness O'Brien. Witness Carter testified that the fact that CWS has title to the property that may be sold is not sufficient reason that shareholders should incur the entire economic impact of either a gain or a loss on the disposition of a system. He further testified that the party who assumes the risk of loss on the property is the party who should have the right to a gain on the sale of that property.

Witnesses O'Brien and Carter both agreed that whichever party assumed the economic risks associated with the property should be the party who receives any gain resulting from the sale of the property; however, they did not agree on which party, CWS's stockholder or its remaining ratepayers, has borne the economic risks associated with the property. It is witness O'Brien's testimony that CWS's stockholder is the party that has assumed the risk associated with the property that may be sold. It is witness Carter's testimony that CWS's remaining ratepayers have assumed the risks associated with the property.

Witness O'Brien testified that CWS's stockholder assumes the economic risk of the replacement of utility property at a cost greater than the cost of the original property that must be replaced. Witness O'Brien testified that, in an original cost jurisdiction, the risk of inflation for the replacement of depreciated property is placed on the utility investor; therefore, it would clearly be unfair to award the inflationary gains realized upon the sale of such assets to a utility's customers who were insulated from this risk.

Witness O'Brien also testified that stockholders provide the capital for investment in utility plant and bear the risks associated with that investment. Witness O'Brien emphasized that a situation similar to Love Canal could occur wherein all the customers pack up and move. He asserted that if this were to happen, there would be no recapture of the stockholder's capital costs related to abandoned systems. The failure to earn the rate of return allowed by the

Commission is another risk that is assumed by the stockholders, according to witness O'Brien.

Witness O'Brien further testified that CWS faces the risk that a competitive entity, such as a municipal or quasi-municipal provider, will parallel its lines. Also, according to witness O'Brien, CWS faces the prospect of failing to recover the costs of acquiring systems and making needed improvements and operating them until CWS's next general rate case. CWS, as testified to by witness O'Brien, must start to depreciate the cost of acquired systems at the time of acquisitions and the depreciation and carrying costs incurred between acquisition and inclusion of the plant in rate base is never recovered.

Witness O'Brien cited a risk that the Commission may refuse to include the full purchase price in rate base on the theory that part of the system acquired constitutes excess capacity even though most systems are constructed to serve many more customers that the number connected in early years. CWS's investor realized this risk in the form of actual disallowances in its last general rate case, Docket No. W-354, Sub 81.

Public Staff witness Carter testified that as a general rule, risks associated with investment in utility systems fall on a utility's ratepayers. He further testified that customers are required to pay for repairing plant that has been damaged through no fault of the utility. He noted several instances in which this has been true. For example, witness Carter discussed the recent damage inflicted upon Carolina Water Service's system, as well as other utility systems, by Hurricane Hugo. According to witness Carter, CWS requested that its customers pay for the costs associated with repairing the damaged water systems caused by Hurricane Hugo. Witness Carter emphasized the fact that the costs of the damage inflicted by Hurricane Hugo are being absorbed by the Company's ratepayers.

Witness Carter discussed other instances in which utility customers bear risks associated with utility plant. He stated that one such instance is through the payment of expenditures incurred in drilling non-productive wells. He testified that when non-productive wells are drilled, the costs of those wells are added to the cost of productive wells and are included in rate base and depreciated over the lives of the productive wells. During cross-examination witness O'Brien agreed that the Company has actually passed the costs for losses such as storm damages, non-productive wells, and plant retirements to its ratepayers.

Witness Carter gave other examples of risks that have been assumed by a utility's ratepayers. One example given by witness Carter was that electric utility ratepayers have been required to assume the costs associated with unexpected outages of electric generating plants. He testified that ratepayers have been required to pay the higher costs of the replacement power that is generated through the utility's less efficient generating plants, or higher cost power that is purchased from other utilities when a utility's generating plant is forced out of service through no imprudent action on the part of the utility's management. Also, witness Carter emphasized that ratepayers are required to pay costs of repairing the plants that are not covered by insurance. He also noted that ratepayers are required to pay depreciation expense, operating and maintenance expenses, taxes, and a return on

newly-capitalized plant as part of getting the damaged plants back into service. Witness Carter mentioned other examples of risks associated with electric generating plants that have been assumed by an electric utility's ratepayers including fires, explosions, expenditures necessary to meet retroactive Nuclear Regulatory Commission design requirements, and the premature failure of major components of generating plants.

Witness Carter also cited instances where ratepayers of telephone companies have assumed risks associated with telephone plant. He testified that ratepayers of telephone utilities have assumed the risks of technological obsolescence. He stated that in recent years digital central office equipment has replaced other central office equipment that has become obsolete before the end of its estimated useful life, and that some telephone companies have requested that the obsolete equipment that was replaced be recognized as an extraordinary loss and amortized to cost of service over a number of years. Witness Carter further testified that other telephone companies have requested that deficiencies in the accumulated depreciation account which resulted from technological obsolescence be amortized over a number of years. Witness Carter stated that, in both of these instances, it has been the utilities' ratepayers, not their stockholders, that have assumed the risks and borne the costs associated with the premature obsolescence of telephone equipment.

Witness Carter testified that since ratepayers do in fact bear risks associated with utility property, they should also be entitled to any gain when utility property is later sold.

A difference of opinion exists between the witnesses as to whether the existence of uniform rates is a fact that should be considered in determining whether a utility's stockholders or its ratepayers should receive the benefit of any gain on the sale of utility property. Company witness O'Brien testified that the existence of uniform rates should not have any effect on whether the stockholders or ratepayers should get the benefit of any gain or loss on the sale of public utility property. He stated that uniform rates are approved on the basis of being just, reasonable and non-discriminatory, and that there is a presumption that all customers pay the appropriate price for service and for the facilities that serve them. He further testified that there is no relationship between the rate structure and the accounting for a gain or loss on the sale of a facility, and that the payment of rates, uniform or otherwise, does not give rise to the acquisition of rights, title, or interest in utility property.

Public Staff witness Carter disagreed with witness O'Brien on this subject. Witness Carter testified that the existence of uniform rates is a critical fact that should be considered in determining whether a utility's ratepayers or its stockholders should be assigned the gain or loss on the disposition of a utility system. Witness Carter further testified that under uniform rates all customers are charged the same rates for utility service even though the cost of providing service to each customer, or even each subdivision, is not the same, nor is the quality of service provided to each customer or subdivision the same. Witness Carter emphasized that under uniform rates there is a pooling of risks and costs among the customers of all systems. He further testified that since there is a sharing of risks among the customers of all systems, a gain on the sale of any of the systems should be given to the remaining customers of the utility.

Counsel for CWS pointed out to witness Carter that at the time of the hearing the Genoa system had only been included in the uniform rate structure of CWS for approximately one month. Witness Carter replied that CWS made the decision not to include the Genoa system in its 1988 rate case, Docket No. W-354, Sub 69. He stated that this system had been owned by the Company for approximately six months at the time of the 1988 rate case. Witness Carter also pointed out that in its last general rate case, Docket No. W-354, Sub 81, CWS included systems in rate base that had been owned less than six months; therefore, the Company could have chosen to include the Genoa system in Docket No. W-354, Sub 69.

Company witness O'Brien emphasized that CWS has not earned the rate of return allowed by the Commission during the years 1980 through 1989. Witness O'Brien testified that the Commission should consider this fact to be a reason that CWS's stockholder should receive the benefit of any gains resulting from the sale of utility systems or facilities. Public Staff witness Carter testified that whether CWS earns a return greater than or less than the return found fair by the Commission should not influence whether CWS's stockholder should retain the gains on the sales of the systems. Witness Carter said that this Commission does not guarantee that CWS will in fact earn the rate of return found fair by the Commission. He emphasized that CWS is given the opportunity to earn the rate of return found fair by the Commission but is not guaranteed that it will do so. Witness Carter explained that one of the reasons that CWS has not earned the rate of return found fair by the Commission is its acquisitions of many new systems during this time period. Witness Carter further testified that CWS's management probably knew that the Company's earnings would suffer in the short term as a result of its large expansion program. He stated that this was a fact known by CWS's management before it began its large expansion program. He testified that this was a known risk that CWS's management assumed and the fact that CWS did not earn the rate of return found fair by the Commission is not a reason that the benefits of any gain on the sale of utility property should be given to CWS's stockholder. Witness Carter testified that CWS's existing customers have probably paid higher rates as a result of CWS purchasing under-capitalized water and sewer companies in various states of disrepair and making the necessary expenditures to repair and upgrade the facilities in order to provide quality service. He testified that since existing customers have probably paid higher rates as a result of CWS's expansion program, that is a very good reason that CWS's remaining ratepayers should receive the benefit of a gain on the sale of these systems.

Both Company witness O'Brien and Public Staff witness Carter testified that if each of the affected systems were sold to a city or sanitary district the customers on the systems being sold would receive many benefits. The two witnesses did not agree, however, on whether CWS would benefit from the sales of the affected systems. Witness O'Brien testified that generally divestments limit both CWS's current and future opportunity to maximize long-term returns to its shareholders through customer growth. He stated that divestments also minimize opportunities to reduce overhead costs and create both transfer costs and morale problems when displaced personnel must be relocated. Downsizing the customer base and associated operating personnel additionally impedes the development of organizational depth and backup support. Moreover, divestment typically requires the removal of facilities resulting in substantial abandonment costs.

Witness O'Brien further testified that in its twenty-five year history only six systems of the approximately 250 that have been owned by Utilities, Inc., have ever been sold. He also stated that in the twenty years in which CWS has operated in North Carolina, not one of its approximately 90 subdivisions served has been sold.

Witness Grantmyre testified that Heater Utilities, Inc., has sold two of its systems to municipalities at gains, and that the gains were accounted for below-the-line. Witness Grantmyre also testified that two of its systems had been paralleled, and another system would soon be paralleled. Witness Grantmyre testified that all losses associated with the paralleling of its systems have been borne by the stockholders.

Witness O'Brien did testify that on rare occasions there are times when municipal acquisition of one of CWS's systems is both sensible and desirable. One specific example cited by witness O'Brien where the sale of a system or facility may be in CWS's best interests is the ability of a municipal provider to parallel CWS's facilities. He stated that unnecessary duplication of investment in comparable facilities does not benefit the utility, the municipality, or the customers, and that in such instances, a sale, even at a loss may be preferable. He further testified that in such an instance the loss would be borne by the shareholders.

Public Staff witness Carter testified that there are additional reasons why the sale of these systems would be beneficial to CWS. He gave the following reasons, other than the probability that the Beatties Ford facilities would be paralleled, that the sale of these systems would be advantageous to CWS, even if the entire gain on the sale is given to CWS's remaining ratepayers:

(1) CWS can avoid potential expenditures for dechlorination facilities and tertiary filters in Beatties Ford.

(2) In selling the Genoa and Raintree systems, CWS has the opportunity to sell two systems on which, according to witness O'Brien, CWS has not earned a reasonable return since it purchased them.

(3) CWS can avoid significant future capital expenditures for both water and sewer facilities in the Riverbend subdivision in order to comply with increasing environmental standards.

(4) CWS will no longer have to assume the capital expansion costs of the required new sewage treatment plant in the Riverbend subdivision at a cost of $500,000.

(5) CWS will have additional capital from the sales of all of the affected systems. Even if the gains are ultimately given to CWS's remaining ratepayers, CWS will have the money now to invest in additional plant or otherwise spend as management deems appropriate.

Witness Tweed testified that if all of the gain on the sale of a water system is flowed back to customers, the water company would have no incentive to sell the system.

Both witness O'Brien and witness Carter agreed that in a complete liquidation of the assets of a water or sewer company, the stockholders should receive the entire gain or loss on the liquidation, since there would be no remaining customers who could receive the gain or absorb the loss. Witness Carter testified, however, that under a partial liquidation there are remaining customers who can receive the benefit of a gain or absorb the loss.

Witness O'Brien testified that under a partial liquidation the Company is undergoing a complete liquidation of a system and a partial liquidation of the Company. He testified that CWS is selling complete independent systems and transferring the customers to another utility capable of meeting their needs. Witness O'Brien further testified that each system is independent in that it is totally self-sufficient, and that the mains, backbone plant and appurtenances of each system serve that system only and no other. He contrasted the sale of a complete independent system and the loss of its customers to the selling of excess plant by an electric utility which involves no loss of customers. He testified that gains on those two sales situations should be treated differently for ratemaking purposes. Witness Carter agreed that in CWS's situation there will be a loss of customers if the systems are sold, whereas there was no loss of customers when electric utilities sell excess plant; however, he testified that he did not believe the gains on the sale should be treated differently for ratemaking purposes. He testified that in both instances the ratepayers should be given the benefit of the gains on the sales. While CWS's systems are physically independent, they are not financially self-sufficient because the uniform rate structure results in customers of all CWS's systems being responsible for the risks and costs of each CWS system.

Witness Carter was asked a series of hypothetical cross-examination questions concerning partial liquidations. Witness Carter testified that the facts, circumstances, dollar amounts, and number of customers on the systems being liquidated all must be examined and a decision made based on all these facts. He stated that a decision on which party should receive the benefits of a gain or absorb a loss must be made on a case by case basis, based on the facts in each case.

Witness Tweed also testified that the Commission should weigh each case based upon its own merit. Witness Tweed added that in some cases investors pay more for a utility system than is allowed in rate base; therefore, they have an investment on which they are not receiving a return. He stated that if the Commission continues to disallow a return on excess investment, and also takes the gain on sale from the stockholders, this would discourage investors with regard to future investment.

Public Staff witness Carter testified that if a utility could prove that the price it paid for a water or sewer system was reasonable, even though it was more than the system's original cost, then the gain should be calculated on the difference between the sales price and the total purchase price less accumulated depreciation. In other words, the gain would be reduced by the amount of any acquisition adjustment that was not included in rate base.

Witnesses Tweed and Grantmyre offered additional reasons why giving the remaining ratepayers any gains from the sales of water or sewer systems would not be a good policy. Some of the reasons they offered are as follows:

(1) If all the gain is flowed back to customers, the water company will have no incentive to sell the system to a city.

(2) If part of the gain is flowed back to the customers, the water company would likely increase its sales price to a city to compensate for the amount flowed back to the customers.

(3) Such a Commission policy would terminate or at least dramatically reduce the number of systems sold to cities.

(4) Cities will lose by having to pay a higher purchase price or undergo expensive construction costs in duplicating the facilities which they can not purchase.

(5) The customers being acquired by a city will lose by either not being served by the city or by receiving service at higher rates than would have been possible if the city's cost of acquiring the system were lower.

(6) Investors will lose interest in acquiring additional systems in North Carolina and will invest their money in other states.

(7) This policy would encourage utilities to form separate corporations for each system.

(8) Such a policy would encourage cities to parallel existing facilities. This would result in competition for customers and increased operating expenses to serve an area.

(9) Bankers would be even more reluctant to loan money to water companies.

(10) Such a policy may hinder the process of larger water and sewer companies acquiring the smaller ones.

Public Staff witness Carter offered rebuttal to the above arguments by witnesses Tweed and Grantmyre. Witness Carter testified that if the Commission establishes a policy that gains on the sales of utility property should be given to the utility's remaining ratepayers, that policy should not have any effect on negotiations between a water or sewer company and a city. He stated that the water or sewer company would continue to try to get the highest price on the sale of a system to a city, and the city would continue to try to purchase the system at the lowest possible price. Witness Carter emphasized that it would continue to be to a city's advantage to purchase a water or sewer system from a utility if the facilities were in good condition and could be purchased from a utility for less money than the city would have to spend to parallel the facilities. He further testified that, in his opinion, if a city initially offered an extremely low price for a system at the beginning of the negotiations, it would abandon that position as negotiations progressed, and the two parties would probably end at the same negotiated price as they would have reached absent a policy of giving gains on the sales of water or sewer systems to a utility's remaining ratepayers. Witness Carter also testified that, in his opinion, if a water or sewer company initially tried to increase its sales price to reflect the fact that the gain on the sale would be given to

its remaining customers, the two parties would again probably reach the same negotiated sales price they would have reached absent the Commission policy of giving the remaining ratepayers the benefit of the gains on the sales of utility property.

Witness Carter testified that he did not believe that if the Commission established the policy of giving the gains on the sales of utility property to a utility's remaining ratepayers it would affect the decisions of investors to purchase additional water and sewer companies in North Carolina. Witness Carter emphasized that the most important factor to an investor is the regulatory climate in North Carolina as far as the opportunity to earn a reasonable return on his investment. Witness Carter conceded that keeping the gain on a sale may be in the back of an investor's mind, but the most important consideration to an investor is where his money can earn the most favorable return on an ongoing utility business. Witness Carter added that both witness O'Brien and witness Grantmyre stated that they do not buy systems with the intent of selling them. Witness Carter testified that in CWS's most recent rate case, Docket No. W-354, Sub 81, the Commission granted CWS a 13.45% return on equity. Witness Carter stated that an investor would be more interested in investing in a State that allows a 13.45% return on equity on its utility operations, but does not allow the investor to keep the gains on sales of utility systems, than he would be in investing in a State that permits him to keep the gain on sales of utility systems but only grants the company the opportunity to earn a 12% return on equity on its utility operations. Witness Carter emphasized the fact that these are the first systems to be sold by CWS, and that sales of utility systems do not occur very frequently. Witness Carter also testified that he did not believe that a water utility would form a separate corporation for each system if the Commission determines that gains on the sales of utility systems should be given to the utility's remaining ratepayers. He stated that this would be expensive and would not be a wise management decision. He did state that a water or sewer utility may set up separate corporations for groups of systems with similar operating costs and characteristics. He further testified that he thought that it would be reasonable for a water or sewer company to take such action.

Public Staff witness Carter testified that if CWS failed to sell the Beatties Ford facilities to CMUD, it would indicate imprudence on the part of the Company's management. Witness Carter gave several reasons for his testimony. He stated that the Company's refusal to sell to CMUD would result in the Beatties Ford facilities being paralleled by CMUD. If this happens, CWS will lose customers to CMUD and not receive any money from CMUD. He further stated that this would likely cause an increase in CWS's rates following its next general rate case. Witness Carter further explained that CMUD would have to spend more money to parallel the Beatties Ford facilities than it would pay to CWS to acquire the facilities. Other reasons, according to witness Carter, included CWS not acting in the best interests of its customers by causing customers who switch to CMUD to have to pay a tap fee for water and sewer service. If CWS sells to CMUD, the Beatties Ford customers will not be required to pay a tap fee to CMUD. Witness Carter explained that if the customers who connect to the CMUD system have to pay an unnecessary tap fee these customers will be financially damaged by CWS's decision. In addition, witness Carter testified that if CWS does not sell the Beatties Ford facilities to CMUD, the remaining customers will also suffer financially because there will be fewer customers to cover the costs of operating the Beatties Ford

facilities. Another factor discussed by witness Carter is that if the Company does not sell to CMUD, its decision will cause CMUD to incur unnecessary expenses. He emphasized that these problems would arise without a corresponding benefit to CWS.

Witness Lineberger, Chief Engineer with CMUD, presented testimony related to fees that customers will have to pay to the City of Charlotte if the Beatties Ford facilities are not sold by CWS to CMUD. According to witness Lineberger, the failure to sell the facilities to CMUD will result in the paralleling of the Beatties Ford facilities by CMUD. If this were to happen, customers who want to connect to the City's system will have to pay both the tapping privilege and connection fees. The required fees for a typical water and sewer resident are $994 and $2,012, respectively. Based on witness Lineberger's testimony, additional expenses must be incurred for the plumbing service needed to connect to the City's system.

Witness Lineberger also discussed the total estimated cost of installing a water distribution and sewage collection system required by annexation. He stated that the cost related to providing the basic systems, plus the cost of extending additional water and sewer mains necessary to parallel CWS's facilities in Beatties Ford/Hyde Park East, along with the cost of connecting the current customers, would be at least $2,432,050, excluding tapping privilege fees. This cost would be shared by the City and the customers.

Witness Carter testified that if CWS refuses to sell the Beatties Ford facilities it would not be acting in the best interests of its stockholders. He stated that if CWS unnecessarily imposes extra costs on its former customers, remaining customers, and CMUD, this would be not in the best interests of its stockholders. He emphasized that CWS's management should strive to avoid actions which unnecessarily harm the clear public interest. Moreover, noted witness Carter, if the gain is passed on to the remaining ratepayers, CWS's stockholder will not be harmed since CWS will not have lost any of its investment. Witness Carter pointed out that witness O'Brien testified that unnecessary duplication of investment in comparable facilities does not benefit the utility, the municipality, or the customers, and that in such instances a sale, even at a loss, may be preferable.

Public Staff witness Carter was cross-examined concerning his testimony which stated that if CWS sells the Beatties Ford facilities to CMUD and passes the gain to the remaining ratepayers, CWS's stockholder will not be harmed and will not have lost any of its investment. Counsel for CWS asserted that witness Carter has ignored any expectation that the investor has for future revenues and profitability from operating the Beatties Ford system. He asked witness Carter if he wasn't failing to recognize the consequences that would flow to CWS's stockholder from a shrinkage of the Company's business. Witness Carter's response to this assertion was that there will be some shrinkage of business even if CWS does not sell the Beatties Ford facilities to CMUD because some customers will leave CWS and connect to the CMUD system. He continued by saying if that happens there will be less remaining customers to absorb the fixed costs associated with the Beatties Ford system, but if the Beatties Ford facilities are sold, that problem will not develop. Moreover, CWS can reinvest its proceeds (equal to net original cost) from the systems being sold and therefore acquire new systems or new ventures to replace what has been sold.

Witness Carter testified that he was also of the opinion that CWS's failure to sell the Genoa, Raintree and Riverbend systems would indicate imprudence on the part of CWS's management. He stated that the sale of the Genoa and Raintree systems will benefit existing customers of those systems. He further testified that the sale of the Riverbend system will benefit both CWS and its remaining customers by eliminating future capital expenditures for a required new sewer treatment plant at a cost of $500,000, and by eliminating expenditures necessary to comply with increasing environmental standards.

Public Staff witness Carter testified that if CWS does not sell the Beatties Ford facilities to CMUD, the Commission, in CWS's next general rate case, could impose a rate of return penalty on CWS for its imprudent management decision. In addition, witness Carter stated that if CWS does not sell the Beatties Ford facilities to CMUD and CMUD parallels the Beatties Ford facilities, resulting in a loss of customers from CWS to CMUD, the Commission could exclude a portion of the Beatties Ford facilities from rate base. In addition, he stated that operation and maintenance expenses, depreciation expense, and taxes related to the property disallowed from rate base, could be excluded from determining the cost of service in CWS's next general rate case. Witness Carter recommended that the Commission take either or both of these actions in CWS's next general rate case if CWS does not sell the Beatties Ford facilities to CMUD. He also recommended that the Commission consider imposing a rate of return penalty on CWS in its next general rate case for its imprudent management decision if it does not sell the Genoa, Raintree, and Riverbend systems.

Witness Carter made a specific recommendation that the gains on the sales of any of the affected systems should be given to CWS's remaining ratepayers; however, he did not make a specific recommendation in this proceeding on the method the Commission should use to give the benefit of gains on the sales of the affected systems to the remaining ratepayers. He testified that there are two ratemaking methods available to give CWS's remaining ratepayers the benefit of the gains on the sales of these systems. One method is to amortize the net-of-tax gains to operations over a specific time period and to deduct the unamortized balance from rate base. Another method is to treat the net-of-tax gains as cost-free capital and deduct it from rate base. Under the second method, none of the gain would be amortized to operations. Witness Carter testified that the amortization method has the advantage of reducing expenses over the amortization period, which would result in lower rates than would otherwise be granted to CWS during the amortization period. He stated that the advantage of deducting the entire net-of-tax gain from the rate base is that it results in lower rates for the ratepayers over the long term. The net-of-tax gain would be deducted from rate base in every rate case. An advantage of this method for CWS is that the funds represented by the net-of-tax gains are retained in the business and can be used to make upgrades and improvements to the water systems instead of being returned to CWS's remaining customers through lower rates than would otherwise be granted to CWS during the amortization period.

Witness Carter's specific recommendation in this proceeding is that the net-of-tax gains on the sales of these systems be recorded in a deferred account until the appropriate ratemaking method of giving the benefits of the gains to CWS's remaining customers is determined in CWS's next general rate case. He stated that this would give all parties in CWS's next rate case

proceeding an opportunity to address the appropriate method of returning the benefits of the gains to CWS's remaining ratepayers. He also recommended that CWS file reports with the Commission and Public Staff concerning the calculations of each gain and workpapers supporting the calculations. In addition, he recommended that the Commission require CWS to file journal entries related to the gains, including the removal of the plant and associated accounts from the CWS's books and records.

Witness Carter testified that in recent years the general policy of this Commission has been to give the gains on the sales or transfers of utility plant to the utilities' ratepayers. Some of the cases presented by witness Carter that have received such treatment are listed on Carter Exhibit II. They include Duke Power Company, Docket No. E-7, Subs 338 and 408; Carolina Power & Light Company, Docket No. E-2, Sub 461; Piedmont Natural Gas Company, Docket No. G-9, Sub 212; Virginia Electric and Power Company, Docket No. E-22, Sub 273; and all independent telephone companies excluding Southern Bell and General Telephone Company of the South, Docket No. P-100, Sub 81.

## CONCLUSIONS

1. The transfer of the water and sewer systems herein to the governmental entities will result in substantial advantages to the customers of these systems and should be encouraged by the Commission.

2. Carolina Water Service, Inc. of North Carolina and its remaining customers should equally share in the benefits of gains resulting from the sale of CWS's facilities used to provide utility service in the Beatties Ford/Hyde Park East, Genoa, Raintree, and Riverbend subdivisions.

The Commission determines that the transfers of each of the water and sewer systems at issue in this proceeding is in the best interest of their customers and should be approved. The Commission has issued orders approving the transfers and deferring the regulatory treatment of the gain on each of the sales. The Commission in this proceeding has been presented evidence concerning which party should receive the benefit of the gains on the sales of these systems.

After weighing all of the evidence the Commission concludes that the appropriate ratemaking treatment is that CWS and its remaining customers should share equally in the benefit of any gains resulting from the sales of facilities used to provide utility service in the Beatties Ford/Hyde Park East, Genoa, Raintree, and Riverbend subdivisions. The Commission emphasizes that CWS's remaining ratepayers will receive an equal portion of the benefit of only the amount of sales proceeds left after CWS's stockholders have recovered their investment and all reasonable transaction costs associated with the transfers.

Witnesses for both CWS and the Public Staff testified that the party that assumes the risks associated with utility property is the party that should receive the benefit of any gain or absorb any loss on the sale of property that has been used to provide utility service. The parties to these proceedings have identified numerous risks associated with the public utility property which is the subject of transfer. Testimony has been presented asserting which party does in fact assume such risks, and the Commission recognizes that the ultimate decision regarding which party bears such risks is a matter of

judgement based upon the evidence presented. The Commission, after careful weighing of the evidence presented, is not persuaded that the entire risks associated with the utility property is assumed by either CWS or its ratepayers. The Commission concludes that CWS and its ratepayers share in the risks associated with the property that has been used to provide public utility service.

Furthermore, the Commission believes that factors other than a determination as to who bears the risks should be and have been given appropriate consideration in reaching a determination in this matter. The parties appearing in these proceedings agree that the customers on the systems being transferred would receive many benefits after being acquired by the city or sanitary districts. The Commission, as a matter of policy, recognizes the inherent advantages often associated with municipal and sanitary district service and in fact has actively sought municipal and county acquisition of troubled water and sewer systems under our jurisdiction. See, for example, Carolina Water Service, Inc. of North Carolina - Rate Increase Proceeding, Docket No. W-354, Subs 69 and 81 (Commission directed the company to negotiate the purchase of water in bulk from, or sale of troubled water systems to, the Asheville-Buncombe Water Authority). See also Cowan Valley Water System - Jackson County, Docket No. W-829, Sub 3 (Commission actively sought county bulk water service to a regulated water system under emergency operatorship). In reaching its decision in this matter, the Commission has given weight to the premise that if the stockholders are deprived of all of the gains on a potential sale of a system to a municipality, or similar entity, such a policy would remove any incentive to sell the system, thereby often depriving the customers of such system many benefits associated with municipal acquisition.

G.S. 62-2(1) and (3) declare it to be the policy of the State "[t]o provide fair regulation of public utilities in the interest of the public" and "[t]o promote adequate, reliable and economical utility service to all of the citizens and residents of the State." (emphasis added.) The Commission is of the opinion that the transfers herein meet these policy goals and should be encouraged.

The principle adopted herein--that whoever assumes the risks associated with utility property should receive the gain--has been recognized by this Commission in previous dockets and by commissions and courts in other jurisdictions, both state and federal. Many of these decisions are collected and discussed in the brief of the Public Staff. An examination of these decisions disclose that the gain on sale has been allocated to the stockholders or to the ratepayers, or to both, depending upon the evidence before the various commissions and courts. The Commission has determined in this proceeding, based upon all the evidence presented to it, that the gain on sale of the subject water and sewer systems should be equally allocated to the CWS shareholder and the remaining ratepayers of CWS.

The Commission further concludes that CWS should record 50% of the amount of the net-of-tax gains on the sales of these systems in a deferred account to be returned to its remaining customers following the Company's next general rate case. The Commission will decide in CWS's next general rate case proceeding the appropriate manner to give CWS's remaining ratepayers their portion of the benefit of the net-of-tax gains.

CWS is required to file reports with the Commission and the Public Staff providing the calculations of each gain and workpapers supporting the calculations. Journal entries related to the plant, including the removal of plant and associated accounts from the Company's books and records, are also required to be filed by CWS in a manner consistent with the decision herein.

IT IS, THEREFORE, ORDERED as follows:

1. That 50% of the gains on the sales of Beatties Ford/Hyde Park East, Genoa, Raintree, and Riverbend systems should be assigned to CWS's remaining ratepayers in a manner to be determined in CWS's next general rate case and that 50% of said gain should be assigned to CWS's shareholder(s).

2. That CWS shall give written notification to the Commission after the sale and transfer of each system has been completed.

3. That CWS record 50% of the net-of-tax gains in a deferred account until the Commission decides the manner in which the benefit of the gains should be returned to CWS's remaining ratepayers.

4. That CWS file reports with the Commission and Public Staff concerning the calculations of each gain and the workpapers supporting the calculations. Any party disagreeing with the calculations of each gain may contest the amount of gain in CWS's next general rate case.

5. That CWS file journal entries related to gains, including the removal of the plant and associated accounts from CWS's books and records in a manner consistent with the provisions of this Order.

ISSUED BY ORDER OF THE COMMISSION
This the 16th day of October 1990.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Tate dissents.

DOCKET NO. W-778, SUB 2
DOCKET NO. W-778, SUB 3
DOCKET NO. W-778, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Application of CWS Systems, Inc., for Authority to Acquire the Franchise and Assets of Water and Sewer Systems Serving the Fairfield Harbour Subdivision Located in Craven County, North Carolina, from Northeast Craven Utility Company<br><br>and<br><br>In the Matter of<br>Application of CWS Systems, Inc., for Authority to Acquire the Franchise and Assets of Water and Sewer Systems Serving the Fairfield Mountains Subdivision Located in Rutherford County, North Carolina, from Mountains Utility Company<br><br>and<br><br>In the Matter of<br>Application of CWS Systems, Inc., for Authority to Acquire the Franchise and Assets of the Water and Sewer Systems Serving the Fairfield Sapphire Valley Subdivision Located in Jackson and Transylvania Counties, North Carolina, from Jackson Utility Company | ORDER APPROVING TRANSFER; WARNING AGAINST VIOLATION OF G. S. 62-111(a) |

HEARD IN: Dobbs Building, Raleigh, North Carolina, at 9:30 a.m., on Tuesday, August 28, 1990

BEFORE: Commissioner Robert O. Wells, Presiding, Chairman William W. Redman, Commissioner Sarah Lindsay Tate, Commissioner Ruth E. Cook, Commissioner Julius A. Wright, Commissioner Charles H. Hughes, and Commissioner Laurence A. Cobb

APPEARANCES:

For the Applicant:

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

For Fairfield Communities, Inc.:

W. Daniel Martin, III, Ward & Smith, P.A., Post Office Box 8409, Greenville, North Carolina

For the Using and Consuming Public:

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

For the Town of Lake Lure:

Charles F. Powers, III, Sink, Powers, Sink & Potter, Attorneys at Law, Post Office Box 1471, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter arose upon the filing of applications by CWS Systems, Inc. (hereinafter referred to as CWS, Applicant, or Company) on May, 23, 1990, for authority to acquire the franchise and assets of the water and sewer systems serving the Fairfield Harbour Subdivision (Docket No. W-778, Sub 2), for authority to acquire the franchise and assets of the water and sewer systems serving the Fairfield Mountains Subdivision (Docket No. W-778, Sub 3), and for authority to acquire the franchise and assets of the water and sewer systems serving the Fairfield Sapphire Valley Subdivision (Docket No. W-778, Sub 4).

The Public Staff brought CWS's applications before the Commission at its June 18, 1990, Conference. The Public Staff concluded that "it appears that the ownership and control of the utilities have been transferred without prior written approval by the Commission as required by G.S. 62-111."

The Commission, by Order dated July 6, 1990, consolidated the three dockets for hearing and required CWS to give public notice. The Commission set public hearing for August 28, 1990, on the issues of the public convenience and necessity of the transfers, CWS's compliance with G. S. 62-111, and other issues raised in prefiled testimony.

On July 16, 1990, CWS filed a response to the Commission's Order of July 6, 1990, in which the Company requested temporary operating authority pursuant to G. S. 62-116 but stated that it did not believe that such authority was necessary.

On July 27, 1990, the Public Staff filed a motion to suspend the hearing date and the date upon which intervenor testimony was due until the parties could agree on later dates.

On August 2, 1990, CWS filed a response to the Public Staff's motion requesting that the Commission deny the motion.

The Public Staff, by motion filed on August 3, 1990, requested that the Commission reserve for future hearing the issue of rate base determination on each of the systems involved in the transfers and hear all other issues related to the transfers on August 28, 1990.

On August 8, 1990, the Commission issued an Order granting CWS temporary operating authority, setting a hearing for October 18, 1990, to determine rate base, and reaffirming the August 28, 1990, hearing date for the transfer applications.

On August 15, 1990, the Public Staff filed a motion to compel responses to two of its data requests, and on August 20, 1990, CWS filed a response opposing the motion.

On August 17, 1990, the Town of Lake Lure filed a motion to intervene and requested that the Commission postpone the hearing set for August 28, 1990.

The Commission, by Order dated August 22, 1990, required CWS to respond fully to Public Staff data requests and, by Order dated August 27, 1990, postponed the hearing on the rate base issues until October 25, 1990.

The August 28, 1990, hearing was held as scheduled. The Applicant presented the direct testimony of the following witnesses: Carl Daniel, Vice-President and Regional Director of Operations of CWS and its sister company, Carolina Water Service, Inc., of North Carolina (CWSNC), and Jim Camaren, Vice-President of Applicant. CWS had previously submitted the pre-filed testimony of Patrick J. O'Brien, Vice-President and Treasurer of Applicant.

The Public Staff presented the direct testimony of the following witnesses: Ronald Brown, a Utilities Engineer with the Public Staff's Water Division; Kenneth Rudder, a Utilities Engineer for the Public Staff; and William Grantmyre, President of Heater Utilities, Inc.

The Town of Lake Lure presented the direct testimony of Jerry King, Town Manager of Lake Lure.

Public witnesses included the following: Robert Leslie, member of the Board of Directors of Fairfield Harbour Property Owners' Association; George Griffin, President of the Fairfield Harbour Property Owners' Association; and Joseph Satrape, Vice President of the Fairfield Mountains Property Owners' Association.

On October 2, 1990, CWS Systems, Inc., and the Public Staff filed Stipulation on Rate Base in these dockets and jointly moved the Commission to cancel the hearing on rate base determination and to determine the rate base-related issues as set forth in the stipulation. On October 24, 1990, the Commission issued an Order continuing the hearing in these dockets on rate base-related issues scheduled for October 25, 1990.

## FINDINGS OF FACT

1. CWS is a North Carolina corporation duly franchised by this Commission to operate as a public utility in providing water and sewer utility service to customers residing in various North Carolina service areas where it has been authorized to provide such service.

2. Northeast Craven Utility Company (Northeast Craven) is a public utility duly organized under the laws of North Carolina. Northeast Craven is the owner of the franchise and assets of the water and sewer system serving the Fairfield Harbour subdivision located in Craven County, North Carolina.

3. Mountains Utility Company (Mountains) is a public utility duly organized under the laws of North Carolina. Mountains is the owner of the

franchise and assets of the water and sewer system serving the Fairfield Mountains Subdivision located in Rutherford County, North Carolina.

4. Jackson Utility Company (Jackson) is a public utility duly organized under the laws of North Carolina. Jackson is the owner of the franchise and assets of the water and sewer system serving the Fairfield Sapphire Valley subdivision located in Jackson and Transylvania Counties, North Carolina.

5. Northeast Craven, Mountains, and Jackson are wholly owned subsidiaries of Fairfield Harbour, Inc., a company duly organized under the laws of the State of North Carolina. Fairfield Harbour, Inc., is a wholly owned subsidiary of Fairfield Communities, Inc. (Fairfield Communities), a Delaware corporation.

6. On April 4, 1990, Northeast Craven, Mountains, Jackson, and their parent companies entered into a contract with CWS to transfer the utility franchises and assets. The purchase price for the franchises and assets was $2,600,000. The Commission has jurisdiction over the applications for approval of the transfer of the utility franchises and assets from Fairfield Communities and its affiliates to CWS.

7. Fairfield Communities has been experiencing serious financial difficulties.

8. Numerous improvements are needed on the Northeast Craven, Mountains, and Jackson systems. Although Fairfield Communities does not possess the financial and technical resources to make these improvements, CWS does. CWS is a fit, willing, and able purchaser.

9. CWS has not applied or proposed to increase existing flat or metered rates on the systems.

10. CWS filed with the Commission the application for the subject transfers on May 23, 1990. Prior to this date, and also prior to any Commission approval, CWS had taken over operational control of the Fairfield systems, had begun the billing to the customers, and was receiving all the revenues paid by the customers for utility service. Also prior to May 23, CWS had paid the purchase price of $2.6 million to Fairfield and its creditor and had received from Fairfield and recorded the deeds for the utility property which was the subject of transfers.

11. The Fairfield Mountains Property Owners' Association does not own or have the exclusive right to purchase the water system serving the Fairfield Mountains Subdivision.

12. Heater Utilities, Inc., a company regulated by the Commission, also negotiated with the Fairfield companies for the purchase of the subject systems and conducted an extensive investigation of the utility property and records. Heater, however, was unwilling to pay the purchase price to Fairfield prior to Commission approval under G.S. 62-111(a). The Town of Lake Lure, through its intervention, expressed its strong interest in acquiring the water and sewer systems of Mountains Utility serving residences and businesses in the Fairfield Mountains Resort, which is within the boundaries of the Town.

13. The applications for transfer in this proceeding are justified by the public convenience and necessity and should be approved.

14. The Rate Base Stipulation signed by CWS and the Public Staff should be approved.

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

These Findings of fact are undisputed and are based upon the verified applications and attached exhibits in these proceedings.

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

The evidence for Findings of Fact Nos. 7-9 is found in the testimony and exhibits of CWS witnesses Camaren and Daniel, Public Staff witnesses Rudder, Brown, and Grantmyre, and public witnesses Leslie and Griffin.

None of the parties dispute the fact that Fairfield Communities is and has been experiencing financial difficulties. Public Staff witness Grantmyre explicitly testified as to this fact.

Similarly, both the Public Staff and CWS agree that improvements will be necessary on the systems. The two parties, however, disagree as to the extent of the specific improvements.

MOUNTAINS UTILITY COMPANY

CWS witness Daniel testified that customers of the Mountains Utility Company have experienced low water pressure problems and that the system, as it presently is, cannot provide an adequate water supply to customers. As a result, witness Daniel stated that the water distribution system will need extensive modification. The primary thrust of the modification will be the addition of water mains to loop the system which should alleviate pressure and supply problems. The estimated cost of these modifications is $27,000. Company witness Daniel also testified that additional storage capacity, at an approximate cost of $82,000, is needed to serve new sections and to replace a leaking bladder tank. Company witness Daniel stated that a new well and completion of chlorination facilities will be necessary to meet state standards. The estimated cost of these improvements is $20,000.

Public Staff witness Brown agreed with Company witness Daniel that looping the Mountains systems would be appropriate. In addition, witness Brown testified that some of the older well houses need to be repaired or replaced and in certain instances chlorination equipment must be installed. Public Staff witness Brown also testified that the bladder tank is badly leaking and that the supervisor of Mountains recommends that it be replaced by a 150,000 gallon tank. In addition, according to Public Staff witness Brown, a booster pump house needs to be repaired.

The Commission concludes that CWS and the Public Staff should work together to identify the improvements needed to this system. The Commission further concludes that the improvements needed on the Mountains systems should be implemented as soon as possible, and that CWS should file quarterly reports stating the progress of these improvements, beginning February 1, 1991.

## JACKSON UTILITY COMPANY

CWS witness Daniel testified that there are water pressure problems on the Jackson system, as a result of poor system hydraulics, and that this system will also need to be looped. Company witness Daniel stated that the concrete storage tank and at least one hydropneumatic tank need to be replaced. The estimated cost of these improvements is $130,000. CWS also anticipates that three well houses will need to be redone, at an estimated price of $11,000, and that the sewage treatment plant will require installation of dechlorination equipment.

The Public Staff agrees that three well houses are in need of repair. In addition, Public Staff witness Brown testified that the concrete storage tank is leaking and may be in need of replacement rather than repair. Mr. Brown also testified that, although installation of a dechlorination unit at the Jackson wastewater treatment plant is not essential, it may be desired for operational and aesthetic reasons.

The Public Staff, however, disputes the need for replacement of the hydropneumatic storage tank for the water system, contending that, although the tank does not meet ASME code, it was installed prior to current regulations and has not been required to be replaced by the North Carolina Department of Environmental Health (DEH). Public Staff witness Brown also challenges the existence of pressure problems due to poor system hydraulics. Mr. Brown stated that low pressure problems had occurred in June but that they were corrected through voluntary reduction. Mr. Brown observed that the water system expansions were professionally designed and installed and had been approved by the State.

The Commission concludes that CWS and the Public Staff should work together to identify the improvements needed to this system. The Commission further concludes that said improvements should be made as soon as possible. CWS should file quarterly reports stating the progress of these improvements, beginning February 1, 1991.

## NORTHEAST CRAVEN UTILITY COMPANY

CWS witness Daniel testified that two hydropneumatic storage tanks on Northeast Craven's water distribution system are not certified to handle the necessary operating pressures of the system and should be replaced. The estimated cost is $27,000. In addition, witness Daniel stated that existing chlorination equipment is inadequate and needs to be replaced at an estimated cost of $2,000.

The Public Staff challenges the need for replacement of the two hydropneumatic storage tanks since they were installed prior to the current ASME regulations. However, the Public Staff does recommend replacement of a severely rusted pressure tank adjacent to the Fairfield Harbour offices. The Public Staff agrees that additional chlorination equipment is necessary.

The Commission concludes that CWS and the Public Staff should work together to identify the improvements needed to this system. The Commission further concludes that these improvements should be made as soon as possible.

CWS should file quarterly reports stating the progress of these improvements, beginning February 1, 1991.

FITNESS OF CWS

The testimony presented by both the Public Staff and CWS demonstrates that Fairfield Communities is experiencing financial difficulties. Company witness Daniel offered testimony that the improvements needed on the systems in the next six to nine months will total at least $299,000, that customer growth will require major capital improvements in the amount of approximately $3,000,000 over the next several years, and that Fairfield Communities does not have the financial resources to make these improvements. CWS has demonstrated that it has the financial resources to make the improvements that are and will be needed on the Mountains, Jackson, and Northeast Craven systems.

CWS has shown that the Company and its affiliates can provide not only the financial strength, but also the technical support and managerial expertise to maintain, run, and improve the systems that Fairfield Communities cannot. Public Staff witness Brown testified that CWS and its parent, Utilities, Inc., have the resources and expertise to correct any deficiencies and upgrade the systems.

Utilities, Inc., provides water and sewer service to over 100,000 customers in 12 states. CWS and its affiliates are primarily concerned with the responsible ownership and efficient operation of utility systems. CWS uses certified operators to whom it offers financial incentives to obtain a higher level of certification. In addition, CWS uses a formal customer response cycle that includes a follow up procedure to ensure that customer problems are corrected. Clearly, the Company has demonstrated that it is a fit, willing, and able purchaser to operate the systems, and the Commission so concludes.

In contrast, a developer, such as Fairfield Communities, is generally compelled to operate a water and sewer utility system only as necessary for development of its property. Generally, a developer lacks experience and expertise to run the systems efficiently and lacks long term interest in maintaining the systems. As a developer's real estate holdings decline, so too does its interest in maintaining the water and sewer systems. Clearly, a transfer of the Northeast Craven, Mountains, and Jackson systems from a developer, such as Fairfield Communities, to CWS is in the best interest of the customers.

Although the Public Staff has not made a recommendation regarding transfer of the systems, the Public Staff expresses concern in its testimony that CWS may raise rates on these systems to bring them into conformity with the uniform rates charged by CWSNC. This concern was reiterated by public witness Leslie.

CWS witness Daniel testified that CWS traditionally has acquired systems when it is advantageous to hold them separately from CWSNC's North Carolina systems. According to witness Daniel, CWS management has no specific intent to merge the systems with the systems of CWSNC. In addition, witness Daniel stressed that the applications do not seek an increase in its flat and metered rates. As for a possible future rate increase, witness Daniel stated that an evaluation of the need for such an increase can only be made after gaining operating experience with the systems.

Based on the foregoing, the Commission concludes that the rates currently charged in each of the three systems should not be changed, as proposed by the Company. Further, the Commission concludes that, in order to effectively monitor each system's cost of service, CWS should maintain separate accounting records for each system, as proposed by the Public Staff.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 AND 13

The evidence for Findings of Fact Nos. 10 and 13 is found in the testimony and exhibits of CWS witnesses O'Brien, Camaren, and Daniel and of Public Staff witnesses Rudder, Brown, and Grantmyre.

The Public Staff brought CWS's applications before the Commission at its June 18, 1990, conference. The Public Staff concluded that "it appears that the ownership and control of the utilities have been transferred without prior written approval by the Commission as required by G.S. 62-111." In testimony presented at the hearing, the Public Staff did not make any recommendations regarding the transfers but expressed concern that the transaction had been consummated before the Commission had approved the transfers.

CWS witness Camaren testified that the purchase agreement specifically conditioned the transfers upon first obtaining approval from the Commission. Moreover, CWS notified the Public Staff that it had begun operation of the systems as a contract operator pending Commission approval pursuant to an agreement with Fairfield.

Company witness Camaren asserted that by making the transfers explicitly contingent upon Commission approval, CWS had attempted to comply with the guidelines established by the Commission in its January 13, 1986, memorandum. Witness Camaren stated that the memorandum was prepared as a direct result of concerns raised by CWS's sister company, CWSNC. According to witness Camaren, CWS believed that the Commission continued to operate under the guidelines based upon the Commission's previous approval of numerous purchase agreements entered into by CWSNC and upon the failure of the Commission and Public Staff to object to the exchange of funds and transfer of operating control of the Sidgefield and Stoneridge Subdivisions prior to Commission approval in Docket No. W-274, Sub 57.

Company witness Camaren asserted that the Commission had tacitly approved of the procedure followed by CWS in the Commission's "Application for Transfer of Public Utility Franchise and For Approval of Rates." Item three on page six of the application form requires submittal of a "copy of purchase agreements or recorded deeds showing ownership or control of the water or sewer systems."

Article II, 1 of the purchase agreement between CWS and Fairfield provides:

> "Within thirty (30) days following the execution of this agreement, purchaser and parent will file petitions with the Commission...requesting approval of this agreement and the transactions contemplated herein. The parties herein

> agree to cooperate fully in such applications for transfer and approval. In the event such approvals should not be granted from Commission..., the parties will take all such action as may be necessary to place them in their original position.
>
> It is mutually understood and agreed that the sale and conveyance of the facility shall become effective upon the issuance of a certificate of public convenience and necessity from the Commission....."

The Company contends that this provision and CWS's actions comply with past Commission practice as evidenced by the Commission's decisions in prior CWSNC cases and in Docket No. W-274, Sub 57, in the Commission transfer application form, and in the 1986 memorandum. The 1986 memorandum states in part:

> "In many cases contracts to sell a utility system are made contingent upon Commission approval being granted or the closing date of the sale is set for a time after all necessary regulatory approvals have been obtained. Either provision would satisfy the requirements of G.S. 62-111(a)."

G.S. 62-111(a) provides in part:

> "No franchise now existing or hereafter issued under the provisions of this Chapter... shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity."

(Emphasis added.) The N.C. Court of Appeals has recently interpreted this statute:

> ". . . . We flatly reject any suggestion that the statute permits the completion of transfers contingent upon or subject to Commission approval. Such a proposition plainly flies in the face of the clear wording of the statute.
>
> "We recognize that before a proposed transfer can become ripe for consideration by the Commission, there must be an agreement to transfer; i.e., the owner of the franchise and the proposed buyer must have reached agreement on the terms and conditions of the transfer or acquisition. But the actual transfer of assets or operational control may never precede the Commission's written approval. This requirement, imposed by the General Assembly, is based on the sound rationale that, if such a change of control and assets were effected before approval has been granted, the Commission would then be placed in the wholly untenable position of having to nullify a de facto transfer as part of the approval proceedings, if the public convenience and necessity so required. The risk of

disruption to the public and practical problems posed by such a circumstance are obvious. Franchise assets could be encumbered, franchise operations and control assumed by the transferee, and the transferor thereafter dissolved -- all before the Commission has given its approval to such transfer, and all under the guise that no transfer has actually taken place because the transaction has not been "legally consummated" in that it was contingent upon or subject to Commission approval. The statute may not be so circumvented. Our Legislature, by the unambiguous terms of the statute, clearly intended to prohibit such de facto transfers of franchises before the Commission has had the opportunity to pass upon the merits of the transfer under the public convenience and necessity test.

"It is manifest on the face of the record that the parties to the transfer in this case have violated the clear requirement of G.S. § 62-111(a). In the period following the execution of the purchase agreement, and prior to the Commission's order of approval, Pinehurst Enterprises [the transferor] clearly operated these franchises, not as an independent utility, but as agent for R.I.M. The profits generated by such operation were deposited in R.I.M.'s bank account. Moreover, assets of Pinehurst Enterprises were pledged to secure financing for R.I.M. Most disconcerting, the Commission was plainly aware of these circumstances.

"R.I.M., however, contends that no violation occurred because 'the parties agreed to mechanisms to facilitate returning to the status quo ante' in the event Commission approval was not given. This contention, of course, is premised upon the recognition that a de facto transfer was contemplated by the purchase agreement, that such a transfer would be operative until the Commission issued its ruling, and that such a transfer indeed had occurred. R.I.M further urges that it had no enforceable property rights in the assets of Pinehurst Enterprises because Commission approval was a condition precedent both under the agreement and the statute. This assertion plainly begs the question. Commission approval is a condition precedent to a lawful transfer under the statute. It is inescapable, however, that these parties -- in every aspect of their course of dealing -- treated Commission approval as a condition subsequent, to the effect that an unlawful, de facto transfer occurred. The cold record cannot be contradicted by the facile argument that the purchase agreement was unenforceable until the Commission issued its approval of the transfer. The actions of Pinehurst Enterprises and R.I.M. in this case violated G.S. § 62-111(a) in that a transfer and pledging of the assets, ownership, and control of these franchises occurred before the Commission issued its written approval."

Pinehurst, 99 N.C. App. 224, at 231-33 (emphasis in original). Under this opinion, which the Commission fully intends to follow in this and all subsequent transfer proceedings, there is no doubt that G.S. 62-111(a) has been violated where a payment of the purchase price, a transfer of assets, a change of ownership, or a transfer of operating control of a utility system has

occurred prior to Commission approval, even if the purchase agreement states that it is contingent upon Commission approval.

In the present case, CWS witness Camaren admitted that CWS took over operational control of Fairfield systems prior to Commission approval of the transfer. He admitted that CWS was not only doing the billing, but was also receiving all the revenues paid by the customers prior to Commission approval. CWS put Fairfield operations personnel on the CWS payroll prior to Commission approval. CWS paid the purchase price of $2.6 million to Fairfield and its creditor before the application for transfer was even filed. The application was filed May 23, 1990; $780,000 of the purchase price was paid to a Fairfield creditor on April 4, 1990, and the remainder of the purchase price was released from escrow to Fairfield around April 23, 1990. CWS received and recorded the deeds for the utility property in late April and early May of 1990 -- again before it had applied for transfer of the utility systems. Company witness Camaren admitted that the only thing left to be done to complete the transfer was to obtain Commission approval.

Company witness Camaren repeatedly suggested that CWS had not "received" the utility property because the purchase agreement made the transfer contingent on Commission approval. This is precisely the same argument that was rejected by the Court of Appeals in its Pinehurst decision. The Court of Appeals took the approach that a utility could not claim a transfer did not occur just because the contract stated it was contingent on Commission approval, when a de facto transfer has occurred: "We flatly reject any suggestion that the statute permits the completion of transfers contingent upon or subject to Commission approval." Pinehurst, 99 N.C. App. at 231.

Based on the foregoing, it is clear that CWS violated G.S. 62-111(a), particularly in view of the interpretation of this statute in the Pinehurst case by the Court of Appeals.

CWS contended that prior Commission actions, especially the 1986 memorandum, justified the manner in which the Company undertook the acquisition of the Fairfield utilities. Admittedly, the Commission has struggled for some years with the question of the acquisition of utility properties prior to Commission approval. The Commission's memorandum of 1986 attempted to address this problem and lay down sufficient guidelines for the utilities to follow. After quoting G.S. 62-111(a), the memo expressly noted: "The statute provides that neither a utility franchise nor control of a utility franchise may be sold, assigned, or otherwise transferred in any manner except after an application has been filed with the Utilities Commission seeking approval of such action and the approval of the Commission has been given by written order." Unfortunately, the 1986 memorandum failed to foresee the zeal and ingenuity of water and sewer utilities in consummating transfers prior to Commission approval.

CWS, as a regulated utility and as an affiliate of Carolina Water Service, Inc. of North Carolina, should have been aware of the increasing activity surrounding the de facto transfer issue in the Commission and in the Courts. The legality of de facto transfers was being challenged on appeal in the Pinehurst case at the same time that CWS was conducting a de facto transfer with Fairfield. Perhaps the pendency of this issue on appeal would have justified CWS in taking a more conservative approach in its acquisition of the

Fairfield utilities. The Commission points out that CWS went further toward completing the transfer with Fairfield--by releasing the purchase money and deeds from escrow prior to Commission approval--than occurred in the Pinehurst case that was awaiting decision in the Court of Appeals.

As a further indication that CWS was aware of the increasing importance of the de facto issue before the Commission, CWS had testified earlier this year in another proceeding that it would hold purchase monies in escrow prior to Commission approval. Mr. Owens and Mr. Cameren, the President and Vice President respectively, of Utilities, Inc., the parent of CWS, both testified to the Commission in Docket No. W-354, Subs 74, 79, and 81, on April 11, 1990, that the CWS policy would be to hold new acquisitions (transfers) in escrow until receiving Commission approval. That testimony occurred exactly one week after CWS executed the purchase contracts for the Fairfield systems, but over a month before CWS filed its transfer application for the Fairfield systems. Neither Mr. Owens nor Mr. Cameren indicated on April 11, 1990, that the Fairfield transaction would be an exception to this policy. Mr. Cameren argued in this proceeding that the escrow policy he stated on April 11 was not meant to apply to the Fairfield transaction since it had been executed a week earlier. The Public Staff argued that CWS should have applied the escrow policy it promised the Commission on April 11 to the Fairfield transaction. This is illustrated by the fact that CWS modified its written purchase agreement on April 4, 1990, to hold most of the purchase price in escrow pending approval from the Florida Division of Land Sales. Mr. Cameren admitted that CWS could have added an escrow agreement that also held the Fairfield purchase money in escrow pending approval by the North Carolina Utilities Commission.

The behavior of CWS in this proceeding is especially egregious for two reasons: First, the actions of CWS in effectively completing the Fairfield transfers prior to Commission approval put the Commission in the very dilemma foreseen by the Court of Appeals in the Pinehurst case: ". . . if such a change of control and assets were effected before approval has been granted, the Commission would then be placed in the wholly untenable position of having to nullify a de facto transfer as part of the approval proceedings, if the public convenience and necessity so required. The risk of disruption to the public and the practical problems posed by such a circumstance are obvious. Franchise assets could be encumbered, franchise operations and control assumed by the transferee, and the transferor thereof dissolved--all before the Commission has given its approval to such transfer, and all under the guise that no transfer has actually taken place because the transfer has not been 'legally consummated' in that it was contingent upon or subject to Commission approval."

The dilemma in which the Commission finds itself in this proceeding is especially vexing because of the financial condition of Fairfield. There was an abundance of evidence in this proceeding that the Fairfield companies were in financial difficulty. CWS admitted that Fairfield was under "financial stress," had "financial problems," had suffered "substantial financial losses," and was "unable to refinance a new debt borrowing." (The Commission notes that a substantial portion of the $2.6 million purchase price was paid by CWS to a creditor of Fairfield.) In these circumstances, the ability of CWS to "undo the deal" for transfer if Commission approval was not granted seems highly questionable. If Fairfield did not have the financial resources to make

improvements amounting to a few hundred thousand dollars, as testified to by CWS witness Daniel, then how could Fairfield possibly repay the $2.6 million purchase price to CWS? It appears quite likely that the parties to this transaction could not be placed back in their original positions if the Commission denied the application for transfers.

Secondly, the behavior of CWS in acquiring the Fairfield utilities unfairly placed a competitor for the properties at a serious disadvantage. William Grantmyre, the President of Heater Utilities, Inc., was a serious negotiator with Fairfield to acquire the utilities. Heater conducted extensive negotiations with the Company, performed an on-site inspection of the properties, and spent many hours in a detailed accounting audit of the Fairfield systems. Unknown to Heater, Fairfield was also negotiating with CWS. Heater told Fairfield that Heater would only pay the purchase price for the Fairfield systems after Commission approval, in order to comply with G.S. 62-111(a). (Heater's interpretation of G.S. 62-111(a) was markedly different from that of CWS and, as evidenced by the Pinehurst decision, was clearly the correct interpretation.) CWS, however, agreed to pay the purchase price for the Fairfield systems prior to Commission approval. In Mr. Grantmyre's opinion, and in the opinion of the Public Staff, the willingness of CWS to pay the purchase price before Commission approval was a contributing factor to Fairfield's decision to sell to CWS rather than to Heater. Clearly, Heater Utilities, which was seriously interested in purchasing the utilities and was capable of operating the utilities, was placed at a serious competitive disadvantage by CWS's payment of the purchase price prior to Commission approval--in fact, even prior to the filing of its application for approval of the transfers.

The Commission is acutely aware of growing competition between larger water and sewer utility companies for the acquisition of additional systems. The competition makes it even more important that all companies abide by the requirements of G.S. 62-111(a). The Commission continually hears about level playing fields in the competitive telecommunications industry and certainly wants to maintain a level playing field for acquisitions in the water and sewer industry. One company's willingness to ignore the requirements of G.S. 62-111(a) should not be used to an unfair advantage in said acquisitions. Again, this type of behavior will not be tolerated by the Commission in the future and will result in denial of the transfer application.

Clearly, CWS's actions in this acquisition resulted in a clear violation of G.S. 62-111(a), which under the Pinehurst decision would justify a denial of the Application.

On the other hand, CWS has demonstrated the ability to effectively operate the systems. CWS and its affiliated companies have a long history of both water and sewer operations and have similar operations in the general geographical area of the properties subject to transfer herein this proceeding. The record clearly shows that CWS has the financial and operational capability to effectively operate the subject systems in a manner beneficial to the affected customers.

The Commission has carefully studied the record in this proceeding. Based on this study, and notwithstanding the Company's violation of G.S. 62-111(a), the Commission reluctantly concludes that the transfer applications are

justified by the public convenience and necessity and should be approved. This approval is based primarily on CWS's undisputed ability to adequately provide service to the subject subdivisions. However, in reaching this decision, the Commission has also carefully considered the likelihood of the parties being unable to return to their original positions if the application were denied.

In approving this transfer application, the Commission warns the Company in the strongest terms that G.S. 62-111(a) as interpreted by the Pinehurst decision must be adhered to in the future. In addition, the Commission concludes that a show cause proceeding should be established to determine whether CWS should be fined for its actions in regards to effectively completing the transfers prior to Commission approval. An order to this effect will be issued on this day in a separate docket.

The Pinehurst decision has made it clear what procedures are acceptable under G.S. 62-111(a). As a result of this decision, the Commission has reviewed all internal procedures and forms, to make doubly sure that G.S. 62-111(a) is strictly followed. In conjunction with this effort, on this date the Commission is issuing an Order in Docket No. W-100, Sub 15, to all water and sewer companies that directs this industry to strictly adhere to G.S. 62-111(a), as interpreted by the Pinehurst decision. It should be absolutely clear that the Commission intends to follow the requirements of G.S. 62-111(a), as interpreted by the Pinehurst decision, in all future transfer proceedings. Failure of any utility to adhere to this policy will result in denial of the transfer application.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for Finding of Fact No. 11 is found in the testimony and exhibits of public witness Satrape.

It is witness Satrape's position that the Fairfield Mountains Property Association (POA) owns or has a right to purchase the Mountains water system from Fairfield Communities. Citing the "Master Declarations and Covenants and Restrictions" (Satrape Exhibit 1), Mr. Satrape testified that the POA believes that it had purchased the water system from the developer. In support of his position, Mr. Satrape points to Article IX, Section 2 of the Master Declaration which states:

> "Title to Common Properties. The Developer shall convey the properties to the P.O.A. after the construction of same is completed, or at an earlier time." (emphasis added.)

Satrape Exhibit 1.

A close examination of the Master Declarations, however, reveals that the water system did not constitute Common Properties that the developer was required to convey to the POA. Specifically, Article I, Section 1(D) of the Master Declaration defines "Common Properties" as:

> "[T]hose areas so designated upon any recorded subdivision plat of the property which are intended to be devoted to the common use and enjoyment of Owners of the properties and shall also mean and refer to any improvement or area designated by the Developer as Common Property in

> writing on the plat or by recorded instrument delivered to the Club, and shall specifically include, but not to the exclusion of other improvements which may hereinafter be designated as Common Properties by the Developer, the following: roads and streets, lakes, medical facilities, fire stations, libraries, arts and crafts centers, and permanent parks."

Satrape Exhibit 1. There is no evidence that the water system in and of itself falls within this definition of "Common Properties." Moreover, Article VII, Section 1 explicitly states that the water system becomes Common Property if the developer decides to sell it to the POA.

> "Developer shall determine the most feasible manner of providing for a permanent central water system and may transfer ownership to the P.O.A.; in which event, the water system shall become a Common Property and shall be operated, maintained and improved by the P.O.A. and all revenues shall belong to the P.O.A."

Id. (emphasis added.)

The Master Declarations thus do not require Fairfield Communities to transfer the water system to the P.O.A., but gives it the option to do so if it desires. There is no evidence that Fairfield has exercised that option. The argument that Fairfield has exercised the option is negated by the fact that the POA has not operated, maintained, or improved the Mountains water system as owner. Instead of conveying the water system to the POA, Fairfield Communities has chosen to sell the system to CWS. The Commission concludes that under the Master Declarations the POA neither has an exclusive right to purchase nor does it already own the Mountains water system.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

There was evidence in this proceeding that Heater Utilities also negotiated with the Fairfield companies and was interested in acquiring the subject water and sewer systems. The Town of Lake Lure intervened in this proceeding and testified as to its strong interest in acquiring the water and sewer systems serving residences and business in the Fairfield Mountains Resort, which is within the boundaries of the Town.

In the Pinehurst case, the Court of Appeals noted a similar situation that faced the Commission in that case. The Court stated:

> "We further note, that although the Commission considered the question of the Village's suitability to operate these franchises to be irrelevant, it nevertheless went on to determine that the Village had not substantiated its claim that it would be a more suitable operator. It is undeniable that the intervention of the Village in these proceedings is predicated on its status as a potential purchaser, "waiting in the wings" as a competing buyer of these franchises. Such status, however, does not render the question of whether the Village could provide better service at better rates than R.I.M. irrelevant in these transfer proceedings. On the contrary, the question of whether another potential purchaser of a water or sewer franchise can provide better service is plainly relevant under the broad public convenience and necessity test of G.S. §62-111(a).

> But equally plainly, such a showing would not of itself be dispositive of the issue of whether approval should be granted. When weighing the broad aspects and implications of public convenience and necessity, the Commission is cloaked with wide discretion and is not required to reject an application for transfer merely because another potential purchaser produces evidence that it might be able to do a better job."

There was no evidence that the Town of Lake Lure or Heater were unsuitable to operate the subject water and sewer systems. In fact, Heater Utilities is regulated by us and is in good standing with the Commission. Clearly Heater is fit, willing, and able to operate the systems. The Commission, however, has before it the application of CWS to acquire the water and sewer systems of the Fairfield companies. Elsewhere in this Order, the Commission has found and concluded that CWS is fit, willing, and able to provide water and sewer service to these service areas. As pointed out by the Court of Appeals, the Commission is not required to reject the application of CWS for transfer "merely because another potential purchaser produces evidence that it might be able to do a better job." Although the possibility of potential purchasers is relevant under the public convenience and necessity test of G.S. 62-111(a), we do not believe that the showing in this case is of itself "dispositive of the issue of whether approval should be granted."

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence supporting this Finding of Fact is found in the Stipulation on Rate Base filed by the Public Staff and CWS on October 2, 1990. The stipulation includes the allocation of the $2.6 million purchase price to the respective systems acquired by CWS from Fairfield Communities. The matters agreed to in this stipulation are not controverted in the record.

Based on the foregoing, the Commission concludes that the stipulation on rate base filed by the Public Staff and CWS should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the transfer of the utility franchise and assets of the water and sewer systems serving the Fairfield Harbour Subdivision located in Craven County, North Carolina, to CWS Systems, Inc., is approved.

2. That the transfer of the utility franchise and assets of the water and sewer systems serving the Fairfield Mountains Subdivision located in Rutherford County, North Carolina, to CWS Systems, Inc., is approved.

3. That the transfer of the utility franchise and assets of the water and sewer systems serving the Fairfield Sapphire Valley Subdivision located in Jackson and Transylvania Counties, North Carolina, to CWS Systems, Inc., is approved.

4. That the Stipulation on Rate Base filed by CWS and the Public Staff be, and hereby is, approved.

5. That the quarterly plant improvement reports spoken to in this Order should be timely filed.

6. That CWS shall maintain separate accounting records for each system acquired in this proceeding.

7. That CWS shall strictly adhere to the requirements of G.S. 62-111(a), as interpreted by the Pinehurst deicison, in future acquisitions of utility systems in the State of North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of December 1990.

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

Commissioner Tate dissents.
Commissioner Cobb dissents.

COMMISSIONER COBB, DISSENTING: I dissent. The blatant disregard of CWS Systems, Inc. for both our rules and the law of this state is described in detail in the majority opinion. I fully concur in these findings.

I disagree with the majority's conclusion that the misconduct of the company can be remedied through a show cause procedure. No company should be allowed to profit from its unlawful conduct. Since the majority properly concluded that the violations of CWS precluded competitive bids for the systems by other interested parties, the appropriate punishment would be to deny the transfers so as to allow all potential purchases to begin anew on the proverbial "level playing field."

Laurence A. Cobb
Commissioner

DOCKET NO. W-970

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Dr. C. B. Hughes and Walnut Cove Developers, Inc., Route 2, Box 567, Yadkinville, North Carolina 27055, Operating a Water Supply System Serving Kingswood Place Subdivision Stokes County, North Carolina | ) FINAL ORDER OVERRULING<br>) EXCEPTIONS AND AFFIRMING<br>) RECOMMENDED ORDER |

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, September 11, 1990, at 2:00 p.m.

BEFORE: Commissioner J. A. Wright, Presiding; Commissioners Sarah Lindsay Tate, Ruth E. Cook, Robert O. Wells, and Laurence A. Cobb

APPEARANCES:

For Dr. C. B. Hughes and Walnut Cove Developers, Inc.

Lee Zachary, Attorney at Law, Zachary and Zachary, Attorneys at Law, Post Office Box 608, Yadkinville, North Carolina 27055

For the Public Staff:

Paul L. Lassiter, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On August 2, 1990, Commission Hearing Examiner Rudy Shaw entered a Recommended Order in this docket declaring Dr. C. B. Hughes and Walnut Cove Developers, Inc., not to be public utilities and, therefore, to be exempt from regulation.

On August 16, 1990, the Public Staff filed its Exceptions and Motion for Oral Argument setting forth the grounds on which the Public Staff considered such Recommended Order to be unlawful, unjust, unreasonable, and unwarranted.

By Order entered in this docket on August 21, 1990, the Commission scheduled an oral argument on exceptions for September 11, 1990, 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. The Public Staff offered oral argument in support of its exceptions, and counsel for Dr. Hughes and Walnut Cove responded.

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

August 2, 1990, 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 the Public Staff should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions filed by the Public Staff with respect to the Recommended Order entered in this docket on August 2, 1990, be, and the same are hereby, overruled and denied.

2. That the Recommended Order entered in this docket by Hearing Examiner Rudy Shaw on August 2, 1990, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

3. That a copy of this Order be mailed or hand delivered to all 13 users of the water system in Kingswood Place Subdivision by Dr. Hughes of WCDI within one week of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of September 1990.

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

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| Company | Cents per kWh | Docket No. | Date |
|---|---|---|---|
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North Carolina Power - Order Approving Refund Plan
E-22, Sub 308 (6-20-90)

North Carolina Power - Order Requiring Consolidated Public Notice for Authority to Adjust Its Electric Rates and Charges, and Pursuant to G.S. 62-133.2 and NCUC Rule R8-55 Relating to Fuel Charge Adjustments for Electric Utilities
E-22, Sub 314; E-22, Sub 319 (9-26-90)

SECURITIES

Carolina Power & Light Company - Order Granting Authority to Issue and Sell Additional Securities (Long-Term Debt)
E-2, Sub 570 (1-8-90)

Carolina Power & Light Company - Order Granting Authority to Issue Securities Pursuant to Revolving Credit Agreement
E-2, Sub 587 (10-26-90)

Duke Power Company - Order Approving Amendment to use Proceeds from the Sale of Preferred Stock for Financing Construction Program
E-7, Sub 423 (5-3-90)

Duke Power Company - Order Approving Issuance and Sale of Long-Term Debt Securities
E-7, Sub 465 (5-3-90)

Duke Power Company - Order Approving a Two-for-One Common Stock Split
E-7, Sub 473 (8-14-90)

TARIFFS

Carolina Power & Light Company - Order Approving Tariffs
E-2, Sub 537; E-2, Sub 333 (8-1-90)

Carolina Power & Light Company - Order Approving Dispatched Power (Experimental) Rider No. 68A
E-2, Sub 567 (6-26-90)

Carolina Power & Light Company - Order Approving Tariffs for a New Time-of-Use Schedule for Churches and Revision of Small General Service Time-of-Use Schedule
E-2, Sub 577 (4-26-90)

Carolina Power & Light Company - Order Approving Tariff Filing
E-2, Sub 579 (9-28-90)

North Carolina Power - Order Approving Modifications to Rider J
E-22, Sub 312 (8-2-90)

MISCELLANEOUS

Carolina Power & Light Company - Order Accepting Recommendation and Requiring Further Evaluation of Study to Consider Classification of Martin Luther King Day as an Off-Peak Holiday for Time-of-Use Rate Schedules
E-2, Sub 525 (7-24-90)

Carolina Power & Light Company - Order Approving Conveyance and Requiring Deferred Accounting
E-2, Sub 537; E-2, Sub 333 (10-16-90)

Carolina Power & Light Company - Order Granting Authority to Enter into a Pollution Control Financing
E-2, Sub 575 (3-12-90)

Carolina Power & Light Company - Order Approving Revised Service Regulations Effective January 1, 1991
E-2, Sub 585 (8-28-90)

Carolina Power & Light Company - Additional Order Approving Revised Service Regulations Effective January 1, 1991
E-2, Sub 585 (10-25-90)

Carolina Power & Light Company and Duke Power Company - Order Reassigning Service Areas in Wake County
ES-102 (7-18-90) cross-referenced

Crescent Electric Membership Corporation and Duke Power Company - Order Approving Transfer of Service Area
ES-103 (10-25-90) cross-referenced

Duke Power Company - Order Establishing Accounting Procedures for Storm Damage
E-7, Sub 460 (1-11-90)

Duke Power Company and the City of High Point - Order Approving the "Service Area Allocation Agreement"
E-7, Sub 464 (5-4-90)

Duke Power Company - Order Approving Pilot Program to Promote the Installation of Central Air Conditioner Load Control of Nonresidential Customers
E-7, Sub 469 (7-3-90)

Duke Power Company - Order Approving Pilot Program to Promote the Installation of High-Efficiency Heat Pumps and Central Air Conditioners
E-7, Sub 470 (7-3-90)

Duke Power Company - Order Approving Revisions to Underground Distribution Installation Plan
E-7, Sub 472 (8-13-90)

Duke Power Company - Order Allowing Requested Accounting Treatment of Certain Materials and Supplies
E-7, Sub 475 (12-12-90)

Duke Power Company - Order Allowing Requested Accounting Treatment of the Coley Creek Project Costs
E-7, Sub 476 (12-12-90)

Duke Power Company and Carolina Power & Light Company - Order Reassigning Service Areas in Wake County
ES-102 (7-18-90) cross-referenced

Duke Power Company and Crescent Electric Membership Corporation - Order Approving Transfer of Service Area
ES-103 (10-25-90) cross-referenced

Nantahala Power and Light Company - Order Declaring that Alcoa has Discharged and Fulfilled Its Obligations in these Dockets
E-13, Sub 29; E-13, Sub 35 (4-6-90)

New River Light and Power Company - Order Approving Changes to Service Regulations
E-34, Sub 27 (5-23-90)

North Carolina Electric Membership Corporation - Order Deferring Ruling
EC-67, Sub 1 (5-11-90)

North Carolina Electric Membership Corporation - Order Approving Modification to Its Security Light Program
EC-67, Sub 3 (2-6-90)

North Carolina Power - Order Approving Partial Waiver of Rule R8-13, Periodic Tests of Meters
E-22, Sub 313 (4-18-90)

FERRY BOATS

Parsons, Mitch - Order Granting Common Carrier Authority to Transport Passengers via Water in Ferry Boat Operations
A-34 (4-9-90)

Roanoke Belle, Shep Moss t/a - Order Allowing Withdrawal of Application for Charter Boat Authority
A-36 (5-7-90)

## GAS

### COMPLAINTS

Piedmont Natural Gas Company, Inc. - Order Closing Docket in Complaint of Barbara Booth
G-9, Sub 303 (6-21-90)

Public Service Company of North Carolina, Inc. - Recommended Order on Remand in Complaint of Eaton Corporation
G-5, Sub 226 (12-28-90)

Public Service Company of North Carolina, Inc. - Recommended Order on Remand in Complaint of Blue Ridge Textile Printers, Inc.
G-5, Sub 227 (12-28-90)

Public Service Company of North Carolina, Inc. - Order Closing Docket in Complaint of E. A. Langley
G-5, Sub 255 (1-17-90)

Public Service Company of North Carolina, Inc. - Order Closing Docket in Complaint of C. C. Mangum, Inc.
G-5, Sub 264 (8-28-90)

Public Service Company of North Carolina, Inc. - Order Dismissing Complaints with Prejudice and Closing Dockets in Complaint of Scott Mills, Pine State Creamery Company, John Boyle and Company, Incorporated, Walsh Division, Colloids, Inc., C.C. Mangum, Inc., Milkco, Inc., CR Industries, Seneca Foods Corporation, and Owen Manufacturing Co.
G-5, Sub 260, Sub 261, Sub 262, Sub 263, Sub 264, Sub 266, Sub 267, Sub 268 and Sub 269 (10-11-90)

Public Service Company of North Carolina, Inc. - Order Accepting Settlement and Closing Docket in Complaint of Vanderbilt Shirt Company
G-5, Sub 271 (8-16-90)

Public Service Company of North Carolina, Inc. - Order Keeping Docket Open for Six Months in Complaint of Scott Mills
G-5, Sub 273 (8-22-90)

Public Service Company of North Carolina, Inc. - Order Keeping Docket Open for Six Months in Complaint of Gerber Products Company
G-5, Sub 275 (10-2-90)

### EXPLORATION AND DEVELOPMENT - Order Approving E and D Refund Plan

| Company | Docket Number | Date |
|---|---|---|
| North Carolina Natural Gas Corporation | G-21, Sub 283 | 4-5-90 |
| North Carolina Natural Gas Corporation | G-21, Sub 288 | 10-17-90 |
| Pennsylvania and Southern Gas Company | G-3, Sub 161 | 4-4-90 |

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|---|---|---|---|
| Pennsylvania and Southern Gas Company | G-3, | Sub 164 | 9-26-90 |
| Piedmont Natural Gas Company, Inc. | G-9, | Sub 298 | 3-21-90 |
| Piedmont Natural Gas Company, Inc. | G-9, | Sub 305 | 9-26-90 |
| Public Service Company of North Carolina, Inc. | G-5, | Sub 265 | 3-21-90 |
| Public Service Company of North Carolina, Inc. | G-5, | Sub 276 | 9-26-90 |

RATES - PURCHASED GAS ADJUSTMENT (PGA)

North Carolina Natural Gas Corporation - Order Authorizing Increase in Rates Effective March 1, 1990
G-21, Sub 281 (2-27-90)

North Carolina Natural Gas Corporation - Order Authorizing PGA change Effective June 1, 1990
G-21, Sub 286 (5-23-90)

North Carolina Natural Gas Corporation - Order Authorizing Increase in Rates Effective November 1, 1990
G-21, Sub 289 (10-31-90)

Pennsylvania & Southern Gas Company, North Carolina Gas Service Division - Order Amending Order of October 31, 1989, and Authorizing Adjustment to Books and Records
G-3, Sub 159 (2-27-90)

Pennsylvania & Southern Gas Company, North Carolina Gas Service Division - Order Allowing PGA Changes and Deferred Adjustments Effective July 1, 1990
G-3, Sub 163; G-3, Sub 138 (7-3-90)

Piedmont Natural Gas Company, Inc. - Order Allowing Purchase Gas Adjustment to Track Changes in Supplier Rate Procedures Effective March 1, 1990
G-9, Sub 299 (2-27-90)

Piedmont Natural Gas Company, Inc. - Order Approving Purchase Gas Adjustment of its Rates and Charges to Track Changes in its Wholesale Cost of Gas
G-9, Sub 300 (5-4-90)

Piedmont Natural Gas Company, Inc. - Order Authorizing Rate Change Effective November 1, 1990, and Denying Deferred Accounting Treatment of Remaining Southern Expansion Costs
G-9, Sub 300 and Sub 306 (10-31-90)

Piedmont Natural Gas Company, Inc. - Order Approving Increase Effective December 1, 1990
G-9, Sub 308 (11-21-90)

Public Service Company of North Carolina, Inc. - Order Allowing PGA Changes and Deferred Adjustments
G-5, Sub 272 (6-6-90)

Public Service Company of North Carolina, Inc. - Order Allowing PGA Changes and Deferred Adjustment Effective November 30, 1990
G-5, Sub 278 (11-21-90)

RATES

Public Service Company of North Carolina, Inc. - Order Approving Special Fuel Tax Rider Increase
G-5, Sub 183 (6-12-90)

SECURITIES

North Carolina Natural Gas Corporation - Order Approving Sale of Common Stock for Use in Employee Stock Purchase and Stock Option Plans
G-21, Sub 282 (4-27-90)

Pennsylvania & Southern Gas Company, North Carolina Gas Service Division - Order Granting Authority to Issue Bonds
G-3, Sub 162 (4-17-90)

TARIFFS

Public Service Company of North Carolina, Inc. - Order Approving Special Fuel Tax Rider Tariff Change
G-5, Sub 183 (7-24-90)

MISCELLANEOUS

Piedmont Natural Gas Company, Inc. - Order Approving Depreciation Rates
G-9, Sub 77-D (1-9-90)

Public Service Company of North Carolina, Inc. - Order Authorizing Destruction of Certain Old Records
G-5, Sub 256 (1-3-90)

MOTOR BUSES

AUTHORITY GRANTED - COMMON CARRIER

| Company | Charter Operations | Docket No. | Date |
|---|---|---|---|
| ARC Travel, Inc. | Statewide | B-519 | 4-4-90 |
| AT&T Charter Service, Inc. | Statewide | B-528 | 3-1-90 |
| Bee-Line Charter Service, Inc. | Statewide | B-549 | 11-1-90 |
| Blue Ridge Tours, Ferris M. Crumpton, d/b/a | Statewide | B-544 | 9-19-90 |
| C & E Charter and Tours, Artis Robert Ezzell, Jr., and James Philip Canterbury, d/b/a | Statewide | B-520 | 3-22-90 |
| Cherokee KOA, Sontag, Inc., d/b/a | Statewide | B-532 | 5-17-90 |
| Coastal Transport Service, Inc. | Statewide | B-534 | 10-1-90 |
| Gary's Travel Tours, Gary's Charters, Inc., d/b/a | Statewide | B-540 | 7-30-90 |
| Goff's Goodtime Tours, Royce L. Goff, d/b/a | Statewide | B-538 | 7-12-90 |
| H & R Tours, Inc. | Statewide | B-547 | 11-1-90 |

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|---|---|---|---|
| Interstate Tours USA, Michael Singletary and William Singletary, d/b/a | Statewide | B-534 | 5-18-90 |
| Moore Bus Tours, Inc. | Statewide | B-530 | 3-16-90 |
| New Trails, Inc. | Statewide | B-541 | 8-23-90 |
| People's Choice, Inc. | Statewide | B-518 | 3-5-90 |
| Piedmont Coach Lines, Inc. | Statewide | B-110, Sub 26 | 12-7-90 |
| Regal Coaches Corporate Events, Inc., d/b/a | Statewide | B-517 | 1-24-90 |
| Tar Heel Stage Lines, Inc. | Statewide | B-531 | 5-3-90 |
| Tiffany's Express, Inc. | Statewide | B-543 | 9-12-90 |
| United National Tours, United National Free & Accepted Masons and Order of Eastern Stars, Inc., d/b/a | Statewide | B-535 | 8-2-90 |
| VIP Leasing, Ltd. | Statewide | B-527 | 3-7-90 |

AUTHORIZED SUSPENSION

| Company | Certificate | Reason |
|---|---|---|
| Great Getaway Tours, Inc. B-407, Sub 1 (9-10-90) | B-407 | Good Cause |
| Tiffany's Express, Inc. B-543, Sub 1 (9-28-90) | B-543, Sub 1 | Good Cause |

BROKER'S LICENSE

A & B Tours, Bobby W. House, d/b/a - Order Granting Broker's License
B-524 (3-1-90)

Going Places Tours and Travel, Lisa Renae Alexander, d/b/a - Order Granting Broker's License
B-522 (3-5-90)

Kahl, John Wayne, Wayne Kahl's Tours, d/b/a - Order Granting Broker's License
B-523 (2-19-90)

North Carolina First Tours - Recommended Order Cancelling Broker's License
B-358, Sub 1 (12-12-90)

Vilas, Carol C. and Associates - Order Granting Broker's License
B-546 (10-26-90)

CERTIFICATES CANCELLED

Albemarle Charter Service, Fred Warren Hahn, d/b/a - Order Cancelling Certificate No. B-508
B-508, Sub 1 (11-20-90)

Blue Ridge Tours, Ferris M. Crumpton, d/b/a - Order Cancelling Certificate No. B-544
B-544, Sub 1 (11-7-90)

Forte's Chartered Bus & Van Service, Louis C. Forte, t/a - Recommended Order Cancelling Operating Authority for Certificate No. B-452
B-452, Sub 3 (2-27-90)

Getaway Unlimited Tours, Robert E. Kirby, Linda H. Kirby & Ronald E. Wilkins, d/b/a - Order Cancelling Broker's License No. B-511, out of business
B-511, Sub 1 (8-21-90)

Regional Coach, Regional Storage & Transport, Inc., d/b/a - Order Cancelling Certificate No. B-500
B-500, Sub 2 (1-31-90)

The Moore Tours, Inc. - Recommended Order Cancelling Broker's License Certificate No. B-274
B-274 (6-27-90)

Tiffany's Express, Inc. - Order Cancelling Certificate No. B-543
B-543, Sub 2 (10-26-90)

Travelease Bus Line, Inc. - Recommended Order Cancelling Operating Authority for Certificate No. B-510
B-510, Sub 1 (3-14-90)

Walnut Cove Coach Line, Inc. - Recommended Order Cancelling Operating Authority for Certificate No. B-467
B-467, Sub 2 (6-27-90)

NAME CHANGE

Carolina Charters of Vale, Inc. - Order Approving Name Change from Gerald D. Carpenter & Jerry D. Dills, d/b/a Dills and Carpenter Transit, Certificate No. B-415
B-525 (1-17-90)

Carolina Sightseeing Tours, Inc. - Order Approving Name Change from Diotal International, Inc., d/b/a Carolina Sightseeing Tours, Certificate No. B-516
B-516, Sub 1 (5-18-90)

Friendship Travel, Inc. - Order Approving Name Change from ARC Travel, Inc., Certificate No. B-519
B-536 (4-27-90)

Interstate Tours USA, Singl, Inc., d/b/a - Order Approving Name Change from Michael Singletary and William Singletary, d/b/a Interstate Tours USA, Certificate No. B-534
B-534, Sub 1 (8-24-90)

Lake Gaston Bus Service, Inc. - Order Approving Name Change from Theodore R. Williams, d/b/a Lake Gaston Bus Service, Certificate No. B-339
B-339, Sub 5 (5-11-90)

Travel Masters of New Bern, Inc. - Order Approving Name Change from Dennis K. Brooks, d/b/a Travel Master, Certificate No. B-499
B-499, Sub 1 (12-19-90)

MISCELLANEOUS

Duke Power Company - Order Authorizing Duke to Abandon its Transit Operations in the City of Durham
B-209, Sub 30 (5-21-90)

MOTOR TRUCKS

APPLICATIONS AMENDED

ARM Transport, Amy C. Crawford, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3319 (5-23-90)

Adams, C. T. Trucking, Charles T. Adams, d/b/a - Recommended Order Dismissing Application
T-3374 (8-31-90)

Air Cargo Delivery of Fayetteville, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3278 (3-14-90)

Askew, C. L., Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-3350 (7-16-90)

Askew, C. L., Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3350 (7-19-90)

Biggs Contract Hauling, Robert Daniel Biggs, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3414 (12-4-90)

Booker's Express Delivery Service, David Booker, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3320 (5-30-90)

Collins Moving Service, Eugene R. Collins, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3382 (9-11-90)

Fleming Southern, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3327 (5-31-90)

Harmark Ltd., Harris Marketing Ltd., d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3362 (8-21-90)

Haynes, M. B. Corporation - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3395 (10-17-90)

Hinson, Otis McKenzie - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3339 (6-22-90)

Hip's Service, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3306 (4-25-90)

Holbrook Distributing, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3264 (2-22-90)

Holt, H. R. Trucking, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-320, Sub 8 (7-16-90)

Inventory Management Co., Inc. - Order Amending Application, Allowing Withdrawal of Protests and Cancelling Hearing
T-3252 (1-24-90)

Lighthouse Express, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3272 (2-22-90)

Lighthouse Express, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3272, Sub 1 (2-28-90)

M & D Trucking, Michael S. Linker & Mearl D. Linker, d/b/a - Order Amending Application, Allowing Withdrawal of Protests, and Cancelling Hearing
T-3405 (10-31-90)

McLaughlin, Gregory L. - Order Amending Application and Allowing Withdrawal of Protest
T-3367 (8-23-90)

Pee Dee Express, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3284 (3-21-90)

Proctor Trucking Company, Edward Earl Proctor, Jr., t/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3338 (7-5-90)

Raleigh Air Cargo Express, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3302 (4-25-90)

Reynolda Transport Services, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3299 (4-19-90)

SDC, Thomas A. Kirkland, Jr. and James L. Perry, Jr., d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-3260 (2-7-90)

SDC, Thomas A. Kirkland, Jr., and James L. Perry, Jr., d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3260 (2-19-90)

Security Express Services, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3347 (7-25-90)

Sloan, C. E., Clarence E. Sloan, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3315 (5-25-90)

Underwood and Weld Company, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-1392, Sub 5 (10-24-90)

Weathers Trucking, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-3415 (12-6-90)

APPLICATIONS DENIED/DISMISSED

Barbour, William Henry - Order Dismissing Application and Closing Docket
T-3265 (2-28-90)

DDS Express, Danny H. Wyatt, d/b/a - Order Dismissing Application and Closing Docket
T-3181 (1-17-90)

McLaughlin, Gregory L. - Recommended Order Denying Application
T-3367 (9-21-90)

Powell, Charles Mitchell - Recommended Order Denying the Application
T-3393 (10-30-90)

APPLICATIONS WITHDRAWN (COMMON OR CONTRACT CARRIER AUTHORITY)

| Company | Docket Number | Date |
|---|---|---|
| Belue Trucking Co., Inc. | T-2717, Sub 6 | 5-16-90 |
| Cape Fear Transport, Inc. | T-3384 | 8-22-90 |
| Dave's Moving & Storage David J. Yates, d/b/a | T-3213 | 6-26-90 |
| Hawley Transport, Inc. | T-2898, Sub 2 | 3-12-90 |
| Howard Transportation, Inc. | T-3239 | 2-5-90 |
| Jones Trucking, Donnie Jones, d/b/a | T-3258 | 5-2-90 |
| Olde Farm Mobile Home Sales & Service, William S. Wellons, d/b/a | T-2951 | 2-15-90 |
| Phillips Moving & Storage, James Phillips, d/b/a | T-3312 | 6-14-90 |
| Quality Moving & Storage, Inc. | T-3364 | 9-18-90 |
| Reva, Inc. | T-3056 | 1-31-90 |
| Santee Carriers, Inc. | T-1412, Sub 7 | 7-19-90 |

AUTHORITY GRANTED - COMMON CARRIER

Action Couriers, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, and Unmanufactured Tobacco, Statewide
T-3420 (12-19-90)

Air Cargo Delivery of Fayetteville, 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-3278 (3-19-90)

Alexander Trucking Company of Davidson, Incorporated - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except those Requiring Special Equipment and Except Unmanufactured Tobacco, Over Irregular Routes; Statewide
T-263, Sub 12 (1-29-90)

Andrews Auto Sales & Parts, Linda H. Andrews, d/b/a - Order Granting Common Carrier Authority to Transport Group 13, Motor Vehicles, and Group 21, Equipment (Loaders, Backhoes, Skidders, Excavators, Etc.), Statewide
T-3298 (6-4-90)

Anson Carriers, Inc. - Order Granting Common Carrier Authority to Transport Group 10, Building Materials, Statewide
T-3261 (5-10-90)

Avondale Trucking Division, Avondale Mills, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Commodities in Bulk in Tank Vehicles, Statewide
T-3391 (10-16-90)

Baker's Mobile Home Movers, Harold Richard Baker, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Offices, Manufactured Houses and Materials and Supplies used in Connection therewith, Statewide
T-3216 (1-10-90)

Best LTL, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except Petroleum Products in Bulk Tank Trucks, Unmanufactured Tobacco Products, and Household Goods; Statewide
T-3233 (1-10-90)

Black's, Joe Mobile Home Service, Joe Arthur Black and Josephine Pearce Black, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles and Unmanufactured Tobacco and Group 21, Mobile Homes and Modular Homes, Statewide
T-3293 (5-17-90)

Bob's Transport and Storage Co., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories and Commodities in Bulk in Tank Trucks, Statewide
T-3300 (5-9-90)

Bowman, D. M., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco and Accessories, Statewide
T-2343, Sub 3 (12-6-90)

Budget Courier Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Cash, Letters, Business Records, Demand Deposits, Accounting Media, Commercial Papers, Documents, and Written Instruments as are used in the business of Banks, Lenders, and Financial Institutions, Between Points East of and Including the Counties of Richmond, Moore, Lee, Chatham, Durham, and Granville
T-2993, Sub 2 (10-4-90)

Bullard & Oxendine Mobile Home Movers, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points and Places East of and Including Interstate 77
T-3371 (9-12-90)

Burgess, William Wayne - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2887 (3-28-90)

C & C Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3290 (2-16-90)

Cabarrus Consolidating & Management Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-2070, Sub 4 (6-14-90)

Caraway Mobile Home Movers, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3195 (4-6-90)

Carolina Tank Lines, Inc. - Order Granting Common Carrier Authority to Transport Salt in Bags and in Bulk, in Special Equipment, from New Hanover County to Points in North Carolina
T-83, Sub 10 (1-26-90)

Cauthen, Terry Trucking, Terry D. Cauthen, d/b/a - Recommended Order Granting Application, In Part for Common Carrier Authority to Transport Group 5, Solid Refrigerated Products, and Group 21, Cooked or Processed Chickens, Turkeys or Fowl, Packaged Whole or Cut up in Rolls, Cans or Cartons, Between Points in Union and Mecklenburg Counties, and from Union and Mecklenburg Counties to Points in North Carolina and from Points in North Carolina back to Union and Mecklenburg Counties
T-3222 (1-22-90)

Central Division, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3234 (1-10-90)

Coats, Kenneth L. Mobile Home Moving Company, Kenneth L. Coats, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2049, Sub 3 (8-24-90)

Commercial Warehouse, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-1663, Sub 3 (6-4-90)

Cooper, James E. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, and Group 5, Solid Refrigerated Products, Statewide
T-3296 (6-6-90)

Craig Transportation Co. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3167 (3-5-90)

Crews, William C. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Household Goods, Explosives, Unmanufactured Tobacco, and Fuel Oil in Bulk, Statewide
T-3392 (12-11-90)

Crews, William C. Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide, and Group 21, Salt in Bulk, Statewide
T-3243 (8-2-90) Errata Order (8-7-90)

Cummings Mobile Home Services, C. L. Cummings, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3253 (3-23-90)

Cummings N Cummings Mini Movers, Rodney R. Cummings, d/b/a - Recommended Order Granting Application in Part for Common Carrier Authority to Transport Group 18, Household Goods, from and between all points within Guilford and Forsyth Counties
T-3129, Sub 1 (1-17-90)

D & B Mobile Home Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3340 (7-19-90)

D E W Transportation Services, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3205 (2-20-90)

D & L Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco, and Accessories, Statewide
T-1936, Sub 9 (5-24-90)

Dew's Mobile Home Transport, Boyce C. Dew, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles and Unmanufactured Tobacco, and Group 21, Mobile Homes, Statewide
T-3288 (6-4-90)

Dixie Mobile Home Service and Supplies, Inc. - Order Granting Common Carrier Authority to Transport Group 21 (See Specifics on Official Copy of Order in Chief Clerk's Office)
T-3381 (9-6-90)

Down East Delivery, F. Phillip Batchelor, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Between Points in Nash, Edgecombe and Wilson Counties
T-3240 (2-29-90)

East Coast Recovery, Michael W. Jarman and Michael W. Baldwin, d/b/a - Order Granting Common Carrier Authority to Transport Group 13, Motor Vehicles, Statewide
T-3269 (8-23-90)

Executive Delivery Service, Locklar Enterprises, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3316 (6-14-90)

Fine Arts Express, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Paintings, Statutes, Cultural Artifacts, Antiques, Tapestries, Objects of Art, and Materials and Supplies and Equipment Used in the Display and Distribution of the Foregoing Commodities, Statewide
T-3337 (7-19-90)

Fleming Southern, 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-3327 (6-25-90)

Ford, D. A., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except Commodities in Bulk, in Tank Vehicles, and Unmanufactured Tobacco, Statewide
T-3361 (10-4-90)

Fouts House/Mobile Home Movers, Austin Fouts, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes (For Specifics on Points and Places See Official Copy of Order in Chief Clerk's Office.)
T-3270 (4-10-90)

Frito-Lay, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco and Accessories, Statewide
T-2630, Sub 3 (10-24-90)

HWT, Inc., Hazardous Waste Transport, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Hazardous Waste, Consisting of any Waste or Combination of Waste of a Solid, Liquid, Contained Gaseous, or Semi-solid form, which because of its Quantity, Concentration, or Physical, Chemical, or Infectious Characteristics, is so defined by the Environmental Protection Agency, Statewide
T-3037 (12-3-90)

Harris & Gunter Carriers, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3344 (10-15-90)

Herron, Arthur Trucking, Arthur Herron, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, from Asheville, Charlotte, and Raleigh to all Points in North Carolina
T-3283 (4-26-90)

Hinson, Otis McKenzie - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 9, Forest Products; and Group 10, Building Materials, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3339 (9-18-90)

Hip's Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Within the Counties of Durham, Wake, Orange, Alamance, Guilford, Vance, Nash, Edgecombe, Johnston, Franklin, Harnett, Cumberland, Wayne, Wilson and Granville (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3306 (5-24-90)

Holbrook Distributing, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, And Group 5, Solid Refrigerated Products, from Winston Salem to Points in North Carolina (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3264 (3-12-90)

Holden, Gutherie W. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3236 (2-14-90)

Holt, H. R. Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 3 (See Specifics on Official Copy of Order in Chief Clerk's Office)
T-320, Sub 8 (8-29-90)

Howard Transportation, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 10, Building Materials, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3239, Sub 1 (2-6-90)

Humphrey & Littleton House Moving Co., Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points in Onslow, Carteret, Craven, Jones and Pender Counties
T-3358 (10-2-90)

Insured Transportation Systems, Larry W. Sutphin, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Excluding Packages Weighing 100 lbs. or less; and Group 18, Household Goods, Statewide
T-2909 (2-5-90)

Inventory Management Co., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 16, Furniture Factory Goods and Supplies, Between Points within a 200-Mile Radius of Newton, North Carolina (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3352 (2-20-90)

Iredell Milk Transportation, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Liquid Edible Commodities, in Bulk in Tank Trucks, Statewide (Restrictions: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-1647, Sub 1 (1-22-90) Errata Order T-1647, Sub 11 (1-24-90)

JKAA Auto Transport, James I. Martin, d/b/a - Order Granting Common Carrier Authority to Transport Group 13, Motor Vehicles, Statewide
T-3251 (4-9-90)

J & M Mobile Transport, Lawrence L. Justice, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points in Henderson and Buncombe Counties
T-3353 (7-17-90)

Johnson, Rex Trucking, Rex B. Johnson, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Except Commodities in Bulk, in Tank Vehicles, and Unmanufactured Tobacco, Statewide
T-3388 (10-4-90)

Justus Truck Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Household Goods, Commodities in Bulk, Classes A and B Explosives and Shipments of less than 100 Pounds if Transported in a Motor Vehicle in Which no one Package Exceeds 100 Pounds, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-2976 (1-29-90)

Land-Tech, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3376 (9-21-90)

Leonard Edge Auto Sales, Leonard Edge, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Bulk Commodities, and Group 10, Building Materials, Statewide
T-3224 (6-14-90)

M & M Movers, Richard C. Hall and Mark A. Hall, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-1750, Sub 8 (6-18-90)

Marchionda, Steve & Associates, Steven C. Marchionda, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; and Group 5, Solid Refrigerated Products, Group 9, Forest Products; and Group 10, Building Materials, Statewide (For Restrictions See Official Copy of Order in Chief Clerk's Office.)
T-3229 (4-11-90)

McKinney, James - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Within a 25-Mile Radius of Reidsville
T-2114, Sub 2 (2-15-90)

Med-Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3166, Sub 1 (1-10-90)

Mobile Home Transit, Jerry David Boyd, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Manufactured and Modular Houses, and all Commodities related to the Manufactured Housing Industry, Between Points and Places in McDowell, Buncombe, Burke, Rutherford, Cleveland, Henderson, and Catawba Counties
T-3116 (7-20-90)

Morris, Mack Grey - Recommended Order Granting Common Carrier Authority to Transport Group 21, Pre-manufactured Housing, Mobile Homes and Modular Homes, Statewide
T-3246 (1-23-90)

North American Van Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-2108, Sub 2 (3-5-90)

P.M.I. Trucking Co., Pre-Mix Industries, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, and Group 10, Building Materials, Statewide
T-3259 (6-14-90)

P P & T, Charles Puryear, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Wooden Pallets and L. P. Tanks, Statewide
T-3329 (8-13-90)

Palmer, Lemuel Wilson Palmer - Order Granting Common Carrier Authority to Transport Group 13, Motor Vehicles, Statewide
T-3297 (6-14-90)

Paradise Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco; and Group 10, Building Materials, Statewide
T-3217 (1-23-90)

Paragon Freight Systems, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 17, Textile Mill Goods and Supplies, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3238 (2-21-90)

Parmenter, Tom Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Group 21, Poles, and Group 14, Dump Tuck Operations, from New Hanover and Brunswick Counties to Points In North Carolina
T-3174 (3-23-90)

Pee Dee 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-3284 (6-26-90)

Phelps, Timmie C. Trucking, Timmie C. Phelps, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from all Points East of Interstate 85 to all Points in North Carolina (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3071 (3-19-90)

Pierce Mobile Home Moving, Ricky J. Pierce, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, from Points in Wilkes, Ashe, Watauga, Caldwell, Alexander, and Alleghany Counties to Any Point in North Carolina, and from any Point in North Carolina Back to these Counties.
T-3378 (10-2-90)

Proctor Trucking Company, Edward Earl Proctor, Jr., t/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 5, Solid Refrigerated Products; Group 7, Cotton in Bales; and Group 17, Textile Mill Goods and Supplies, Statewide (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3338 (8-8-90)

Puryear Transport, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 21, Liquid Asphalt, in Bulk, Statewide
T-2698, Sub 5 (8-3-90)

R & R Transportation, Richard O. Robinson & Karl H. Robinson, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Commodities in Bulk in Tank Vehicles, Statewide
T-3380 (10-24-90)

Rapid Distribution Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3292 (4-10-90)

Reynolda Transport Services, 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-3299 (5-17-90)

Ronald's Mobile Home Movers, Ronald Dale McKeithan, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3187, Sub 1 (6-4-90)

Rush, Wilbur James - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points in the Counties of Mecklenburg, Gaston, Lincoln, and Cleveland
T-3402 (11-19-90)

S C Transport, Standard Corporation, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3248 (3-26-90)

SDC, Thomas A. Kirkland, Jr. and James L. Perry, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Between Points within Durham, Wake, Orange, Alamance, Chatham, Guilford, Person, Granville, Moore, and Cumberland Counties (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, and Group 20, Daily Distribution of Motion Picture Films, Theatrical Equipment, Advertising and Supplies, and the Daily Distribution of Newspapers, Magazines and other Dated Periodicals within a Defined Area.)
T-3260 (3-15-90) Errata Order (3-19-90)

S & S Transport, Ralph Ray Smith and Claude David Searcey, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, from Buncombe County to Points within North Carolina
T-3257 (2-5-90)

Save-Time Couriers, Sylvia S. Jordan, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, in the Counties of Guilford, Forsyth and Davie
T-3404 (11-26-90) Errata Order (11-30-90)

Sellers Mobile Home Set Up Service, Blake T. Sellers, t/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3237 (3-9-90)

Sizemore Mobile Home Moving, Eugene Sizemore, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-3277 (5-21-90)

Sloan, C. E., Clarence E. Sloan, 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-3315 (6-20-90)

Southland Transportation Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3317 (7-24-90)

Special Service Freight Co. of the Carolinas, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Tobacco Products, Statewide
T-3256 (4-9-90)

Supreme Petroleum Transport Company - Recommended Order Granting Common Carrier Authority to Transport Group 3, and Transport Group 21 (See Specifics for Each Group in Official Order in Chief Clerk's Office.)
T-3325 (8-8-90)

Sur-Way Express Carriers, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities Except Unmanufactured Tobacco and Accessories and Commodities in Bulk in Tank Trucks, Statewide
T-3291 (4-19-90)

T & G Enterprises, G. H. Dowless, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, from Points West of and Including Interstate 95 to all Points in North Carolina
T-3263 (3-5-90)

T.L.S., Inc., Truck Lease Services, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3247 (5-10-90)

Taylor, Laura Lee - 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-3220 (12-21-90)

The Leader Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Except Commodities in Bulk and Unmanufactured Tobacco), Statewide
T-3262 (3-5-90)

Triangle North American, RDP Associates, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Commodities in Bulk in Tank Vehicles, Statewide
T-3377 (11-5-90)

Triple J Hauling, Robert H. Hooks, t/a - Order Granting Common Carrier Authority to Transport Group 13, Motor Vehicles, Statewide
T-3273 (3-19-90)

Truck Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide
T-3334 (7-19-90)

Unifi, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide
T-3242, Sub 1 (1-31-90)

Vogler Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, and Group 21, Liquid Nitrogen, Liquid Fertilizer, and Liquid Fertilizer Materials, in Bulk in Tank Vehicles, Statewide
T-3286 (6-26-90)

Wainscott Trucking, Paul T. Wainscott, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, from Guilford County to Points in North Carolina
T-3309 (5-7-90)

Wilmoth, Thomas Ray - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, within a 25-mile radius of Winston-Salem, North Carolina
T-3134 (2-28-90)

Zerkle Trucking Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles and Unmanufactured Tobacco, Statewide
T-3307 (7-13-90)

AUTHORITY GRANTED - CONTRACT CARRIER

A J & J, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contracts with Campbell Soup Company, Fenestra Corporation, and Exposaic Industries, Inc.
T-3383 (9-10-90)

Boyd Brothers Transportation Company, 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 Contracts with Weyerhaeuser Company and Lowe's Companies, Inc.
T-3228 (2-5-90)

Broglin Delivery Service, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Automotive Parts, Supplies and Accessories, Under Bilateral Contracts with American Parts Systems, Inc., and AEA Incorporated from Asheville to Points and Places within a 100-Mile Radius of Asheville, North Carolina
T-2100, Sub 2 (4-19-90)

C & O Warehousing Corporation - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco, from Wake and Durham Counties to Points in North Carolina, Under Contract with Moore Business Forms, Inc. (Note: The Authority Granted herein, to the Extent it Duplicates any Authority Currently Held, Shall not be Construed as Conveying more than one Operating Right.)
T-2809, Sub 1 (6-26-90)

Cape Fear Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 3, (For Specifics See Official Copy of Order in Chief Clerk's Office) Under Contract with Campbell Oil Company
T-3384 (9-18-90)

Carr Trucking Company, Daniel W. Carr, Jr., d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities; Group 2, Heavy Commodities; and Group 10, Building Materials, Statewide, Under Continuing Contracts with Roll Form Products, Division of RFP, Inc.; Queensboro Steel Corporation; and Southco, Inc., of North Carolina (For Restrictions See Official Copy of Order in Chief Clerk's Office.)
T-3104 (3-29-90)

ECT Rentals, Bobby R. Wade, d/b/a - Order Granting Contract Carrier Authority to Transport Group 17, Textile Mill Goods and Supplies, Statewide, Under Contract with Down East Fabrics Corp.
T-3345 (7-25-90)

East Coast Transport Company, Incorporated - Order Granting Contract Carrier Authority to Transport Group 21, Commodities in Bulk in Tank Vehicles, Statewide, Under Continuing Contract with Koch Chemical Company
T-342, Sub 9 (8-3-90)

Fort Worth Carrier Corporation - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide, Under Continuing Contract with Dillard Deparment Stores, Inc.
T-3356 (11-28-90)

Frito-Lay, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Triangle Pacific Corporation (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-2630, Sub 1 (2-2-90)

Gray Rock Farms, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities; Group 16, Furniture Factory Goods and Supplies; and Group 17, Textile Mill Goods and Supplies, from Iredell County to Points in North Carolina, Under Continuing Contracts with Acme Metal Slide, Inc.; Accuma Corporation; Kewaunee Scientific Corporation; and W. T. Burnette and Company
T-2627 (2-26-90)

Hamilton Trucking & Hauling, Inc. - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Contract with N.C. Products Corp., from its Plants Located in Raleigh, Kinston, Near Fayetteville, Fairmont, and Fuquay-Varina, North Carolina, to Points and Places within the State of North Carolina
T-3394 (10-19-90)

Harmark, Ltd., Harris Marketing, Ltd., d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Contract with Schenkers International Forwarders, Inc., (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3362 (11-26-90)

JR Roland Trucking Company, John Michael Roland, d/b/a - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Contract with Adams Products Company, from its Plants Located in Durham, Rocky Mount, Kinston, Fayetteville, Wilmington, and Morrisville to Points and Places within the State of North Carolina.
T-3370 (8-23-90)

Jackson, Willie Mack - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide, Under Contract with Black & Decker (U.S.)
T-3326 (7-12-90)

Jaggers, Jonathan Daniel - Order Granting Contract Carrier Authority to Transport Group 21 (For Specifics See Official Copy of Order in Chief Clerk's Office)
T-3254 (1-29-90)

Jones, Raymond E. - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Contract with Adams Products Company from its Plants Located in Durham, Rocky Mount, Kinston, Fayetteville and Morrisville, North Carolina, to Points and Places within North Carolina and Return
T-2566, Sub 4 (6-18-90)

MCO Transport, Inc. - Recommended Order Granting Contract Carrier Authority to Transport Group 21, Salt in Bulk, Statewide, Under Continuing Contract with Cargill, Inc., and Group 21, Waste Water, Mixed with Water and Ammonium Nitrate, Statewide, Under Continuing Contract with General Electric Company
T-2278, Sub 3 (4-12-90)

McGill, Albert - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Under Contract with Adams Products Company from its Plants Located in Durham, Rocky Mount, Kinston, Fayetteville, and Morrisville, North Carolina, to Points and Places within North Carolina and Return
T-3332 (6-18-90)

P.M.I. Trucking Co., Pre-Mix Industries, Inc., d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, and Group 10, Building Materials, Statewide, Under Continuing Contracts with Brenner Equipment and Southeast Lumber
T-3259, Sub 1 (3-22-90)

P.M.I. Trucking Co., Pre-Mix Industries, Inc., d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, and Group 10, Building Materials, Statewide, Under Continuing Contracts with Lowe's Companies, Inc.
T-3259, Sub 2 (6-18-90)

Patterson Trucking, Robert H. and Robert S. Patterson, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide, Under Contract with DanAmer
T-3330 (10-11-90).

Piedmont Security Services, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Telephone Equipment and Miscellaneous Small Packages, Between Points in North Carolina Under Contract with AT&T Information Systems, Inc.
T-3144, Sub 1 (2-9-90)

R G's Trucking Co., Robert Glenn Davis, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21 (See Specifics in Official Copy of Order in Chief Clerk's Office)
T-3276 (11-5-90)

ReUse Technology, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Calcined Lime in Bulk, from the Rail Terminal of APG Lime Company in Selma, North Carolina, or as Relocated from Time to Time to the Facilities of Cogentrix of Rocky Mount, Inc., in or near Battleburg, North Carolina, Under Contract with Cogentrix of Rocky Mount, Inc.
T-3352 (8-7-90)

Road Ready Trucking, Carl A. Small, Sr., David Wheatly and George Edward Wheatly, d/b/a - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Statewide, Under Continuing Contracts with Wheatly Oil Co., Inc., and Eastern Oil & Tire Co., Inc.
T-2979 (3-2-90)

Roundtree Movers, Donald Thomas Rountree, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Office Equipment and Inventory, Between Points in Orange and Person Counties, Under Contract with Context Design
T-2963 (2-22-90)

Ryder Distribution Resources, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Carbonated Beverages, Materials, Equipment, and Supplies used in the Manufacture and Bottling thereof, Under Continuing Contract with Sunbelt Coca-Cola Bottling Company, Inc., Statewide
T-2302, Sub 4 (6-14-90)

Santee Carriers, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Fly Ash and Cement in Bulk and Bags, Statewide, Under Continuing Contracts with Coplay Cement, Division of ESSROC Materials
T-1412, Sub 6 (7-24-90)

Savannah Service, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Office Supplies and Furniture, From Charlotte to all Points in North Carolina and Return, Under Contract with Office Products Division, Boise Cascade Corporation
T-3369 (10-30-90)

Schneider National Carriers, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Contract with Family Dollar Stores, Inc. (Restriction: Transportation of Commodities in Bulk in Tank Vehicles and Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3182 (5-7-90)

Service Delivery & Transportation, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contracts with Data Forms & Systems, Zellerbach, Inc., and Computer Forms & Products (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3231 (1-10-90)

Smith's Trucking, Joe Neil Smith - Order Granting Contract Carrier Authority to Transport Group 19, Unmanufactured Tobacco in Sheets on Dollies or Jacks, Between Ahoskie and Windsor, North Carolina and the Return of Used Sheets, Dollies or Jacks, Under Individual Bilateral Contract with R. J. Reynolds Tobacco Co., Winston-Salem
T-2534, Sub 3 (2-1-90)

Su-Ann Trucking Co., Otha L. Stroud, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities; Except Classes A and B Explosives, Household Goods, and Commodities in Bulk; Statewide, Under Contract with Mannington Ceramic Tile by Mid State, Reynolds Distributing Co., Inc., and Tile, Inc., of Fayetteville (Restriction: Transportation of Group 19, Unmanufactured Tobacco and Accessories, is not Authorized.)
T-3159 (3-15-90)

Unifi, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Unmanufactured Tobacco, Statewide, Under Continuing Contract with E. I. DuPont De Nemours & Company, Inc.
T-3242 (1-23-90)

Wicker, Jeffrey Allen - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Unmanufactured Tobacco and Accessories, Statewide, Under Contract with Black & Decker (U.S.)
T-3311 (7-12-90)

Wood, William T. II, Trucking Company, Inc. - Order Granting Contract Carrier Authority to Transport Group 9, Forest Products, and Group 10, Building Materials, Statewide, Under Contracts with Bunn Hardwood Company and Bobby Robbins Trucking Company
T-3398 (11-26-90)

World Marine Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Boats, Attachments, Accessories, and Parts when Moving with Mixed Loads of Boats, Statewide, Under Continuing Contract with Hatteras Yachts Division of Genmar Industries, Inc.
T-3390 (11-19-90)

Yow, Melvin R. Trucking, Melvin R. Yow, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Bulk Fertilizers, (For Specifics See Official Copy of Order in Chief Clerk's Office)
T-2937 (7-24-90)

AUTHORIZED SUSPENSION

| Company | Certificate | Reason |
|---|---|---|
| Ace Moving & Storage Company<br>Wilbert A. Jackson, d/b/a<br>T-954, Sub 4 (1-8-90) | C-677 | Good Cause |
| American Distribution Systems, Inc.<br>T-1758, Sub 4 (4-26-90) | C-173 | Good Cause |
| American Parcel Service, Inc.<br>T-1154, Sub 8 (2-15-90) | C-817 | Good Cause |
| Atlantic Oil Service, Inc.<br>T-1703, Sub 1 (1-16-90) | P-259 | Good Cause |
| Backwoods Mobile Home Service & Repair<br>Hugh Zimbelman and Donald<br>Kenneth Ward, Jr., d/b/a<br>T-2990, Sub 1 (1-23-90) | C-1653 | Good Cause |
| Backwoods Mobile Home Service & Repair<br>Hugh Zimbelman and Donald<br>Kenneth Ward, Jr., d/b/a<br>T-2990, Sub 1 (8-8-90) | C-1653 | Good Cause |
| Brown Transport Corp.<br>T-1777, Sub 3 (1-29-90) | C-127 | Good Cause |
| Brown Transport Truckload, Inc.<br>T-2912, Sub 2 (1-29-90) | C-26 | Good Cause |
| Bullock, Richard Edwin<br>T-1546, Sub 4 (4-26-90) | C-993 | Good Cause |
| Colonial Motor Freight Line, Inc.<br>T-227, Sub 3 (3-1-90) | C-10 | Good Cause |
| Dew's Mobile Home Transport,<br>Boyce C. Dew, d/b/a<br>T-3288, Sub 1 (11-19-90) | C-1822 | Good Cause |
| Exemptco of Surry County,<br>Bobby Kent Long, d/b/a<br>T-2546, Sub 1 (11-26-90) | P-510 | Good Cause |
| Fowler, M. M., Inc.<br>T-72, Sub 7 (10-29-90) | CP-42 | Good Cause |
| Gibson, Boyce Ray Trucking Company<br>T-3175, Sub 1 (11-21-90) | C-1753 | Good Cause |

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|---|---|---|
| H I T, Ervin Harry Hatcher, d/b/a<br>T-2549, Sub 5 (4-26-90) | C-1360 | Good Cause |
| Hill Top Transport, Inc.<br>T-1057, Sub 12 (12-12-90) | P-127 | Good Cause |
| Honeycutt, J. B. Co., Inc.<br>T-94, Sub 16 (10-2-90) | C-217 | Good Cause |
| Hoyle Transfer Company, David Hoyle, d/b/a<br>T-2585, Sub 2 (11-29-90) | C-1392 | Good Cause |
| Kinston Moving and Storage, Inc.<br>T-1644, Sub 4 (10-23-90) | C-1023 | Good Cause |
| Louisiana-Pacific Trucking Company<br>T-2249, Sub 3 (11-27-90) | P-419 | Good Cause |
| Mobile Home Movers and Service,<br>Johnny Jolly, d/b/a<br>T-2902, Sub 1 (7-12-90) | C-1585 | Good Cause |
| Morgan Trucking Co., Glenn Morgan, d/b/a<br>T-2166, Sub 5 (1-8-90) | C-1702 | Good Cause |
| Morgan Trucking Co., Glenn Morgan, d/b/a<br>T-2166, Sub 6 (8-2-90) | C-1702 | Good Cause |
| Mullis, Brandon L., Inc.,<br>T-1470, Sub 2 (8-3-90) | C-969 | Good Cause |
| North State Motor Lines, Inc.<br>T-305, Sub 6 (2-15-90) | C-47 | Good Cause |
| Package Pickup Service, Inc.<br>T-3023, Sub 1 (4-18-90) | C-1649 | Good Cause |
| Pannell, Willie Neal<br>T-997, Sub 2 (7-12-90) | C-721 | Good Cause |
| Pippin, Herbert Joel<br>T-2649, Sub 2 (10-5-90) | C-1410 | Good Cause |
| Quality Mobile Home Sales of Godwin,<br>Turpin Associates, Inc., d/b/a<br>T-2660, Sub 4 (10-8-90) | C-1416 | Good Cause |
| Small Time Movers, Carpio<br>Enterprises, Inc., d/b/a | C-1503 | Good Cause |
| Taylor Transfer & Storage Co., Inc.<br>T-2733, Sub 1 (4-26-90) | C-1367 | Good Cause |

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|---|---|---|
| Wainscott Trucking, Paul T. Wainscott, d/b/a<br>T-3309, Sub 1 (10-4-90) | C-1813 | Good Cause |
| Walker Contract Service, Max Lee Walker, d/b/a | C-1750 | Good Cause |
| Williams, A. T. Oil Company, Inc.<br>T-3042, Sub 1 (1-24-90) | C-1066 | Good Cause |

CERTIFICATES/PERMITS CANCELLED

Ceased Operations

| Company and Certificate No. | Docket Number | Date |
|---|---|---|
| Admiral Transportation Services | T-100, Sub 10<br>T-2475, Sub 6 | 1-17-90 |
| Associates Express (CP-112) | T-3126, Sub 3 | 7-6-90 |
| Beasley Transport, Inc. (P-224) | T-1504, Sub 2 | 1-16-90 |
| C & H Air Service, Ida S. Helms, d/b/a (C-1505) | T-2791, Sub 1 | 2-14-90 |
| C & H Nationwide, Inc. (C-1156) | T-2096, Sub 4 | 5-30-90 |
| Combs, Carson Lee (C-1168) | T-3059, Sub 1 | 1-16-90 |
| Custom Service,<br>William C. Peeler, Jr., d/b/a (P-586) | T-3102, Sub 1 | 4-19-90 |
| Eure, C. H. Trucking, Inc. (C-1087) | T-1886, Sub 4 | 2-15-90 |
| H & W Trucking Company (C-430) | T-529, Sub 7 | 1-19-90 |
| Hadley's Cartage,<br>Charles E. Hadley, d/b/a (C-1381) | T-2514, Sub 2 | 3-26-90 |
| Harris Mobile Home Movers<br>George W. Harris, d/b/a (C-1415) | T-2647, Sub 2 | 4-26-90 |
| Hip's Service, Inc. (C-1817) | T-3306, Sub 1 | 7-19-90 |
| Hopper Brothers, Inc. (C-219) | T-73, Sub 3 | 5-3-90 |
| J & M Mobile Home Repair Service<br>Jimmy T. Brown, d/b/a (C-1523) | T-2801, Sub 2 | 2-8-90 |
| J & W Service, Jerry Small, d/b/a (C-1530) | T-2814, Sub 2 | 2-22-90 |
| L & J Motor Lines, Inc. (C-1364) | T-2530, Sub 2 | 8-2-90 |
| Larry's Mobile Home Repairs, Moves, & Setups<br>Larry Gene Barnard, d/b/a (C-1677) | T-3008, Sub 1 | 4-10-90 |
| Master Mobile Home Movers, Inc. (C-1245) | T-2312, Sub 4 | 6-15-90 |
| Maxton Oil and Fertilizer Company (P-209) | T-1424, Sub 2 | 4-9-90 |
| Mitchell, Cyrus A., Jr. (C-1185) | T-2187, Sub 3 | 6-7-90 |
| Pinebluff Mobile Home Park,<br>Charles Curtis Ferguson, d/b/a (C-1141) | T-2035, Sub 2 | 3-26-90 |
| Prestige Auto Transporters, Inc. (C-1671) | T-3074, Sub 1 | 4-4-90 |
| Quality Mobile Home Sales of Godwin<br>Turpin Associates, Inc., d/b/a (C-1416) | T-2660, Sub 2 | 2-8-90 |
| Sain & Heavner Trucking Co., Inc. (C-1661) | T-3034, Sub 2 | 5-18-90 |
| Stacy, D. W. Co., Inc. (P-307) | T-1898, Sub 2 | 3-26-90 |
| Tommy's Garage,<br>Thomas W. Billings, d/b/a (C-1326) | T-2467, Sub 1 | 1-16-90 |
| Triangle Building Supply, Inc. (C-1611) | T-2872, Sub 2 | 5-3-90 |
| Turnmire, Major Elihue (C-1495) | T-2730, Sub 1 | 11-9-90 |
| Wilmoth, Thomas Ray (C-1708) | T-3134, Sub 1 | 6-13-90 |

Termination of Liability/Cargo Insurance Coverage

Action Transit Company - Recommended Order Cancelling Operating Authority Certificate No. C-1407 - Termination of Liability and Cargo Insurance Coverage
T-2584, Sub 1 (8-3-90)

Admiral Transportation Services, Whitney, Clayton, Helms Associate, Inc., d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-892 - Termination of Liability Insurance Coverage
T-2475, Sub 7 (4-25-90)

American Mobile Home and Auto, Timothy Lee Braswell, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1716 - Termination of Cargo Insurance Coverage
T-3067, Sub 1 (8-23-90)

Anson Carriers, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1812 - Termination of Liability Insurance Coverage
T-3261, Sub 2 (11-20-90)

Beam Express, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1705 - Termination of Cargo Insurance Coverage
T-3036, Sub 1 (4-25-90)

Bissell, Herbert - Recommended Order Cancelling Operating Authority Certificate No. C-1496 - Termination of Cargo Insurance Coverage
T-2719, Sub 1 (8-3-90)

Bonus Motor Express, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1607 - Termination of Liability and Cargo Insurance Coverage
T-3225, Sub 1 (6-18-90)

C & O Trucking, Ceola Locklear, d/b/a - Recommended Order Cancelling Operating Authority Certificate C-1568 - Termination of Liability Insurance Coverage
T-2773, Sub 3 (4-4-90)

Cedar Hills Trucking, Inc. - Recommended Order Cancelling Operating Authority Permit No. P-528 - Termination of Liability Insurance Coverage
T-2681, Sub 1 (9-19-90)

Continental Transport Systems, American Transportation, Inc., d/b/a - Recommended Order Cancelling Operating Authority Certificate/Permit No. CP-90 - Termination of Liability Insurance Coverage
T-2037, Sub 4 (8-23-90)

D & B Mobile Home Service, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1834 - Termination of Cargo Insurance Coverage
T-3340, Sub 1 (12-12-90)

DCV Corporation - Recommended Order Cancelling Operating Authority Certificate No. C-1667 - Termination of Liability Insurance Coverage
T-3075, Sub 1 (7-9-90)

Davidson, R. - Recommended Order Cancelling Operating Authority Permit No. P-380 - Termination of Liability Insurance Coverage
T-2121, Sub 5 (5-30-90)

Dewline, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1655 - Termination of Cargo Insurance Coverage
T-3020, Sub 2 (2-15-90)

Executive Delivery Service, Locklar Enterprises, Inc., d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1824 - Termination of Cargo Insurance Coverage
T-3316, Sub 1 (11-15-90)

Fuller, Thurston Allen and Edith Jenks Fuller - Recommended Order Cancelling Operating Authority Permit No. P-494
T-2431, Sub 2 (8-23-90)

General Transport Systems of Delaware, Inc., General Transport Systems, Inc. - Recommended Order Cancelling Operating Authority Certificate No. CP-108 - Termination of Liability Insurance Coverage
T-2875, Sub 3 (1-19-90)

Howard's Mobile Home Movers, Robert F. Howard, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1669 - Termination of Cargo Insurance Coverage
T-3067, Sub 1 (6-27-90)

Investment Resources Company - Recommended Order Cancelling Operating Authority Certificate No. C-1734 - Termination of Cargo Insurance Coverage
T-3146, Sub 3 (9-11-90)

Jones Transfer, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-43 - Termination of Cargo Insurance Coverage
T-146, Sub 8 (1-23-90)

Jordan Mobile Home Movers, Ronnie Long Jordan, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1728 - Termination of Cargo Insurance Coverage
T-2684, Sub 4 (11-7-90)

Land Link, A Division of Europa Auto Search, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1343 - Termination of Cargo Insurance Coverage
T-2552, Sub 2 (9-19-90)

Lumberton Masonary Company - Recommended Order Cancelling Operating Authority Certificate No. C-1345 - Termination of Cargo Insurance Coverage
T-2518, Sub 8 (12-12-90)

Miller Truck Lines, Patricia A. Miller, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1733 - Termination of Cargo Insurance Coverage
T-3150, Sub 2 (10-16-90)

Mobile Home Movers, L.K.N., Inc., d/b/a - Recommended Order Cancelling Operating Authority Certicicate No. C-1741 - Termination of Cargo Insurance Coverage
T-3157, Sub 1 (11-20-90)

NTC of America, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-783 - Termination of Liability and Cargo Insurance Coverage
T-1097, Sub 12 (2-15-90)

Nationwide Horse Carriers, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-525 - Termination of Liability Insurance Coverage
T-706, Sub 5 (9-19-90)

Overbay Transport, Raymond Overbay, Jr., d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1500 - Termination of Liability Insurance Coverage
T-2936, Sub 2 (4-4-90)

Paradise Trucking, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1777 - Termination of Liability Insurance Coverage
T-3217, Sub 2 (11-15-90)

Pippin, Herbert Joel - Recommended Order Granting Authorized Suspension of Operations - Termination of Cargo Insurance Coverage
T-2649, Sub 1 (5-18-90)

Seaboard Western Express, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1434 - Termination of Liability Insurance Coverage
T-2073, Sub 2 (8-23-90)

Silver Bullet Carrier Corporation - Recommended Order Cancelling Operating Authority Certificate No. C-1717 - Termination of Cargo Insurance Coverage
T-3149, Sub 1 (4-4-90)

Southern Western Express, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1696 - Termination of Cargo Insurance Coverage
T-3080, Sub 2 (10-29-90)

Stewart, Susan Church - Recommended Order Cancelling Operating Authority Permit No. P-455 - Termination of Liability Insurance Coverage
T-2402, Sub 4 (8-3-90)

Sundance Enterprise, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-1738 - Termination of Cargo Insurance Coverage
T-3112, Sub 1 (3-14-90)

Tri-County Transport, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-201 - Termination of Liability Insurance Coverage
T-1708, Sub 3 (11-15-90)

WBT Services, Inc. - Recommended Order Cancelling Operating Authority Certificate No. CP-113 - Termination of Cargo Insurance Coverage
T-3131, Sub 2 (11-20-90)

Woodring's Mobile Home Park, Ray Woodring, d/b/a - Recommended Order Cancelling Operating Authority Certificate No. C-1541 - Termination of Liability Insurance Coverage
T-2834, Sub 3 (11-15-90)

COMPLAINTS

Budget Freight, Inc. - Order Cancelling Certificate, Dismissing Complaint and Cross-Complaint and Closing Docket in Complaint of Harper Trucking Company, Inc.
T-3178, Sub 1 (6-14-90)

Coleman, William W. - Order Dismissing Complaint and Closing Docket
T-3161 (2-22-90)

MERGERS

WestPoint Pepperell, Inc. - Order Approving Merger for WestPoint Pepperell Transportation Company, Holder of Certificate/Permit No. CP-119, to Merge Into WestPoint Pepperell, Inc.
T-2176, Sub 2 (12-21-90)

NAME CHANGE/TRADE NAME

Advanced Installation Services, Inc. - Order Approving Name Change from Action Moving & Storage, Inc., for Certificate No. C-1082
T-3280 (2-8-90)

Ammons Trucking Company, Inc. - Order Approving Name Change from James Elbert Ammons, Jr., d/b/a Ammons Trucking Company, for Certificate No. C-1307
T-2441, Sub 2 (10-1-90)

Andrews Towing & Recovery, Inc. - Order Approving Name Change from Linda H. Andrews, d/b/a Andrews Auto Sales & Parts, for Certificate No. C-1821
T-3360 (6-27-90)

Astro Courier Service, Inc. - Order Approving Name Change from C V & C Cartage, Inc., for Permit No. P-595
T-3359 (6-27-90)

Bridgeways, Inc. - Order Approving Name Change from Bridgeways Company, for Certificate No. C-1260
T-2341, Sub 1 (8-24-90)

Cabarrus Consolidating & Management Company, Lanscot-Arlen Fabrics, Inc., d/b/a - Order Approving Name Change from Cabarrus Consolidating and Management Company, for Certificate/Permit No. CP-118
T-2070, Sub 5 (7-25-90)

Carolina Creditor Service, Michael W. Jarman and Michael W. Baldwin, d/b/a - Order Approving Name Change from Michael W. Jarman and Michael W. Baldwin, d/b/a East Coast Recovery, for Certificate No. C-1842
T-3408 (9-25-90)

Church Trucking Company, Inc. - Order Approving Name Change from Jump Enterprises, Inc., d/b/a Jump Transportation Services, for Certificate No. C-1457
T-3321 (4-11-90)

Craco Freight Carriers, Inc. - Order Approving Name Change from Robert Craver, Richard Coleman, and Gene Murr, d/b/a Craco Freight Carriers, for Permit No. P-600
T-3185, Sub 1 (7-6-90)

Davis Trucking, Inc. - Order Approving Name Change from Wallace Davis, d/b/a Wallace Davis Trucking, for Certificate No. C-1449
T-3267 (1-17-90)

Flash Courier Service of North Carolina, Inc. - Order Approving Name Change from Flash Courier Service, Inc., for Certificate No. C-1674
T-3026, Sub 1 (11-14-90)

Graphics Express, Inc. - Order Approving Name Change from Robert Lewis Tarbuck, d/b/a Graphics Express, for Certificate No. C-1550
T-2873, Sub 1 (2-8-90)

Hinson Trucking, Otis McKenzie Hinson, d/b/a - Order Approving Name Change from Otis McKenzie Hinson, for Certificate No. C-1846
T-3339, Sub 1 (9-27-90)

Hornet Delivery & Courier Service, Inc. - Order Approving Name Change from G. H. Dowless, d/b/a T & G Enterprises, for Certificate No. C-1792
T-3203, Sub 1 (8-23-90)

James Transport, Inc. - Order Approving Name Change from AG-Liquids, Inc., for Permit No. P-604
T-3435 (12-5-90)

Marlowe's Mobile Home Service, Inc. - Order Approving Name Change from Archie Rudolph Marlowe and Thomas Archie Marlowe, d/b/a Marlowe's Mobile Home Repair for Certificate No. C-1248
T-3274 (1-31-90)

North State Transport, Frank Dills, Dorothy Dills & Matthew Dills, d/b/a - Order Approving Name Change from Frank E. Dills & Wesley M. Dills, d/b/a North State Transport, for Permit No. P-523
T-2677, Sub 3 (4-9-90)

Road Ready Trucking, Inc. - Order Approving Name Change from Carl A. Small, Sr., David Wheatly, and George Edward Wheatly, d/b/a Road Ready Trucking, for Permit No. P-614
T-2979, Sub 1 (6-15-90)

Schneider Specialized Carriers, Inc. - Order Approving Name Change from International Transport, Inc., for Permit No. P-606
T-3266 (1-17-90)

Southeast Specialty Haulers, Inc. - Order Approving Name Change from Gregory L. Kershner, d/b/a Southeast Specialty Haulers, for Certificate No. C-1742
T-3250, Sub 1 (5-22-90)

Stevenson, R. L. & Son - Order Approving Name Change from R. L. Stevenson, for Certificate No. C-904
T-1342, Sub 4 (4-27-90)

Stewart, Susan Church - Order Approving Name Change from Herman Stewart, for Permit No. P-455
T-2402, Sub 3 (3-13-90)

Transit Express of Charlotte, Inc. - Order Approving Name Change from U. S. Transit Corporation, d/b/a Transit Express, Inc., for Certificate No. C-1681
T-3062, Sub 1 (5-25-90)

Whiteford Dedicated Services, Inc. - Order Approving Name Change from Whiteford Transport Systems, Inc., for Certificate/Permit No. CP-106
T-2960, Sub 2 (9-18-90)

RATES - MOTOR COMMON CARRIERS

CSE Con-Way Southern Express - Recommended Order Allowing Rate Increase
T-2770, Sub 1 (7-20-90) Order Adopting Recommended Order (7-20-90)

Carpenter Trucking Company, Inc. - Recommended Order Approving Tariff Filing of Proposed Increase in Rates and Charges Including Justification Procedures Applicable on Shipments of Plastic Articles
T-541, Sub 5 (9-28-90) Order Adopting Recommended Order (10-1-90)

Central Transport, Inc. - Recommended Order Approving Tariff Filing of Proposed Increase in Rates and Charges, Scheduled to Become Effective May 1, 1990
T-740, Sub 14 (4-27-90) Order Adopting Recommended Order (4-27-90)

Harris Transport Company - Recommended Order Approving Tariff Supplement No. 6, Proposed Increases in Rates and Charges Including Justification Procedures Applicable on Shipments of General Commodities
T-2633, Sub 5 (8-15-90) Order Adopting Recommended Order (8-16-90)

Infinger Transportation Company, Inc. - Recommended Order Allowing Rate Increase, Scheduled to Become Effective on December 19, 1990
T-698, Sub 10 (12-13-90) Order Adopting Recommended Order (12-18-90)

Matlack, Inc. - Recommended Order Approving Tariff Filing for Proposed Increases in Rates and Charges Including Justification Procedures Applicable on Shipments of Liquid Chemicals and Petrochemicals
T-2281, Sub 2 (9-7-90) Order Allowing Recommended Order to be Effective September 10, 1990 (9-10-90)

Merritt Trucking Company, Inc. - Recommended Order Approving Tariff Filing of Proposed Increase in Rates and Charges Including Justification Procedures Applicable on Shipments of Liquified Petroleum Gas
T-2143, Sub 13 (10-12-90) Order Allowing Recommended Order to be Effective October 22, 1990 (10-16-90)

Merritt Trucking Company - Recommended Order Approving Tariff Filing Proposing a 6% Increase in Transportation Rates Applying on Heavy Fuel Oil, Gasoline, Fuel Oil, Etc. in its Petroleum Tariff No. NCUC 20, Scheduled to Become Effective on December 17, 1990
T-2143, Sub 14 (12-6-90) Order Allowing Recommended Order to be Effective December 17, 1990 (12-11-90)

North Carolina Motor Common Carriers of Household Goods, (Group 18) - Order Closing Docket
T-825, Sub 305 (2-13-90)

North Carolina Motor Common Carriers of General Commodities - Recommended Order Vacating Suspension of Commission Order March 8, 1990
T-825, Sub 312 (4-3-90) Order Adopting Recommended Order (4-3-90)

North Carolina Motor Common Carriers of Household Goods, (Group 18) - Recommended Order Approving Rate Increase in Intrastate Line Haul Rates
T-825, Sub 313 (3-20-90) Order Allowing Recommended Order to be Effective March 21, 1990 (3-21-90)

Motor Common Carriers of Tobacco and Various Specified Accessories - Recommended Order Vacating Order of Investigation and Allowing Tariff Filing to Become Effective as Scheduled
T-825, Sub 315 (6-6-90) Order Adopting Recommended Order (6-11-90)

North Carolina Trucking Association, Inc. - Recommended Order Allowing Rate Increase in Various Rates and Charges, Published in Petroleum Tariff No. 5-W, NCUC No. 166, Scheduled to Become Effective on November 17, 1990
T-825, Sub 316 (11-13-90) Order Adopting Recommended Order (11-13-90)

Roadway Package System, Inc. - Recommended Order Allowing Rate Increase in Various Rates and Charges, Scheduled to Become Effective on July 30, 1990
T-3003, Sub 1 (7-25-90) Order Adopting Recommended Order (7-30-90)

Southern Oil Transportation Company, Inc. - Recommended Order Approving Tariff Filing Proposing Increase in Rates Applying on Item 30 Commodities (Heavy Fuel Oil) and Item 40 Commodities (Gasoline, Fuel Oil, Etc.) Supplement 6, Tariff NCUC No. 6, Scheduled to Become Effective on November 25, 1990
T-202, Sub 11 (11-21-90) Order Allowing Recommended Order to be Effective November 25, 1990 (11-21-90)

Transport South, Inc. - Recommended Order Approving Tariff Filing for Proposed Increases in Rates and Charges, Including Justification Procedures Applicable on Shipments of Petroleum
T-2291, Sub 2 (9-7-90) Order Allowing Recommended Order to Become Effective September 10, 1990 (9-7-90)

Transport South, Inc. - Recommended Order Approving Tariff Filing Proposing Increase in Rates Applying on Item 50 Commodities (Heavy Fuel Oil) and Item 60 Commodities (Gasoline, Fuel Oil, Etc.) Supplement 8, Tariff NCUC No. 1, Scheduled to Become Effective on December 9, 1990
T-2291, Sub 3 (11-27-90) Order Allowing Recommended Order to be Effective December 9, 1990 (11-29-90)

United Parcel Service, Inc., (an Ohio Coporation) - Recommended Order Approving Supplement No. 6 to Tariff North Carolina Utilities Commission No. 5
T-1317, Sub 27 (2-6-90) Order Allowing Recommended Order to Be Effective February 12, 1990 (2-6-90)

Wendell Transport Corporation - Recommended Order Approving Tariff Filing for Proposed Increase in Rates Applying on Butane, Propane or Liquified Petroleum Gas, Scheduled to Become Effective on September 23, 1990
T-1039, Sub 15 (9-14-90) Order Adopting Recommended Order (9-18-90)

Wendell Transport Corporation - Recommended Order Approving Tariff Filing Proposing Increase in Rates Applying on Item 30 Commodities (Heavy Fuel Oil) and Item 40 Commodities (Gasoline, Fuel Oil, Etc.) Supplement 5, Tariff NCUC No. 16, Scheduled to Become Effective on December 2, 1990
T-1039, Sub 16 (11-28-90) Order Adopting Recommended Order (11-28-90)

SALES AND TRANSFERS/CHANGE OF CONTROL

A Nagle/Poor Moving & Storage Co., Inc. - Order Approving Sale and Transfer of Certificate No. C-741 from North American Transfer & Storage of Asheville, Inc.
T-3268 (3-26-90)

Averitt Express, Inc. - Order Approving Sale and Transfer of Certificate No. C-26 from Brown Transport Truckload, Inc.
T-3324 (5-18-90)

Bartlett, Jack Moving, Bartlett-Ramsey Transfer Company, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-646 from Jack E. Bartlett, d/b/a Jack Bartlett Moving and Construction
T-3389 (9-19-90)

Coley's Mobile Movers, Jeffery A. & Denise C. Ledbetter, d/b/a - Order Approving Transfer of Certificate No. C-1164 from Ira G. Coley, d/b/a Coley's Welding Service
T-3289 (3-22-90)

D & D Mobile Home Repairs and Moving, Inc. - Order Approving Sale and Transfer of Certificate No. C-950 from P & Y Mobile Home, Incorporated
T-2116, Sub 1 (3-22-90)

DeHaven's Transfer & Storage of Wilson, Inc. - Order Approving Sale And Transfer of Certificate No. C-637 from Raleigh Furniture Storage Company, Inc.
T-3255 (1-17-90)

Eastern Moving and Storage, Inc. - Order Approving Sale and Transfer of Certificate No. C-596 from Washburn Storage Company
T-3372 (8-27-90)

Gabler Trucking, Inc. - Order Approving Sale and Transfer of Certificate No. C-1219 from H. C. Gabler, Inc.
T-3348 (7-18-90)

Hanna Management, Inc. - Order Approving Sale and Transfer of Certificate No. C-892 from Whitney, Clayton Helms Associate, Inc., d/b/a Admiral Transportation Services
T-3351 (7-18-90)

Hildebran Freight, Inc. - Order Approving Sale and Transfer of Certificate No. C-1353 from Hildebran Freight Brokers, Inc.
T-3399 (10-16-90)

Landstar System, Inc. - Order Approving Sale and Transfer for Authority to Acquire Control of Independent Freightway, Incorporated, Holder of Certificate No. C-1395, by Stock Transfer from I U Truckload, Inc.
T-2643, Sub 1 (1-16-90)

Mid-State Moving Company, Inc. - Order Approving Sale and Transfer of Certificate No. C-677 from Wilbert A. Jackson, d/b/a Ace Moving & Storage Company
T-3271 (2-19-90)

Mike's Mobile Maintenance of Roxboro, Inc. - Order Approving Sale and Transfer of Certificate No. C-1081 from Tom's Mobile Homes, Parts, Sales & Service
T-3281 (3-22-90)

No-Name Movers, Inc. - Order Approving Sale and Transfer of Certificate No. C-1596 from Charles Allen Calhoun, d/b/a Triad Distribution Service
T-2601, Sub 2 (8-27-90)

Old State Motor Lines, Inc. - Order Approving Sale and Transfer of Certificate No. C-47 from North State Motor Lines, Inc.
T-3343 (6-18-90)

Peede Mobile Home Moving, John David Peede, d/b/a - Order Approving Sale and Transfer of Certificate No. C-821 from Lewis C. Coats, d/b/a Lewis C. Coats Trailer Moving Company
T-3294 (4-18-90)

Pulley, K. M. Trucking Company, Inc. - Order Approving Sale and Transfer of Certificate No. C-1367 from Taylor Transfer & Storage Co., Inc.
T-3301 (4-18-90)

Rocor Transportation Companies, Inc. - Order Approving Sale and Transfer of Certificate No. C-1631 from RTC Transportation, Inc.
T-3341 (6-15-90)

SFI, Inc., Southern Freight, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-1775 from Best LTL, Inc.
T-3328 (9-24-90)

Security Storage Company of Raleigh, Inc. - Order Approving Sale and Transfer of Certificate No. C-721 from Willie Neal Pannell
T-3365 (8-27-90)

Shumate's Mobile Home Moving Service, Gary Shumate and Dale Shumate, d/b/a - Order Approving Sale and Transfer of Certificate No. C-910 from Sam D. Eller Motor Carriers, Inc.
T-3313 (5-18-90)

Small Time Movers, MPC Aviation, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-1503 from Carpio Enterprises, Inc., d/b/a Small Time Movers
T-2777, Sub 2 (6-15-90)

Thorne's Transport & Service, Inc. - Order Approving Sale and Transfer of Certificate No. C-1225 from Tarheel Wheel & Axle, Inc.
T-3354 (7-18-90)

Venture Express, Inc. - Order Approving Sale and Transfer of Certificate No. C-1405 from Raeford Trucking Company
T-3434 (12-21-90)

WestPoint Pepperell Transportation Company - Order Approving Assignment and Transfer of Certificate No. C-1373 from Stevens Freight Service, Inc.
T-2176, Sub 1 (6-21-90)

SECURITIES

Caldwell Freight Lines, Inc. - Order Approving Transfer of Control of Certificate No. C-250 by Stock Transfer from John T. Terry to David E. Brenner and Pledge of Assets in Connection with the Stock Transfer
T-2127, Sub 2 (12-21-90)

Dixie Trucking Company, Inc. - Order Approving Transfer of Control of Dixie Trucking Company, Inc., Holder of Certificate/Permit No. CP-54, by Stock Transfer from Kenneth D. Shaver, Sr., to Lawrence J. Neyens, Tommy Mason, Darrell Power and Hoy Allman
T-299, Sub 9 (11-26-90)

Parsons, G. G. Trucking Company - Order Approving Transfer of Control of Certificate No. C-1057 by Stock Transfer From John T. Terry to David E. Brenner
T-1784, Sub 7 (12-21-90)

Ryder Temperature Controlled Carriage, Inc. - Order Approving Transfer of Control of Certificate No. C-1479, by Stock Transfer from Ryder Truck Rental, Inc., to RTCC Acquisition, Inc.
T-2737, Sub 2 (11-26-90)

Santee Carriers, Inc. - Order Approving Sale and Transfer of Certificate/Permit No. CP-63 by Stock Transfer from X. O. Bunch, Jr. to TIC Investment Corp.
T-1412, Sub 8 (8-27-90)

Steagall, James E. - Order Approving Transfer to Acquire Control of Coley Moving & Storage, Inc., Holder of Certificate No. CP-28, by Stock Transfer from Carl B. Coley
T-1268, Sub 7 (3-22-90)

Triangle Express, Carolina Couriers, Inc., d/b/a - Order Approving Transfer to Acquire Control of Certificate No. C-1151 by Stock Transfer from Cleve Buchanan and Norman Brame
T-3103, Sub 1 (4-18-90)

MISCELLANEOUS

A Christian Moving Company, Inc. - Recommended Order Requiring Production of Information
T-2723, Sub 2 (6-22-90)

Motor Common Carriers - Order Amending Agreement
T-825, Sub 240 (9-28-90)

Tri-State Moving & Storage, David E. Dorman, d/b/a - Order Approving Lease of Authority for Certificate No. C-1342 from Joseph J. Afonso, d/b/a Tri-State Moving & Storage
T-2498, Sub 3 (9-19-90)

RAILROADS

APPLICATIONS WITHDRAWN

Southern Railway Company - Order Allowing Withdrawal of Petition to Retire and Remove Track No. 287-55 at Mile Post 286.6 Formerly Serving Strietman Biscuit Company at Greensboro, and Cancelling Hearing
R-29, Sub 779 (2-14-90)

Southern Railway Company - Order Allowing Withdrawal of Petition
R-29, Sub 841 (11-2-90)

Southern Railway Company - Order Allowing Withdrawal of Petition
R-29, Sub 847 (4-18-90)

AGENCY STATIONS

Southern Railway Company - Order Granting Petition to Discontinue the Agency Station at Oxford, and Add Oxford and the Non-Agency Stations of Stem, Burkart and Henderson (Presently Governed by Oxford) to the Agency at Durham
R-29, Sub 803 (1-23-90)

Southern Railway Company - Recommended Order Approving Petition 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, and Closing Docket
R-29, Sub 811 (11-14-90)

MOBILE AGENCY AND NONAGENCY STATIONS

Southern Railway Company - Order Granting Petition to Discontinue Mobile Route NS-6 Based at Varina, North Carolina; and add the Prepay Stations of Duncan, Corinth, Brickhaven, Colon, Lee Brick, Chatham Siding and Cumnock (Presently Served by Mobile Route NS-6) to Open Agency at Varina, North Carolina
R-29, Sub 831 (2-28-90)

Southern Railway Company - Recommended Order Granting Application to Discontinue Mobile Route NC-14 at Greensboro
R-29, Sub 900 (11-7-90)

SIDE TRACKS AND TEAM TRACKS - Order Granting Petition/Authority to Retire and Remove Track

CSX TRANSPORTATION, INC.

CSX Transportation, Inc. - Recommended Order Granting Application on a Six-Months' Trial Basis for Authority to Transfer the Spruce Pine Transportation Service Agency to Its Transportation Service Center at Kingsport, Tennessee
R-71, Sub 182 (4-26-90)

SOUTHERN RAILWAY COMPANY (NORTH CAROLINA RAILROAD COMPANY)

| Docket Number | Date | Track | Town |
|---|---|---|---|
| R-29, Sub 657 | 1-10-90 | 137-2 | Asheville |
| R-29, Sub 739 | 2-1-90 | M-1-2, Mile Post M-1 | High Point |
| R-29, Sub 789 | 6-6-90 | 4, Mile Post H 1.6 | Greensboro |
| R-29, Sub 804 | 3-15-90 | 36-2 | Woodleaf |
| R-29, Sub 805 | 11-28-90 | L-6.6 | Frontis |
| R-29, Sub 809 | 6-4-90 | Mile Post BB-2.7 | Bridgeton |
| R-29, Sub 810 | 1-23-90 | 5-3, Mile Post K-4.9 | Greensboro |
| R-29, Sub 813 | 3-5-90 | L-6-3, Mile Post L-5.3 | Frontis |
| R-29, Sub 815 | 6-4-90 | 60.8, Mile Post EC-60.0 | New Bern |
| R-29, Sub 817 | 9-14-90 | Mile Post NS-161.9 | Farmville |
| R-29, Sub 820 | 5-14-90 | Mile Post 181.2 | Wilson |
| R-29, Sub 822 | 4-27-90 | 298-2, Mile Post 297.1 | High Point |
| R-29, Sub 825 | 1-31-90 | Serving Benfield Industries | Hazelwood |
| R-29, Sub 826 | 2-1-90 | Mile Post K-6 | Friendship |
| R-29, Sub 827 | 1-23-90 | Mile Post K-27 | Winston-Salem |
| R-29, Sub 828 | 3-5-90 | Serving American Tobacco Spur | Durham |
| R-29, Sub 832 | 1-23-90 | 284-33, Mile Post HO.5 | Greensboro |
| R-29, Sub 835 | 2-2-90 | Mile Post 334.7 | Salisbury |
| R-29, Sub 836 | 3-23-90 | Mile Post 403.6 | Bessemer City |
| R-29, Sub 837 | 5-14-90 | 22-1, Mile Post T-21 | Clyde |
| R-29, Sub 838 | 1-23-90 | Mile Post K-5 | Greensboro |
| R-29, Sub 839 | 9-6-90 | 8-3 | Hominy |
| R-29, Sub 840 | 3-23-90 | 273-1, Mile Post 272.3 | Brown Summit |
| R-29, Sub 843 | 5-14-90 | Mile Post 183 | Wilson |
| R-29, Sub 844 | 3-23-90 | 261-1, Mile Post 260 | Reidsville |
| R-29, Sub 845 | 9-6-90 | 1-4, 1-5, Mile Post EC.1 | Goldsboro |

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|---|---|---|---|
| R-29, Sub 846 | 3-23-90 | 1-1, Mile Post MO.1 | High Point |
| R-29, Sub 848 | 3-26-90 | 55-38E, 55-22, 55-36, 55-34 | Durham |
| R-29, Sub 849 | 3-26-90 | Mile Post 286.8 | Pomona |
| R-29, Sub 851 | 11-29-90 | Mile Post T-12 | Coburn |
| R-29, Sub 852 | 9-13-90 | 17-18 | Canton |
| R-29, Sub 853 | 9-6-90 | Mile Post NB 13.4 | Washington |
| R-29, Sub 854 | 10-3-90 | 388-5 and 388-7 | Belmont |
| R-29, Sub 855 | 9-14-90 | 1-22, Mile Post EC 0.4 | Goldsboro |
| R-29, Sub 858 | 7-13-90 | Mile Post NS 230.6 | Raleigh |
| R-29, Sub 859 | 7-27-90 | Mile Post NS 229.6 | Raleigh |
| R-29, Sub 860 | 7-13-90 | Mile Post K-25 | Winston-Salem |
| R-29, Sub 861 | 6-5-90 | Serving Dillard Paper Co. | Frontis |
| R-29, Sub 862 | 6-28-90 | 287-61, Mile Post 286.8 | Greensboro |
| R-29, Sub 863 | 9-13-90 | 20-1, Mile Post EC 19.5 | Kinston |
| R-29, Sub 864 | 9-13-90 | 26-3, Mile Post EC 26.2 | Kinston |
| R-29, Sub 865 | 9-13-90 | 35-1, Mile Post EC 34.9 | Dover |
| R-29, Sub 866 | 9-13-90 | 48-1, Mile Post EC 48.4 | New Bern |
| R-29, Sub 867 | 6-5-90 | 62-2, Mile Post EC 61.4 | New Bern |
| R-29, Sub 868 | 9-13-90 | 68-1, Mile Post EC 68.5 | New Bern |
| R-29, Sub 869 | 9-6-90 | 56-6, Mile Post EC 55.8 | New Bern |
| R-29, Sub 870 | 9-13-90 | 10-1, Mile Post EC 9.7 | LaGrange |
| R-29, Sub 871 | 7-27-90 | 92-4, Mile Post EC 91.4 | Morehead City |
| R-29, Sub 872 | 7-27-90 | 20-1, Mile Post 19.7DW | Eden |
| R-29, Sub 873 | 7-13-90 | Serving Harris Wholesale | Raleigh |
| R-29, Sub 874 | 7-13-90 | 27-3, Mile Post H-26.0 | Haw River |
| R-29, Sub 876 | 9-6-90 | 205.2, Mile Post 300 | High Point |
| R-29, Sub 877 | 7-27-90 | Mile Post NS 226.2 | Raleigh |
| R-29, Sub 879 | 7-13-90 | 1-1, 26-40, 26-41 | Winston-Salem |
| R-29, Sub 880 | 9-13-90 | Mile Post N-6.0 | Granite Quarry |
| R-29, Sub 881 | 7-13-90 | 1, 2, 3, Mile Post NS 256.3 | Duncan |
| R-29, Sub 882 | 9-6-90 | 2-4, Mile Post EC 1.4 | Goldsboro |
| R-29, Sub 883 | 7-13-90 | H2-14, H2-7, H2-16, H2-11, Mile Post H1.6 | Greensboro |
| R-29, Sub 886 | 7-27-90 | Mile Post 233.2 | Raleigh |
| R-29, Sub 887 | 7-13-90 | Mile Post V-13.9 | Lillington |
| R-29, Sub 888 | 9-13-90 | 3-5 | Thomasville |
| R-29, Sub 891 | 12-13-90 | Mile Post S-71.2 | Valdese |
| R-29, Sub 892 | 9-6-90 | Mile Post 21.0L | Eden |
| R-29, Sub 893 | 9-14-90 | Mile Post 22.3L | Draper |
| R-29, Sub 894 | 9-13-90 | 14-2, Mile Post EC-13.7 | LaGrange |
| R-29, Sub 895 | 9-13-90 | Mile Post S25.9 | Statesville |
| R-29, Sub 896 | 11-29-90 | 9, 8 (593 Feet) | Eden |
| R-29, Sub 897 | 9-13-90 | 307.4 | Thomasville |
| R-29, Sub 898 | 10-3-90 | Mile Post S-46.5 | Newton |
| R-29, Sub 899 | 9-13-90 | Mile Post EC-51 | New Bern |
| R-29, Sub 901 | 9-6-90 | Mile Post NS 196.2 | Bailey |
| R-29, Sub 902 | 10-3-90 | Mile Post S-51.2 | Conover |
| R-29, Sub 904 | 10-3-90 | Mile Post S-56.3 | Hickory |
| R-29, Sub 905 | 10-3-90 | S-59-5, Mile Post S-58.9 | Hickory |
| R-29, Sib 906 | 11-29-90 | Mile Post S-80.3 | Morganton |
| R-29, Sub 907 | 11-14-90 | 67-3, Mile Post CF-66.7 | Greensboro |
| R-29, Sub 908 | 10-3-90 | Mile Post L-112 | Durham |
| R-29, Sub 909 | 12-13-90 | S-59-7, Mile Post S-58.0 | Hickory |

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| R-29, Sub 910 | 10-3-90 | Mile Post S-23.2 | Statesville |
| R-29, Sub 911 | 10-3-90 | Mile Post S-55.4 | Hickory |
| R-29, Sub 912 | 10-3-90 | 86.9, Mile Post D-86 | Durham |
| R-29, Sub 914 | 11-14-90 | 2-20, Mile Post H 1.6 | Greensboro |
| R-29, Sub 917 | 12-4-90 | Mile Post S-3.2 | Salisbury |
| R-29, Sub 918 | 11-14-90 | Mile Post L-4 | Winston-Salem |
| R-29, Sub 924 | 12-19-90 | 4-1, Mile Post K-3.5 | Greensboro |
| R-29, Sub 926 | 12-13-90 | Mile Post S-81.4 | Morganton |
| R-29, Sub 927 | 12-13-90 | 32-10, Mile Post H-31.4 | Mebane |
| R-29, Sub 930 | 12-13-90 | NW C7, Mile Post Duke Belt Line | Durham |
| R-29, Sub 931 | 11-29-90 | 4-4, Mile Post L-3.6 | Winston-Salem |
| R-29, Sub 932 | 11-29-90 | Mile Post H-14.9 | Gibsonville |
| R-29, Sub 941 | 12-19-90 | 4, Mile Post 22.3-L | Draper |
| R-29, Sub 944 | 12-4-90 | Mile Post VF-0.7 | Varina |
| R-29, Sub 945 | 12-19-90 | Mile Post 24-L | Eden |

## TELEPHONE

### APPLICATIONS WITHDRAWN OR DISMISSED

AT&T Communications of the Southern States, Inc. - Order Granting Withdrawal of Petition and Closing Docket
P-140, Sub 27 (8-3-90)

Centel Network Communications, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-216 (6-13-90)

Fiberline Network Communications - Order Allowing Withdrawal of Application and Closing Docket
P-213 (5-2-90)

NCN Communications, Inc. - Recommended Order Denying Application for Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services
P-214 (12-20-90)

### CANCELLATIONS

Central Carolina Communications, Inc. - Order Cancelling Certificate of Public Convenience and Necessity Authorizing Resale of Cellular Radio Telecommunications Service in North Carolina
P-170 (1-31-90)

### CERTIFICATES

Burlington Cellular, Inc. - Order Granting Interim Construction Authority to Provide Retail and Wholesale Cellular Radio Telecommunications Services and for Approval of Initial Tariff Containing Rates and Regulations to Serve the Burlington Metropolitan Statistical Area
P-212 (1-5-90)

Burlington Cellular, Inc. - Recommended Order Granting Certificate to Provide Retail and Wholesale Cellular Radio Telecommunications Services and for Approval of Initial Tariff Containing Rates and Regulations to Serve the Burlington Metropolitan Statistical Area
P-212 (2-19-90) Order Making Recommended Order Final (2-21-90)

First Fayette Cellular Corporation - Recommended Order Granting Certificate to Provide Retail and Wholesale Cellular Radio Telecommunications Services and for Approval of Telecommunications Servives and for Approval of Initial Tariff Containing Rates and Regulations to Serve the RSA Known as North Carolina 13-Greene
P-223 (12-19-90)

PACECOM and Pace Membership Warehouse, Inc., Precision Data International, Inc., d/b/a - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services as a Reseller in North Carolina
P-203; P-203, Sub 1 (10-4-90)

RSA Growth Partnership - Recommended Order Granting Certificate to Provide Retail and Wholesale Cellular Radio Telecommunications Services and for Approval of Initial Tariff Containing Rates and Regulations to Serve the RSA Known as North Carolina 13-Greene
P-226 (12-21-90)

COMPLAINTS

Alltel Carolina - Order Closing Docket in Complaint of Millard C. Blackburn
P-118, Sub 60 (7-25-90)

BellSouth Advertising and Publishing Corporation and Southern Bell Telephone - Order Dismissing Complaint and Closing Docket in Complaint of Alamance Plumbing Company, Robert D. Turner, d/b/a
P-89, Sub 37 (10-10-90)

Business Telecom, Inc. - Order Closing Docket in Complaint of Vickey Allen
P-165, Sub 9 (6-11-90)

Centel Cellular of North Carolina - Recommended Order in Favor of Complainant George Kontos
P-150, Sub 9 (5-25-90)

Centel Cellular of North Carolina - Order Approving Billing Credit in Complaint of George V. Kontos
P-150, Sub 9 (11-26-90)

Central Telephone Company - Order Closing Docket in Complaint of Charles Worcester
P-10, Sub 444 (11-29-90)

Contel of North Carolina, Inc. - Order Dismissing Complaint and Closing Docket in Complaint of Patricia A. Michael
P-128, Sub 26 (8-23-90)

ORDERS AND DECISIONS LISTED

GTE South Inc. - Recommended Order Denying Complaint of Steve Winter
P-19, Sub 228 (5-4-90)

GTE South, Inc. - Recommended Order Ruling on Exception in Complaint of Steve Winter
P-19, Sub 228 (6-19-90)

Mebane Home Telephone Company - Order Closing Docket in Complaint of Linda Lambert
P-35, Sub 86 (8-24-90)

Phone America of the Carolinas, Inc. - Order Closing Docket in Complaint of Southern Bell Telephone and Telegraph Company
P-166, Sub 5 (1-16-90)

Southern Bell Telephone and Telegraph Company - Order Closing Docket in Complaint of Chatham County Farm Bureau, The Highway 87 Landscape Preservation Committee, Cleaton Lindsey, Jr., Mrs. Rheumel T. Markham, Allen F. Conrad, and Perry W. Harrison
P-55, Sub 923 (2-6-90)

Southern Bell Telephone and Telegraph Company - Order Keeping Docket Open for Six Months in Complaint of James Vivo
P-55, Sub 928 (4-4-90)

Southern Bell Telephone and Telegraph Company - Order Dismissing Complaint and Closing Docket in Complaint of James Vivo
P-55, Sub 928 (10-10-90)

Southern Bell Telephone and Telegraph Company - Order Dismissing Complaint of Carlton Midyette, Carolantic Realty, Inc.
P-55, Sub 930 (3-15-90)

Southern Bell Telephone and Telegraph Company - Order Closing Docket in Complaint of New-Com
P-55, Sub 933 (6-11-90)

Southern Bell Telephone and Telegraph Company - Order Closing Docket in Complaint of Whitley Antiques, Inc., Ricky Whitley, President, and Chris Whitley, Vice President, d/b/a
P-55, Sub 935 (6-19-90)

Southern Bell Telephone and Telegraph Company - Order Reopening Docket and Serving Additional Complaint in Complaint of Whitley Antiques, Inc.
P-55, Sub 935 (8-9-90)

Southern Bell Telephone and Telegraph Company - Order Keeping Docket Open for Six Months in Complaint of Whitley Antiques, Inc., Ricky Whitley, President and Chris Whitley, Vice President, d/b/a
P-55, Sub 935 (10-10-90)

Southern Bell Telephone and Telegraph Company - Order Dismissing Complaint and Closing Docket in Complaint of Angela S. Kelly
P-55, Sub 939 (9-27-90)

US Sprint - Order Closing Docket Without Prejudice in Complaint of Nine Press, Inc.
P-175, Sub 9 (7-11-90)

EXTENDED AREA SERVICE (EAS)

Carolina Telephone and Telegraph Company - Order Authorizing EAS Poll for Beaufort County Extended Area Service and Aurora to New Bern Extended Area Service
P-7, Sub 741 (8-15-90)

Carolina Telepone and Telegraph Company - Order Authorizing EAS Poll for Trenton and Pollocksville to New Bern Extended Area Service
P-7, Sub 742 (8-15-90)

Carolina Telephone and Telegraph Company - Order Approving Poll for Warrenton to Henderson and Littleton Extended Area Service and Norlina to Henderson Extended Area Service
P-7, Sub 743 (8-21-90)

Central Telephone Company - Order Approving Extended Local Calling Plan and Directing Southern Bell to Seek Waiver; Milton and Yanceyville to Roxboro Extended Area Service
P-10, Sub 439 (8-21-90)

Central Telephone Company - Order Approving No Protest Notice to Hickory Extended Area Service Subscribers
P-10, Sub 441 (1-17-90)

Central Telephone Company - Order Approving Implementation of Extended Area Service from Catawba to Hickory
P-10, Sub 441 (3-28-90)

Concord Telephone Company - Order Approving Plan as Experiment to Offer a County Seat Calling Plan
P-16, Sub 165 (12-5-90)

Continental Telephone Company of North Carolina - Order Approving Implementation of Extended Area Service from Cashiers to Sylva and Cullowhee and Extended Area Service from Highlands to Franklin (Commissioners Hughes and Cobb dissent from that portion of this Order which approves Jackson County EAS. Commissioner Tate abstains from voting on that portion of this Order which approves Jackson County EAS.)
P-128, Sub 23 (3-22-90)

Southern Bell Telephone and Telegraph Company - Order Approving Tariff Filings to Implement a Pender County Calling Plan as Experimental
P-55, Sub 936 (7-19-90)

MERGERS

GTE Corporation and Contel Corporation - Order Granting Authority to Merge
P-19, Sub 234 (11-7-90)

NAME CHANGE

CTS Communications, Inc. - Order Granting Name Change from Milton T. Gibson, Cocots Certificate No. SC-573
SC-573 (7-10-90)

Scott Communications, Joe D. Hutchinson d/b/a - Order Granting Name and Address Change from Joe D. Hutchinson, Cocots Certificate No. SC-510
SC-578 (8-2-90)

The Phone Network, Michael Karaman, d/b/a - Order Granting Name Change from Michael Karaman
SC-174, Sub 1 (9-6-90)

SALES AND TRANSFERS

Business Telecom, Inc. - Order Allowing Transfer of Customer Base and Cancelling Certificate of Public Convenience and Necessity from Econowats, Inc.
P-154, Sub 6; P-165, Sub 11 (4-4-90)

Cellular Services of Hickory, Hickory Metronet, Inc., d/b/a - Order Approving Joint Application for Approval to Transfer Customer Base to Centel Cellular Company of Hickory Limited Partnership
P-198, Sub 2; P-190 (8-1-90)

Coastal Payphone Systems, Inc. - Order Transferring Cocots Certificate No. SC-387 from United Payphone Systems, Inc.
SC-546 (3-27-90)

E-Z Page, Incorporated - Order Granting Transfer of Operating Rights of E-Z Page, Incorporated to Total Communications Limited Partnership
P-219 (3-13-90)

Florida Cellcom, Lynda B. Lovett, d/b/a - Order Approving Transfer and Control of the Assets Including the Certificate of Public Convenience and Necessity to Cellcom of Hickory, Inc., to Provide Wholesale and Retail Cellular Telephone Services and for Approval of Initial Rates, Charges, and Regulations to Serve the Hickory, North Carolina MSA
P-228 (11-7-90)

SouthernNet, Inc.; SouthernNet Systems, Inc.; MCI Telecommunications Corporation - Order Approving Transfer of Control Through Merger of MCI Capital, Inc., into Telecom*USA, Inc.; Transfer of Control Through Merger of MCI Capital, Inc., into Telecom*USA; and Common Control of SouthernNet, Inc., and SouthernNet Systems, Inc., by MCI Telecommunications Corporate
P-156, Sub 19; P-209, Sub 2; P-141, Sub 14 (6-18-90)

## SECURITIES

Burlington Cellular, Inc. - Order Approving Change in Control of BCI from Burlington Cellular License Corporation, to General Cellular Operations Corporation
P-212, Sub 1 (7-11-90)

Coastal Carolina Communications, Inc. - Order Approving Transfer of Assets in Johnston County to Dial Page, LTD.
P-126, Sub 12; P-172, Sub 10 (8-23-90)

Concord Telephone Company - Order Approving the Issuance and Sale of Class B Nonvoting Common Stock for Use in an Executive Stock Option Plan
P-16, Sub 164 (3-12-90)

GTE Mobile Communications, Inc., Carolina Metronet, Inc., Triad Metronet, Inc., and Fayetteville Metronet, Inc. - Order Approving Transfer of Control of Carolina Metronet, Inc., Triad Metronet, Inc., and Fayetteville Metronet, Inc., to GTE Mobile Communications, Inc. P-202, Sub 6; P-152, Sub 16; P-181, Sub 11; P-153, Sub 21 (6-29-90)

GTE Mobile Communications, Inc., W & J Metronet, Inc., and Providence Journal Telecommunications, Inc. - Order Approving Transfer of Control of W & J Metronet Inc., to GTE Mobile Communications, Inc.
P-202, Sub 7; P-196, Sub 7; P-197, Sub 8 (9-4-90)

GTE South Inc. - Order Granting Authority to Issue and Sell First Mortgage Bonds and/or Promissory Notes
P-19, Sub 231 (5-10-90)

Vanguard Cellular Systems, Inc., Vanguard Cellular Systems, of Coastal Carolina, Inc., Wilmington Cellular Communications, Inc., Wilmington Cellular Telephone Corp., and Jacksonville Cellular Telephone Corp. - Order Approving the Acquisition of Wilmington Cellular Telephone Corp. and Jacksonville Cellular Telephone Corp. by Vanguard Cellular Systems of Coastal Carolina, Inc.
P-208, Sub 2; P-196, Sub 4; P-197, Sub 5 (2-8-90)

Vanguard Cellular Systems, Inc., Vanguard Cellular Systems of Coastal Carolina, Inc., W & J Metronet, Inc., and Providence Journal Telecommunications, Inc. - Order Approving Transfer of Control of Wilmington Cellular Telephone Corporation and Jacksonville Cellular Corporation to Eastern North Carolina Joint Venture
P-208, Sub 3; P-196, Sub 5; P-197, Sub 6 (5-14-90)

## SPECIAL CERTIFICATES

| Docket Number | Date | Company |
|---|---|---|
| SC-484 | 3-6-90 | Crosland-Erwin-Associates |
| SC-521 | 1-16-90 | First Continental Communications, Inc. |
| SC-523 | 1-16-90 | D and D Quick Mart |
| SC-524 | 1-25-90 | McCoy Peebles |

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| SC-525 | 1-25-90 | Maxtel |
| SC-526 | 1-30-90 | Flying J Network Systems, Inc. |
| SC-527 | 1-30-90 | West Henderson High School |
| SC-528 | 1-30-90 | South Robeson High School |
| SC-529 | 2-6-90 | Mt. Stream Campground |
| SC-530 | 2-6-90 | Petroleum World, Inc. |
| SC-531 | 2-6-90 | Spartan Petroleum |
| SC-532 | 2-6-90 | Gardner Bonding Co., Inc. |
| SC-533 | 2-20-90 | The Lake Norman Motel |
| SC-534 | 2-20-90 | M & D Quick Stop |
| SC-535 | 2-20-90 | People's Kwik Mart |
| SC-536 | 2-20-90 | Homestead Lodge |
| SC-537 | 3-7-90 | Par-Mail, Inc. |
| SC-538 | 3-7-90 | Dobb's Travel Center |
| SC-539 | 3-7-90 | Jerry W. Lowe |
| SC-540 | 3-7-90 | Wilbert H. Hill Contractors, Inc. |
| SC-541 | 3-14-90 | London Communications, Inc. |
| SC-542 | 3-14-90 | Cedar Forest Christian School |
| SC-543 | 3-14-90 | Dr. Ashok K. Kapur |
| SC-544 | 3-14-90 | Flash Food Store |
| SC-545 | 3-14-90 | Rosa Lee Ledford |
| SC-547 | 3-29-90 | Charge-A-Call, Inc. |
| SC-551 | 5-29-90 | Charlotte Management Associates, Dennis W. Kimbrough and Raymond T. Wood |
| SC-552 | 5-15-90 | Alan Gilber |
| SC-553 | 5-2-90 | John Umstead Hospital |
| SC-554 | 5-2-90 | David C. Van Every Enterprises, Inc. |
| SC-555 | 7-10-90 | Chuck Gilbert |
| SC-556 | 5-29-90 | Nautilus Fitness Center |
| SC-557 | 5-15-90 | Southeastern Center for Contemporary Art |
| SC-558 | 6-20-90 | Douglas J. Fish |
| SC-559 | 7-3-90 | Wilson L. Roughton, d/b/a Northeastern Telecom |
| SC-561 | 6-5-90 | American Inmate Communications, Inc. |
| SC-562 | 6-20-90 | John Michael Willard |
| SC-564 | 6-20-90 | Willie J. Waddell |
| SC-565 | 6-20-90 | Paul Esco Houser |
| SC-566 | 7-5-90 | A. R. Steele |
| SC-567 | 7-3-90 | Walter J. Minton |
| SC-568 | 7-3-90 | Rick's Goodtimes, Inc. |
| SC-569 | 7-3-90 | Personalized Pay Phone, Inc. |
| SC-570 | 7-3-90 | Joseph Patrick Baldwin, d/b/a The Cable Connection |
| SC-571 | 7-5-90 | Adams-Millis |
| SC-572 | 7-10-90 | Jerome Krauss |
| SC-574 | 7-18-90 | The SMART Phone Man, Eric A. Ross, d/b/a Errata Order (7-20-90) |
| SC-576 | 7-18-90 | Telecoin Communications, Ltd. |
| SC-577 | 7-31-90 | White Enterprises, Lawrence E. White, d/b/a |
| SC-579 | 8-14-90 | Godwine-Bailey & Associates, d/b/a The Corner Pocket |
| SC-580 | 9-12-90 | Bible Baptist Christian School |
| SC-581 | 9-13-90 | George A. Sekyi |

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| SC-582 | 9-6-90 | Wallace Telecommunications, Inc. |
| SC-583 | 9-6-90 | King's Mountain High School |
| SC-584 | 9-6-90 | Arthur G. Sims |
| SC-585 | 9-12-90 | Diversified Concrete Products, Inc. |
| SC-586 | 9-14-90 | Wanda W. Elliott |
| SC-587 | 9-11-90 | Thomas Arnold |
| SC-588 | 9-11-90 | Randy J. Thurston |
| SC-589 | 9-20-90 | J C Management Corporation |
| SC-590 | 9-20-90 | Daniel Boone |
| SC-591 | 9-20-90 | Diane C. Beasley |
| SC-592 | 9-20-90 | William Rhodes |
| SC-593 | 9-20-90 | Thomas R. Morgan |
| SC-594 | 10-3-90 | Rick A. Setzer |
| SC-595 | 10-3-90 | Perdue Farms Incorporated |
| SC-596 | 10-3-90 | Michael D. Crutchfield |
| SC-597 | 10-10-90 | Southminster, Inc. |
| SC-598 | 10-22-90 | Daniel Wakefield |
| SC-599 | 10-30-90 | Mayfield & Associates, Inc. |
| SC-601 | 10-30-90 | Hollomans Food Mart |
| SC-602 | 10-30-90 | Guilford College Drug Co., Inc. |
| SC-603 | 11-14-90 | Burns High School |
| SC-604 | 11-14-90 | Fred Adrianse |
| SC-605 | 11-14-90 | Northern Nash Senior High School |
| SC-606 | 11-14-90 | Fike High School |
| SC-608 | 11-20-90 | East Lincoln High School |
| SC-609 | 11-20-90 | Ronnie Pannell |
| SC-610 | 11-28-90 | Robert Cefail & Associates American Inmate Communications, Inc. |
| SC-611 | 12-18-90 | Hon Ming Chan |
| STS-3 | 8-8-90 | Duke University |
| STS-4 | 5-21-90 | Contel Office Communications, Inc. |

SPECIAL CERTIFICATES AMENDED, REVOKED, CANCELLED OR CLOSED

| Docket Number | Date | Company |
|---|---|---|
| SC-3, Sub 3 | 4-12-90 | Coin Telephones, Inc. |
| SC-8, Sub 1 | 1-30-90 | U. S. Telecom |
| SC-19, Sub 2 | 4-16-90 | Carolina Telcom, Inc. |
| SC-28, Sub 1 | 1-23-90 | Zeb V. & Hazel Bailey |
| SC-29, Sub 1 | 5-30-90 | Cedar Square Grocery |
| SC-31, Sub 1 | 1-5-90 | T&T Payphones |
| SC-34, Sub 1 | 1-2-90 | Gary D. Newell |
| SC-43, Sub 1 | 11-26-90 | Presto Food Stores |
| SC-44, Sub 1 | 5-30-90 | Public Telecommunication Systems |
| SC-47, Sub 1 | 1-4-90 | Robert T. Gribble |
| SC-51, Sub 1 | 1-22-90 | J. Kevin Brown |
| SC-55, Sub 1 | 1-4-90 | William H. Booth, Jr. |
| SC-71, Sub 1 | 1-3-90 | Steve Stallings |
| SC-78, Sub 1 | 1-22-90 | Stephen M. Lutz |
| SC-80, Sub 1 | 9-6-90 | Tarheel Telephone Services |
| SC-85, Sub 1 | 1-17-90 | Edward Stephenson |

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| SC-87, Sub 1 | 5-30-90 | Alain David Flexer |
| SC-90, Sub 1 | 1-2-90 | James Neal Musser |
| SC-92, Sub 1 | 5-30-90 | Peach Tele-Com, Inc. |
| SC-93, Sub 1 | 1-17-90 | Thomas M. Pettit |
| SC-94, Sub 1 | 1-22-90 | John J. Peck |
| SC-97, Sub 1 | 4-9-90 | Dewey Alan Plyler |
| SC-101, Sub 1 | 1-4-90 | Ravji Patel |
| SC-107, Sub 1 | 4-9-90 | William B. Allnutt, Jr. |
| SC-110, Sub 1 | 1-25-90 | Reklau Enterprises |
| SC-112, Sub 1 | 1-22-90 | STP Enterprises, Randy Broadway, d/b/a |
| SC-114, Sub 1 | 1-22-90 | William Alfred Dula, Jr. |
| SC-119, Sub 1 | 2-21-90 | Pizza Hut of South Wilmington Street |
| SC-120, Sub 1 | 1-5-90 | Joyce Haynes |
| SC-121, Sub 1 | 2-2-90 | Oakwood Management Company |
| SC-123, Sub 1 | 1-17-90 | Jackson Park Associates |
| SC-129, Sub 1 | 1-5-90 | Aubrey H. Junker, Jr. |
| SC-132, Sub 1 | 1-23-90 | Purcell Enterprises (Donald R. Purcell) |
| SC-140, Sub 1 | 5-30-90 | Joseph A. Mueller |
| SC-155, Sub 1 | 1-3-90 | Fevzi Akbay |
| SC-158, Sub 1 | 8-9-90 | Vanguard Supreme |
| SC-159, Sub 1 | 1-3-90 | Hauser Vending Co., Inc. |
| SC-169, Sub 1 | 3-29-90 | Payphone of Davidson County |
| SC-173, Sub 1 | 11-14-90 | Hardee's Food Systems, Inc. |
| SC-181, Sub 1 | 3-6-90 | Seneca T. Ferry |
| SC-182, Sub 1 | 1-4-90 | Casey Jones |
| SC-184, Sub 1 | 3-6-90 | Ossipee Ski Lodge |
| SC-188, Sub 1 | 1-3-90 | Parkade Corporation |
| SC-190, Sub 1 | 1-25-90 | Larry T. Ball/Salt Works |
| SC-192, Sub 1 | 2-15-90 | Wooten Oil Company |
| SC-196, Sub 1 | 10-19-90 | William E. Baldwin |
| SC-201, Sub 1 | 2-2-90 | Jered Vending |
| SC-202, Sub 1 | 1-4-90 | Gary F. Huelter |
| SC-207, Sub 1 | 5-4-90 | Gurney Baines |
| SC-209, Sub 1 | 5-30-90 | K. L. Peterson Marketing, Inc. |
| SC-213, Sub 1 | 1-2-90 | ROHI Marketing, Inc. |
| SC-218, Sub 1 | 11-21-90 | Chowan College |
| SC-221, Sub 1 | 2-15-90 | Papagayo Restaurant |
| SC-224, Sub 1 | 1-23-90 | Advanced Payphone Systems |
| SC-228, Sub 1 | 3-29-90 | Rawls & Winstead, Inc. |
| SC-229, Sub 1 | 3-22-90 | Rigby's Incorporated |
| SC-235, Sub 1 | 1-3-90 | Chris J. Peterson |
| SC-246, Sub 1 | 1-22-90 | Planters Oil Company |
| SC-249, Sub 1 | 6-5-90 | Ronco, Inc. |
| SC-250, Sub 1 | 5-29-90 | Edwin P. McKnight |
| SC-253, Sub 1 | 1-17-90 | Mr. C's Car Wash |
| SC-256, Sub 1 | 4-4-90 | Marcus A. Crowder |
| SC-266, Sub 1 | 1-17-90 | Pope Oil Company |
| SC-269, Sub 1 | 1-25-90 | Co-Op Tele Service |
| SC-275, Sub 1 | 1-30-90 | Call Communications, Inc. |
| SC-280, Sub 1 | 11-14-90 | Earl Kivett |
| SC-282, Sub 1 | 4-18-90 | E. J. Pope and Son, Inc. |
| SC-286, Sub 2 | 4-12-90 | Peoples Telephone Company, Inc. |

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| SC-289, Sub 1 | 4-18-90 | Network Communications |
| SC-291, Sub 1 | 1-22-90 | Edward W. Wright |
| SC-293, Sub 1 | 1-5-90 | Carl S. Stevens |
| SC-313, Sub 2 | 3-30-90 | National Telcom, Inc. |
| SC-332, Sub 1 | 8-28-90 | Computerized Payphone Systems |
| SC-333, Sub 1 | 1-4-90 | Douglas Mark Vogel |
| SC-340, Sub 1 | 1-23-90 | William B. Minkema |
| SC-341, Sub 1 | 1-10-90 | Freedom Telecom, Inc. |
| SC-343, Sub 1 | 5-15-90 | Ronald P. Warren |
| SC-344, Sub 1 | 8-2-90 | Fresh Way Food Stores |
| SC-345, Sub 1 | 11-2-90 | Triangle Stop, Raeben Oil Company, d/b/a |
| SC-351, Sub 1 | 5-30-90 | Kimberly Ann Savchuk Brown |
| SC-359, Sub 1 | 1-25-90 | Sealed Air Corporation |
| SC-363, Sub 1 | 1-2-90 | Taylor's Services and Communications |
| SC-371, Sub 1 | 1-4-90 | Ice Service, Inc. |
| SC-373, Sub 1 | 2-2-90 | Sugar Mountain Resort, Inc. |
| SC-375, Sub 1 | 1-22-90 | Leola and Oliver Alexander |
| SC-376, Sub 1 | 1-25-90 | Flash Food Store/Gary D. Williams |
| SC-377, Sub 1 | 3-14-90 | Ernest Telecom, Inc. |
| SC-381, Sub 1 | 2-2-90 | Rohi Telecommunication |
| SC-388, Sub 1 | 3-30-90 | Danny Alvin Poindexter |
| SC-393, Sub 1 | 11-14-90 | K & B Servicenter, Inc.; J. W. Gambel, Jr. |
| SC-404, Sub 1 | 3-6-90 | Tele-America Communications Partnership |
| SC-405, Sub 1 | 1-2-90 | Investors Network and Security Services, Inc. |
| SC-409, Sub 1 | 1-2-90 | Cross Roads Convenient Stores |
| SC-410, Sub 1 | 3-27-90 | Claud E. Mabe, d/b/a C.O.P. |
| SC-431, Sub 1 | 6-20-90 | U.S. Communications of Westchester, Inc. |
| SC-436, Sub 1 | 8-2-90 | Asheville Cellular Phone Center |
| SC-443, Sub 1 | 1-22-90 | Louise's (Store) Kwick Stop |
| SC-449, Sub 1 | 1-4-90 | Stallings Supermarket & Video/Moris Williams |
| SC-452, Sub 1 | 1-22-90 | James I. Burgess |
| SC-461, Sub 1 | 1-2-90 | Get-N-Go |
| SC-462, Sub 1 | 8-2-90 | Camp Ton-A-Wandah |
| SC-463, Sub 1 | 11-2-90 | Florida Apartments Motel |
| SC-470, Sub 1 | 5-25-90 | Southcomm, Tim Barnett, d/b/a |
| SC-471, Sub 1 | 1-17-90 | Shetelcom |
| SC-482, Sub 1 | 8-2-90 | Joseph M. Gallenberger |
| SC-484, Sub 1 | 1-2-90 | Crosland-Erwin-Associates |
| SC-490, Sub 1 | 1-23-90 | Kenny L. Ramsey |
| SC-498, Sub 1 | 11-14-90 | John Schneider |
| SC-503, Sub 1 | 4-26-90 | Telecom South |
| SC-509, Sub 1 | 1-30-90 | William V. Mottershead |
| SC-510, Sub 1 | 5-30-90 | Kim Trager |
| SC-515, Sub 1 | 3-30-90 | Carolina Payphone Systems |
| SC-516, Sub 1 | 5-21-90 | Milton T. Gibson |
| SC-518, Sub 1 | 1-23-90 | Paper Doll Lounge |
| SC-520, Sub 1 | 1-22-90 | Kim A. Fadel |
| SC-525, Sub 1 | 3-30-90 | MaxTel |
| SC-527, Sub 1 | 6-28-90 | West Henderson High School |
| SC-529, Sub 1 | 3-15-90 | Mt. Stream Campground |

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| SC-545, Sub 1 | 11-21-90 | Rosa Lee Ledford |
| SC-546, Sub 1 | 5-9-90 | Coastal Payphone Systems, Inc. |
| SC-547, Sub 1 | 6-5-90 | Charge-A-Call, Inc. |
| SC-554, Sub 1 | 8-2-90 | David C. Van Every Enterprises, Inc. |
| SC-559, Sub 1 | 11-21-90 | Northeastern Telecom, Wilson L. Roughton, d/b/a |

SPECIAL CERTIFICATES REINSTATED

| Docket Number | Date | Company |
|---|---|---|
| SC-223, Sub 1 | 6-5-90 | Circus Foodstore, Ronald R. Stephens, d/b/a |
| SC-299, Sub 1 | 4-6-90 | U. S. Public Communications, Inc. |
| SC-311, Sub 2 | 1-10-90 | Great Smoky Mountain Systems, Inc. |
| SC-374, Sub 2 | 1-8-90 | Glenn D. Hart |
| SC-484, Sub 2 | 3-6-90 | Crosland-Erwin-Associates |
| SC-497, Sub 1 | 6-12-90 | I.C.C.A. |

TARIFFS

AT&T Communications of the Southern States, Inc. - Order Allowing Tariff to go into Effect
P-140, Sub 26 (1-12-90)

AT&T Communications of the Southern States, Inc. - Order Suspending Tariff to Offer MultiQuest Service
P-140, Sub 28 (9-20-90)

Alltel Cellular Associates - Order Allowing Tariffs to go into Effect
P-149, Sub 9 (12-18-90)

Centel Cellular Company of North Carolina, Centel Cellular of Virginia and Raleigh/Durham MSA Limited Partnership - Order Disapproving Tariff to Implement Charges for Busy and No-Answer Roamer Calls
P-150, Sub 14; P-206, Sub 3; P-148, Sub 9 (3-21-90)

Centel Cellular Company of North Carolina and Centel Cellular of Virginia - Order Allowing Tariff to go into Effect to Increase Roamer Rates
P-150, Sub 13; P-206, Sub 2 (3-21-90)

Contel of North Carolina, Inc. - Order Allowing Tariff Subject to Prior Agreement Requirement Concerning the Use of Automated Dialing and Recorded Message Playing Equipment (Commissioner Tate dissents.)
P-128, Sub 27 (9-12-90)

GTE South - Order Allowing Tariffs to Become Effective and Requiring Changes in Billing Procedures
P-19, Sub 232 (6-8-90)

Southern Bell Telephone and Telegraph Company - Order Approving Tariff to Audit the Minutes of Use Reported by Entities Completing Unauthorized IntraLATA Calls
P-55, Sub 932 (4-18-90)

Southern Bell Telephone and Telegraph Company - Order Allowing Tariff to go into Effect
P-55, Sub 937 (7-3-90)

Southern Bell Telephone and Telegraph Company - Order Approving Tariff with Modification
P-55, Sub 940 (8-23-90)

Southern Bell Telephone and Telegraph Company - Order Suspending Tariff to Offer an Inward Toll Optional Calling Plan for IntraLATA Only 800 Service
P-55, Sub 943 (12-27-90)

MISCELLANEOUS

ALLTEL Carolina Inc., Sandhill Telephone Company, and Heins Telephone Company - Order Allowing Amortization of Gains/Losses Related to Customer Premises Equipment
P-118, Sub 61; P-53, Sub 58; P-26, Sub 103 (7-18-90)

Alltel Cellular Associates of the Carolinas; Metro Mobile CTS of Charlotte, Inc. - Order Approving Consent Order
P-149, Sub 8; P-155, Sub 10 (9-11-90)

Barnardsville Telephone Company - Order Approving Service Contract and Addendum
P-75, Sub 39 (8-28-90)

Blue Ridge Cellular Telephone Company - Order Granting Interim Construction Authority to Provide Retail and Wholesale Cellular Services and for Approval of Initial Tariff Containing Rates, Charges, and Regulations
P-236 (11-21-90)

Carolina Telephone and Telegraph Company - Order Acknowledging Amendment to Contract and Continuing Prior Order for Transfer of Directory Assets
P-7, Sub 713 (2-1-90)

Carolina Telephone and Telegraph Company - Order Allowing Regrouping and Touch-Tone Decrease
P-7, Sub 739 (5-16-90)

Carolina Telephone and Telegraph Company - Order Regarding Treatment of Interstate Billing and Collection Activity
P-7, Sub 740 (11-10-90)

Centel Cellular Company of North Carolina, Telespectrum, Inc., and Raleigh Durham MSA Limited Partnership - Order to Cease and Desist and to Show Cause
P-148, Sub 11; P-150, Sub 17; P-157, Sub 26 (6-27-90)

Centel Cellular Company of North Carolina, Telespectrum, Inc., and Raleigh/Durham MSA Limited Partnership - Order Approving Customer Notice
P-148, Sub 11; P-150, Sub 17; P-157, Sub 26 (7-27-90)

Central Telephone Company - Interim Protective Order Requiring Production of Information and Permitting Operation
P-10, Sub 434 (1-9-90)

Ernest; National Calling Card - Order to Cease and Desist
P-217; P-218 (3-6-90)

Florida Cellcom, Lynda B. Lovett, d/b/a - Order Approving Request to Pledge Certain Assets
P-205, Sub 3 (6-13-90)

GTE South - Interim Protective Order Requiring Production of Information and Permitting Operation
P-19, Sub 207 (3-21-90)

GTE South - Order Approving Application Seeking Consent to and Approval of a Contract with an Affiliated Entity ("CODETEL")
P-19, Sub 233 (10-3-90)

ITT Communications Service, Inc.; Southern Bell Telephone and Telegraph Company - Order Closing Dockets for Failure to Provide Intrastate Operator Services in Accordance with Provisions of Tariff; Presubscription of Southern Bell Telephone and Telegraph Company's Public and Semi-Public Pay Telephones
P-207, Sub 1; P-55, Sub 917 (2-13-90)

Lovett, Lynda B., d/b/a Florida Cellcom, t/a Cellcom of Hickory - Order to Cease and Desist
P-205, Sub 1 (3-21-90)

Metro Mobile CTS of Charlotte, Inc. - Order to Cease and Desist
P-155, Sub 8 (1-31-90)

Metro Mobile CTS of Charlotte, Inc. - Order Approving Agent and Customer Notice
P-155, Sub 8 (3-14-90)

NCN Communications, Inc. - Order to Cease and Desist
P-214 (7-9-90)

Saluda Mountain Telephone Company - Order Approving Service Contract and Addendum
P-76, Sub 28 (8-28-90)

Saluda Mountain Cellular Telephone Company - Order Granting Interim Construction Authority for a Certificate of Public Convenience and Necessity and for Approval of Initial Rates, Charges, and Regulations
P-234 (11-21-90)

Service Telephone Company - Order Approving Service Contract and Addendum
P-60, Sub 51 (8-29-90)

Southern Bell Telephone and Telegraph Company - Order Regarding Employee Letters Written in Support of Caller ID Service to Establish Rates and Regulations for Caller ID Service
P-55, Sub 925 (4-4-90)

Triad Metronet, Fayetteville Cellular Telephone Company, and Carolina Metronet - Order to Cease and Desist
P-152, Sub 13; P-153, Sub 17; P-181, Sub 8 (2-19-90)

Triad Metronet, Inc., Carolina Metronet, Inc., Fayetteville Cellular Telephone Company, Jacksonville Cellular Communications, Inc., and Wilmington Cellular Communications, Inc. - Order Granting Motion to Amend Certificates of Public Convenience and Necessity to Resell Long Distance Telephone Services
P-152, Sub 17; P-153, Sub 22; P-181, Sub 12; P-197, Sub 9; P-196, Sub 8 (11-21-90)

## WATER AND SEWER

### APPLICATIONS WITHDRAWN

Burnett Construction Company, Inc. - Order Allowing Withdrawal of Applications and Closing Dockets
W-892, Sub 3; W-892, Sub 4 (2-23-90)

Burnett Utilities, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-892, Sub 6 (6-19-90)

Campbell Water Service, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-972 (6-13-90)

Channel Side Corporation - Order Allowing Withdrawal of Application and Closing Docket
W-939, Sub 1 (2-26-90)

Clearwater Utilities, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-846, Sub 9 (4-5-90)

Goss Utility Company - Order Allowing Withdrawal of Application and Closing Docket
W-457, Sub 8 (2-23-90)

Long Bay Utilities, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-961 (4-4-90)

Mid South Water Systems, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-720, Sub 56 (6-13-90)

Mid South Water Systems, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-720, Sub 66 (6-13-90)

Mid South Water Systems, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-720, Sub 80 (4-12-90)

Ogden Village Utilities, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-836, Sub 1 (4-5-90)

Primary Utilities, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-948, Sub 1 (4-17-90)

Scientific Water and Sewage, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-176, Sub 21 (3-20-90)

Sehorn Water Supply, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-773, Sub 4 (5-10-90)

Vance Rural Water System, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-890, Sub 1 (3-27-90)

Wastewater Services, Inc. - Order Allowing Withdrawal of Application and Affirming Recommended Order of December 14, 1989
W-869, Sub 2 (1-5-90)

AUTHORIZED ABANDONMENT OR SUSPENSION

Cowan Valley Water System - Order Granting Authority to Temporarily Abandon Well
W-829, Sub 3 (8-21-90)

CANCELLATIONS

Baker Water Service, Inc. - Order Cancelling Franchise to Provide Water Utility Service in Country Club Estates Subdivision, Richmond County, and Closing Docket
W-756, Sub 1 (1-17-90)

Campen Carolina Corporation - Order Cancelling Franchise to Provide Water and Sewer Utility Service in Clearview Valley Subdivision, Henderson County
W-911, Sub 1 (8-31-90)

FDB, Inc. - Order Cancelling Franchise to Provide Water Utility Service in Tuxedo Subdivision, Henderson County
W-544, Sub 2 (3-23-90)

Home Realty Company and Insurance Agency, Inc. - Order Cancelling Franchise to Provide Water Utility Service in Hidden Valley Subdivision, Cabarrus County
W-521, Sub 2 (4-4-90)

Huffman, George W. - Order Cancelling Franchise to Provide Water Utility Service in Washington Forest Subdivision, Catawba County
W-424, Sub 2 (3-15-90)

Looper, C. R. - Order Cancelling Franchise to Provide Water Utility Service in Granite Falls Subdivision, Caldwell County
W-501, Sub 5 (6-27-90)

McRae Construction Company, Inc. - Order Cancelling Franchise to Provide Water Utility Service in Delphine Gardens Subdivision, Anson County, and Closing Docket
W-466, Sub 2 (4-17-90)

Public Utility Franchise of Avalon Water Utility Service - Order Cancelling Franchise for Water Utility Service in Colonial Estates Subdivision, Randolph County, and Closing Docket
W-382, Sub 8 (4-11-90)

Public Utility Franchise of Dees and Tyndall, Inc. - Order Cancelling Franchise to Provide Water Utility Service in Maplewood Subdivision, Wayne County, and Closing Docket
W-923, Sub 1 (4-3-90)

Wilson Water System - Order Cancelling Franchise and Transferring the Water Utility System in Willow Springs Subdivision, Wilson County, to the City of Wilson (Owner Exempt from Regulation) and Closing Docket
W-698, Sub 1 (9-19-90)

CERTIFICATES

BRTR, Inc. - Order Granting Franchise to Furnish Water Utility Service in Cinnamon Woods Subdivision, Henderson County, and Approving Rates
W-762, Sub 5 (12-26-90)

Beau Rivage Plantation, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Furnish Water and Sewer Utility Service in Beau Rivage Plantation, New Hanover County, and Approving Rates
W-971 (9-21-90)

Burnett Construction Company, Inc. - Order Granting Franchise to Furnish Water Utility Service in Wiltshire Manor Subdivision, Mecklenburg County, and Approving Rates
W-892, Sub 5 (4-20-90)

Carolina Water Service of North Carolina, Inc. - Order Granting Franchise to Furnish Water Utility Service in Cambridge Subdivision, Cabarrus County, and Approving Rates
W-354, Sub 78 (4-20-90)

Corolla North Utilities, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in the Villages at Ocean Hill Subdivision, Currituck County, and Setting Initial Rates
W-953 (7-16-90)

Deerfield Shores Utility Company, Inc. - Recommended Order Granting Franchise to Furnish Sewer Utility Service in Deerfield Shores Subdivision, Carteret County, and Approving Rates
W-925 (11-9-90) Errata Order (11-13-90)

Governor's Club Development Corporation - Recommended Order Granting Franchise to Furnish Sewer Utility Service in Governor's Club Subdivision, Chatham County, and Approving Rates
W-947 (4-24-90)

Harrco Utility Corporation - Order Granting Franchise to Furnish Sewer Utility Service in River Oaks Subdivision, Wake County, and Approving Rates
W-796, Sub 2 (4-3-90)

Harrco Utility Corporation - Order Granting Franchise to Furnish Sewer Utility Service in Park Ridge Subdivision, Wake County, and Approving Rates
W-796, Sub 3 (4-3-90)

Harrco Utility Corporation - Order Granting Franchise to Furnish Sewer Utility Service in Woods of Tiffany Subdivision, Wake County, and Approving Rates
W-796, Sub 4 (4-3-90)

Harrco Utility Corporation - Order Granting Franchise to Furnish Sewer Utility Service in Hardscrabble Subdivision, Durham County, and Approving Rates
W-796, Sub 5 (4-3-90)

Harrco Utility Corporation - Order Granting Franchise to Furnish Water Utility Service in Hardscrabble Subdivision, Durham County, and Approving Rates
W-796, Sub 6 (9-27-90)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Brookstone Subdivision, Wake County, and Approving Rates
W-274, Sub 56 (1-30-90)

Heater Utilities, Inc. - Recommended Order Granting Franchise to Furnish Water Utility Service in Stoneridge-Sedgefield Subdivision, Orange County, and Approving Rates
W-274, Sub 57 (5-11-90)

Heater Utilities, Inc. - Recommended Order Granting Franchise to Furnish Water and Sewer Utility Service in Hawthorne Subdivision, Wake County, and Approving Rates
W-274, Sub 60 (12-21-90)

Hydraulics, Ltd. - Order Granting Franchise to Furnish Water Utility Service in Smoke Ridge Estates Subdivision, Guilford County, and Approving Rates
W-218, Sub 63 (5-17-90)

Hydraulics, Ltd. - Order Granting Franchise to Furnish Water Utility Service in Apple Hill Subdivision, Cleveland County, and Approving Rates
W-218, Sub 67 (6-19-90)

Hydraulics, Ltd. - Order Granting Franchise to Furnish Water Utility Service in Laurel Acres Subdivision, Guilford County and Sturbridge Village Subdivision, Orange County, and Approving Rates
W-218, Sub 68 (8-7-90)

Hydraulics, Ltd. - Order Granting Franchise to Furnish Water Utility Service in Dorsett Downs Subdivision, Guilford County, and Approving Rates
W-218, Sub 69 (6-26-90)

Inlet Bay Utilities, Inc. - Order Granting Franchise to Furnish Water and Sewer Utility Service in Inlet Water Subdivision, New Hanover County, and Approving Rates
W-828, Sub 5 (11-2-90)

Mid South Water Systems, Inc. - Order Granting Franchise to Furnish Water and Sewer Utility Service in Landen Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 97 (1-31-90)

Mid South Water Systems, Inc. - Order Granting Franchise to Furnish Water Utility Service in East Shores Subdivision, Burke County, and Approving Rates
W-720, Sub 105 (12-11-90)

North State Utilities, Inc. - Order Granting Franchise to Furnish Sewer Utility Service in Saddleridge Subdivision, Wake County, and Approving Rates
W-848, Sub 10 (11-2-90)

Piedmont Construction and Water Company - Order Granting Franchise to Furnish Water Utility Service in Hidden Creek Subdivision, Catawba County, and Approving Rates
W-262, Sub 36 (7-19-90)

Rayco Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Westwood Subdivision, Rowan County, and Water and Sewer Utility Service in Mikkola Downs Subdivision, Forsyth County, and Approving Rates
W-899, Sub 7 (7-17-90)

Wastewater Services, Inc. - Order Granting Franchise to Furnish Sewer Utility Service in 105 Place South Service Area, Watauga County, and Approving Rates
W-869, Sub 3 (11-21-90)

COMPLAINTS

Associated Utilities, Inc. - Order Closing Docket in Complaint of Robert R. Sasser
W-303, Sub 8 (12-6-90)

C&L Utilities, Inc. - Order Closing Docket in Complaint of Milton J. Arter
W-535, Sub 8 (1-9-90)

Carolina Water Service - Order Dismissing Complaint of Howard F. Herman, Jr., and Closing Docket
W-354, Sub 80 (5-17-90)

Dillard Grading Company - Recommended Order in Complaint of Jack Debnam, President, Forest Hills Homeowners Association of Cullowhee, Inc.
W-340, Sub 9 (5-3-90) Final Order Affirming Recommended Order and Denying Exceptions W-340, Sub 9 (7-12-90)

Fleetwood Falls, Inc. - Order Keeping Docket Open for Six Months in Complaint of Bob McElroy
W-380, Sub 4 (2-22-90)

Fleetwood Falls, Inc. - Order Closing Docket in Complaint of Bob McElroy
W-380, Sub 4 (8-23-90)

Heater Utilities, Inc. - Order Keeping Docket Open for Six Months in Complaint of Eric S. and Debra K. Dahlin, Representatives of the Residents of Oak Hollow Estates
W-274, Sub 53 (1-9-90)

Heater Utilities, Inc. - Order Closing Docket in Complaint of Eric S. and Debra K. Dahlin, Representatives of the Residents of Oak Hollow Estates
W-274, Sub 53 (6-11-90)

Hensley Enterprises - Order Closing Docket in Complaint of Nicky D. Darby
W-89, Sub 29 (1-9-90)

Huffman Water Systems, Inc. - Recommended Order Requiring Improvements Within 30 Days in Complaint of Ned J. Bowman and Other Residents of the Crestmont Development
W-95, Sub 12 (5-25-90)

Hydraulics, Ltd - Order Closing Docket in Complaint of William B. Deal and Other Residents of Lancer Acres
W-218, Sub 57 (2-23-90)

Montclair Water Company - Order Closing Docket in Complaint of Edmund Gaethke
W-173, Sub 20 (11-27-90)

Nero Utilities, Inc. - Order Closing Docket in Complaint of Chris Williams
W-881, Sub 1 (11-21-90)

Outer Banks Beach Club, Inc. - Recommended Order Granting Permanent Injunction in Complaint of Dare Resorts, Incorporated
W-887, Sub 1 (6-22-90)

R.O.E. Water Company - Recommended Order on the Complaint of Theodore F. Lapier
W-820, Sub 6 (12-6-90)

United Systems, Inc. - Final Order Concluding No Good Cause to Investigate Complaint and Dismissing Complaint without Prejudice and Closing Docket in Complaint of Mr. and Mrs. John Porterfield
W-886, Sub 2 (9-27-90)

ORDERS AND DECISIONS LISTED

DECLARING UTILITY STATUS

| Company | Docket Number | Date |
|---|---|---|
| Mid South Water Systems, Inc. | W-720, Sub 100 | 5-10-90 |
| Mid South Water Systems, Inc. | W-720, Sub 108 | 9-12-90 |
| Ocean Side Corporation | W-636, Sub 2 | 12-18-90 |

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Bethlehem Utilities, Inc. - Order Authorizing Discontinuation of Service for the Water Utility System Serving Hillsdale Subdivision, Alexander County
W-259, Sub 7 (12-5-90)

NAME CHANGE

Burnett Construction Company, Inc. - Order Approving Name Change to Burnett Utilities, Inc., and Increase in Rates for Providing Water and Sewer Utility Service in All Its Service Areas in North Carolina
W-892, Sub 6 (4-4-90)

Mountain Ridge Estates Water System - Order Approving Name Change from Associated Realty & Investment
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Alpha Utilities, Inc. - Recommended Order Granting Rate Increase for Water Utility Service in All Its Service Areas in Wake County, and Requiring Reports
W-862, Sub 7 (9-12-90)

BRTR, Inc. - Recommended Order Granting Rate Increase for Water Utility Service in Fox Ridge and Woods of Fox Ridge Subdivision, Henderson County
W-762, Sub 3 (8-31-90)

Blue Creek Utilities - Recommended Order Granting Partial Rate Increase for Providing Sewer Utility Service in All Its Service Areas, Onslow County
W-857, Sub 2 (11-9-90)

Bradshaw Water Company, Thomas B. Allen, d/b/a - Recommended Order Granting Rate Increase for Water Utility Service in All Its Service Areas, Gaston and Mecklenburg Counties
W-103, Sub 10 (11-9-90) Errata Order (11-13-90)

Brightwater Water Department - Order Granting Rate Increase for Water Utility Service in Brightwater Subdivision, Henderson County, and Requiring Public Notice
W-151, Sub 6 (12-20-90)

Brown, E. S. - Order Suspending Proposed Rate Increase in the Butler Mountain Estates Water System, Buncombe County, Requiring Completed Application, and Reaffirming Refund Schedule
W-732, Sub 1 (2-22-90)

Browning Enterprises, Inc. - Order Granting Rate Increase for Water Utility Service in Hawthorne Hills Subdivision, Henderson County, and Requiring Public Notice
W-569, Sub 3 (2-1-90)

Compass Utilities - Order Approving a $15.00 Monthly Assessment on an Interim Basis for Riverbend Subdivision, Crosby Water and Sewer, Emergency Operator
W-885, Sub 2 (3-2-90)

Cowan Valley Water System - Order Approving Additional $250 Assessment and Notice to Customers of Assessment
W-829, Sub 3 (10-10-90)

Davis, Roy A. and Virginia B. - Recommended Order Granting Increase in Rates Effective on and after January 1, 1991 for Water Utility Service in KenRoy Estates Subdivision, Wilson County
W-631, Sub 2 (11-28-90)

Eagle Heights Utility Company - Order Approving New Rates for Water Utility Service in Eagle Heights Subdivision, Buncombe County, to Offset an Increase in the Cost of Water Purchased from the City of Asheville, and Requiring Public Notice
W-826, Sub 2 (1-23-90)

Eagle Heights Utility Company - Recommended Order Approving Assessment
W-826, Sub 3 (6-26-90)

Forest Hills Water System, Dillard Grading Company, d/b/a - Recommended Order Granting Commericial Rate Schedule for University Inn
W-340, Sub 11 (8-17-90)

Forest Hills Water System, Dillard Grading Company, d/b/a - Order Granting Exception and Modifying Effective Date of Recommended Order for Commercial Rate Schedule for University Inn
W-340, Sub 11 (9-10-90)

Hart Water Systems, Inc. - Recommended Order Granting Partial Rate Increase for Water Utility Service in All of Its Subdivisions, Catawba County
W-739, Sub 1 (3-9-90)

Havelock Development Corporation - Order Granting Rate Adjustment to Pass Through Increased Purchased Water Costs for Water Utility Service in Westbrooke Subdivision, Craven County, and Requiring Public Notice
W-223, Sub 8 (1-24-90)

Holly Hills Water, Donald Miller d/b/a - Recommended Order Approving Rate Increase for Water Utility Service in Holly Hills Estates Subdivision, Jackson County
W-855, Sub 1 (12-28-90)

Hudson Cole Development Corporation - Order Approving Interim Rates for Water and Sewer Utility Service in All Its Service Areas in North Carolina and Denying Motion for Audit
W-875, Sub 2 (8-22-90)

Hudson Cole Development Corporation - Recommended Order Granting Partial Rate Increase for Water and Sewer Utility Service in All Its Service Areas in North Carolina
W-875, Sub 2 (11-6-90)

Hydraulics, Ltd. - Order on Interim Rates for Providing Water Utility Service in All Its Service Areas in North Carolina
W-218, Sub 70 (7-12-90)

Juniper Water Company, Thomas B. Allen, d/b/a - Recommended Order Granting Rate Increase for Water Utility Service in Milhaven Park Subdivision, Mecklenburg County
W-868, Sub 3 (11-9-90) Errata Order (11-13-90)

Lake Summit Water System - Recommended Order Approving Rate Increase for Water Utility Service in Lake Summit Subdivision, Henderson County, Upon Stipulation
W-58, Sub 6 (2-28-90) Order Adopting Recommended Order as Final Order (2-28-90)

Laurel Hill Water Company, Z. V. Pate, Inc., d/b/a - Order Granting Rate Increase for Providing Water Utility Service in Laurel Hill Subdivision, Scotland County
W-67, Sub 7 (1-3-90)

Looper, C. R. - Order Granting Rate Increase for Water Utility Service in Granite Falls Subdivision, Caldwell County, and Requiring Public Notice
W-501, Sub 4 (1-9-90)

Piedmont Construction and Water Company - Order Approving Tariff Revision to Increase Rates
W-262, Sub 37 (8-28-90)

Ross, Sanford E. - Order Approving Rate Increase for Providing Water Utility Service in Hidden Valley Estates Subdivision, Haywood County, and Requiring Improvements and Reports
W-618, Sub 2 (10-10-90) Errata Order (10-18-90)

Scotsdale Water and Sewer, Inc. - Order Approving Interim Rates for Water Utility Service in All Its Service Areas in North Carolina, Scheduling Hearing, and Requiring Public Notice
W-883, Sub 12 (8-1-90)

Scotsdale Water and Sewer, Inc. - Recommended Order Granting Partial Rate Increase for Providing Water Utility Service in All Its Service Areas in North Carolina
W-883, Sub 12 (12-21-90)

Sehorn Water Supply, Inc. - Order Granting Rate Increase for Providing Water Utility Service in Old Farm Subdivision, Cabarrus County, Cancelling Hearing, Requiring Improvements, and Requiring Public Notice
W-773, Sub 5 (12-28-90)

Sherwood Forest Utility, Inc. - Recommended Order Granting Partial Rate Increase for Sewer Utility Service in Sheffield Place Subdivision, Transylvania County
W-706, Sub 4 (11-27-90)

Stoney Brook Estates Water System - Recommended Order Approving Rate Increase for Providing Water Utility Service in Stoney Brook Estates Subdivision, Johnston County, and Requiring Public Notice
W-295, Sub 2 (12-20-90)

Valleydale Water Company, Lewis E. Watford, d/b/a - Recommended Order Granting Rate Increase for Water Utility Service in Valleydale Subdivision, Gaston County
W-272, Sub 4 (11-15-90)

Wastewater Services, Inc. - Recommended Order Approving Rate Increase for Sewer Utility Services in Hunter's Glen Subdivision, Henderson County
W-869, Sub 4 (12-6-90)

White, Edwin W., Emergency Operator for McCullers Pines Water Systems - Order Granting Rate Increase for Providing Water Utility Service in McCullers Pines Subdivision, Wake County, and Requiring Public Notice
W-727, Sub 2 (3-20-90)

SALES AND TRANSFERS

Alpha Utilities, Inc. - Order Granting Transfer of the Franchise to Provide Water Utility Service in Oak Ridge Subdivision, Johnston County, from Oak Ridge Water Systems, Inc., and Approving Rates.
W-862, Sub 8 (11-27-90)

Brookwood Water Corporation - Order Approving Transfer of Ownership of the Water Utility System Serving Ellerslie Subdivision, Cumberland to Harnett County (Owner Exempt from Regulation), Cancelling Franchise, and Closing Docket in Complaint of Ellerslie Homeowners Association
W-177, Sub 28; W-177, Sub 30 (2-21-90)

Browning Enterprises, Inc. - Order Approving Transfer of Ownership of Its Water Utility System Serving Hawthorn Hills Subdivision, Henderson County, to the City of Hendersonville (Owner Exempt from Regulation)
W-569, Sub 4 (11-21-90)

Butler, Algernon L., Jr., Trustee in Bankruptcy for Conner Home Corporation - Order Approving Transfer of Water Utility System Serving Conner Village Subdivision, Carteret County, to the Town of Newport (Owner Exempt from Regulation), and Cancelling Franchise
W-343, Sub 2 (2-15-90)

CWS Systems, Inc. - Recommended Order Approving Transfer of Franchise and Assets of the Water System Serving the Forest Hills Subdivision, Jackson County
W-778, Sub 5 (12-14-90) Order Adopting Recommended Order (12-14-90)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Sewer Utility Service in Ashley Hills and Amber Hills Subdivisions, Wake County, from Parrish and Weathers, and Approving Rates
W-354, Sub 75 (3-26-90)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Water Utility Service in Zemosa Acres Subdivision, Cabarrus County, from Zemosa Acres Water System, and Cancelling Franchise
W-354, Sub 76 (3-26-90)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Sewer Utility Service in Kings Grant Subdivision, Wake County, from WPM Associates, and Cancelling Franchise
W-354, Sub 77 (3-26-90)

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 Approving Rates
W-354, Sub 79 (1-5-90)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Water and Sewer Utility Service in Beatties Ford Park and Hyde Park East Subdivisions, Mecklenburg County, to the Charlotte Mecklenburg Utility District (Owner Exempt from Regulation), and Deferring Regulatory Treatment of Gain on Sale
W-354, Sub 82 (5-3-90)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfers and Setting Hearing on Regulatory Treatment of Gain on Sale (See Official Copy of Order in Chief Clerk's Office for Specifics)
W-354, Sub 86; W-354, Sub 87; W-354, Sub 88 (6-7-90)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Water and Sewer Utility Service in Olde Point Suddivision, Pender County, from C&L Utilities, Inc., and Approving Rates
W-354, Sub 92 (11-9-90)

Cleveland Enterprises Water System, Inc., d/b/a Flat Mountain Estates Water System - Recommended Order Approving Transfer of Franchise to Provide Water Utility Service in Flat Mountain Estates Subdivision, Macon County, from Flat Mountain Estates Water System, Inc., and Approving Rates
W-973 (11-14-90)

Coastal Carolina Utilities, Inc. - Order Allowing Transfer of Franchise to Provide Sewer Utility Service in Smith Creek Estates Subdivision, New Hanover County, from H & H Development Company, and Approving Rates
W-917, Sub 2 (1-30-90)

Crayton Utilities, Inc. - Recommended Order Approving Transfer of Franchise to Provide Sewer Utility Service in Country Club Hills Subdivision, Craven County, from Horse Creek Farms Utilities Corporation, and Approving Rates
W-969 (7-17-90)

Cumberland Water Company - Order Approving Transfer of the Water Utility System Serving Arran Lakes West Subdivision and the Water and Sewer Utility System Serving Gates Four Subdivision, Cumberland County, to the Public Works Commission of the City of Fayetteville ( Owner Exempt from Regulation)
W-169, Sub 22 (12-20-90)

Frit Environmental, Inc. - Order Approving Transfer of Franchise to Provide Sewer Utility Service to the Island Beach & Racquet Club Condominiums and the Sheraton Hotel and Convention Center, Carteret County, and Approving Rates
W-965 (2-27-90)

Heater Utilities, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in Eaglewood Farms Subdivision, Wake County, and Approving Rates
W-274, Sub 54 (3-27-90)

Heater Utilities, Inc. - Order Approving Transfer of Franchise to Provide Sewer Utility Service in Beachwood, Briarwood Farms, Mallard Crossing, Wildwood Green, and Windsor Oaks Subdivisions, Wake County, from CAC Utilities, Inc., and Approving Rates
W-274, Sub 55 (3-27-90)

Hydraulics, Ltd. - Order Cancelling Public Hearing, Granting Authority to Transfer the Franchise to Provide Water Utility Service in Shiloh Subdivision, Catawba County, from Shiloh Water Company, Approving Rates, and Requiring Public Notice
W-218, Sub 60 (1-24-90)

Hydraulics, Ltd. - Order Cancelling Public Hearing, Granting Authority to Transfer the Franchise to Provide Water Utility Service in Hilltop Subdivision, Burke County, from Boyd E. Abernathy, d/b/a Hilltop Subdivision Water System, Approving Rates, and Requiring Public Notice
W-218, Sub 61 (1-24-90)

Hydraulics, Ltd. - Recommended Order Allowing Transfer of Franchise for Water Utility Service in Riverview Acres Subdivision, Catawba County, from H. C. Cline Building & Supply Company, and Approving Rates
W-218, Sub 64 (6-26-90)

Hydraulics, Ltd. - Recommended Order Allowing Transfer of Franchise for Water Utility Service in Crestview Subdivision, Burke County, from Elon Smawley, and Approving Rates
W-218, Sub 65 (6-26-90)

Hydraulics, Ltd. - Recommended Order Allowing Transfer of Franchise for Water Utility Service in Suburban Acres Subdivision, Cleveland County, from Cleveland Water Systems, Inc., and Approving Rates
W-218, Sub 66 (11-21-90)

Laurel Hill Water Company - Order Approving Transfer for Providing Water Utility Service in Laurel Hill Subdivision, Scotland County, from Z. V. Pate, Inc., and Approving Rates
W-67, Sub 8 (10-18-90)

Little, C. F. Construction, Inc. - Order Approving Transfer of Ownership of the Water Utility System Serving Camelot Subdivision, Cabarrus County, to the City of Harrisburg (Owner Exempt from Regulation)
W-921, Sub 1 (11-21-90)

Mid South Water Systems, Inc. - Order Allowing Transfer for Providing Water Utility Service in All Subdivisions, Gaston County, Presently Served by Hensley Enterprises, Inc., and Approving Rates
W-720, Sub 99 (8-1-90)

Miller, R. B., Jr. - Order Approving Transfer of Franchise for Providing Water Utility Service in Miller Development #2, Caldwell County, to Horseshoe Acres Homeowners Association (Owner Exempt from Regulation), and Cancelling Franchise
W-493, Sub 4 (3-20-90)

North Wilmington Service Company, Ammons Northchase Corporation, d/b/a - Recommended Order Approving Transfer to Provide Water and Sewer Utility Service in Northchase Subdivision, New Hanover County, from Inlet Bay Utilities, Inc., and Approving Rates
W-963 (2-5-90)

Rayco Utilities, Inc. - Order Granting Transfer of Franchise for Water Utility Service in Old Farm Subdivision, Rowan County, from Old Farm Water System, Inc., and Approving Rates
W-899, Sub 8 (1-31-90)

Seven Lakes Utilities, Inc. - Order Approving Transfer of Application by Moore Water and Sewer Authority to Acquire the Water Systems of Seven Lakes Utilities, Inc., Moore County
W-955, Sub 2 (11-28-90)

Skyland Drive Water Association, Jan Black, d/b/a - Recommended Order Approving Transfer of Franchise for Water Utility Service in Skyland Drive Subdivision, Gaston County, from Witten Supply Company, Inc., d/b/a Skyland Drive Water Systems and Approving Rates
W-964 (1-31-90)

Statley Pines Utilities, Inc. - Recommended Order Approving Transfer of Franchise for Sewer Utility Service in Statley Pines Subdivision, Craven County, from Horse Creek Farms Utilities Corporation, and Cancelling Franchise
W-968 (7-17-90)

Sunset Park Utilities, Inc. - Order Approving Transfer of Ownership of the Sewer Utility System Serving Sunset Park Subdivision in Cumberland County, to The Public Works Commission of the City of Fayetteville (Owner Exempt from Regulation), and Cancelling Franchise
W-178, Sub 2 (2-23-90)

Utility Systems, Ltd.,; Heater Utilities, Inc. - Recommended Order Approving Transfer for Sewer Utility Service in Barclay Downs Subdivision, Wake County, from Utility Systems, Ltd., and Approving Rates, also Increase Rates for Sewer Utility Service in Barclay Downs Subdivision, Wake County, and Closing Docket
W-463, Sub 4; W-274, Sub 58 (7-24-90)

Wastewater Services, Inc. - Order Approving Transfer of Franchise for Water Utility Service in Butler Mountain Estates Subdivision, Buncombe County, from E.S. Brown, and Requiring Customer Notice of $24.00 Monthly Rate
W-869, Sub 2 (1-10-90)

Wastewater Services, Inc. - Order Approving Transfer of Franchise to Provide Sewer Utility Services in Hunter's Glen Subdivision, Henderson County, from David R. Hillier, Bankruptcy Attorney for Horse Show Sewer Company, Approving Existing Rates, Establishing General Rate Case, Suspending Proposed Rates, Scheduling Hearing, and Requiring Public Notice
W-869, Sub 4 (6-7-90)

West Wilson Water Corporation - Order Approving Transfer of Franchise to Provide Water Utility Service in White Oak Subdivision, Wilson County, from CN&H Corporation, and Approving Rates
W-781, Sub 10 (1-9-90)

West Wilson Water Corporation - Order Approving Transfer of Franchise to Provide Water Utility Service in Hazelwood Subdivision, Edgecombe County, from Hazelwood, Inc., and Approving Rates
W-781, Sub 11 (6-7-90)

SECURITIES

Kannapolis Water Company - Order Authorizing Release of Bond
W-934, Sub 1 (5-11-90)

Weber, T. Carroll - Order Approving 100% Stock Transfer of Surry Water Company, Inc., from Elizabeth J. Lovill
W-314, Sub 23 (1-18-90)

TARIFFS

Burnett Utilities and Mid South Water Systems, Inc. - Order Approving Contract to Bill and Collect Sewer Charges for Charlotte-Mecklenburg Utility Department
W-392, Sub 7; W-720, Sub 101 (8-7-90)

C & L Utilities, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service for VOC Testing Expense Mandated by EPA
W-535, Sub 9 (12-20-90)

CWS Systems, Inc. - Order Revising Tariff for Water Utility Service in Forest Hills Subdivision, Jackson County
W-778, Sub 5 (12-27-90)

Honeycutt Water System, Inc. - Order Approving Tariff Revision
W-472, Sub 5 (9-19-90)

Horse Creek Farms Utility Corporation - Order Amending Tariff Providing Sewer Utility Service in Horse Creek Farms Subdivision, Onslow County
W-888, Sub 4 (7-13-90)

Lee, Ira D. & Associates, Inc. - Order Approving Tariff Revision for Providing Sewer Utility Service in Deerchase Subdivision, Wake County
W-876, Sub 1 (7-13-90)

Mercer Environmental Corporation - Order Approving Tariff Amendment
W-198, Sub 23 (8-14-90)

Mid South Water Systems, Inc., Bethlehem Utilities, Inc., and H. C. Huffman Water Systems, Inc. - Order Allowing Tariff Amendments
W-720, Sub 98; W-259, Sub 6; W-95, Sub 13 (7-17-90)

Mid South Water Systems, Inc. - Order Approving Tariff Amendment to Include a Tap-on Fee for Water Utility Service in Royal Pointe Subdivision, Iredell County
W-720, Sub 106 (10-18-90)

Mountain Ridge Estates Water System - Order Approving Tariff Revision for Authority to Amend Its Tariff to Increase Rates for Water Utility Service for VOC Testing Expense Mandated by EPA
W-975, Sub 1 (11-27-90)

SRME Water System, Harry W. Meredith, d/b/a - Order Approving Tariff Revision to Increase Rates for Water Utility Service in Spring Road Mobile Estates, Beaufort County
W-733, Sub 3 (2-15-90)

Skyview Water System, Inc. - Order Approving Tariff Revision
W-293, Sub 4 (8-28-90)

Tobacco Branch Village, Inc. - Order Approving Tariff Revision for Providing Water Utility Service in Tobacco Branch Village, Graham County
W-504, Sub 3 (11-28-90)

TEMPORARY OPERATING AUTHORITY

Carolina Water Service, Inc., of North Carolina - Order Granting Temporary Operating Authority to Transfer the Franchise to Provide Water and Sewer Utility Service in Olde Point Subdivision, Pender County, from C&L Utilities, Inc. and Approving Rates
W-354, Sub 92 (9-6-90)

China Grove Community Utility Services Company, Inc. - Order Granting Temporary Operating Authority to Furnish Water and Sewer Utility Services in the Village of China Grove Textiles, Inc., Rowan County, and Approving Rates
W-976 (10-26-90)

Hydraulics, Ltd. - Order Granting Temporary Operating Authority to Furnish Water Utility Service in Laurel Acres Subdivision, Guilford County, and Sturbridge Village Subdivision, Orange County, Approving Interim Rates, Requiring Refunds, and Requiring Public Notice
W-218, Sub 68 (6-7-90)

MISCELLANEOUS

Bess, Cregg, Inc. - Order Restricting Water Use and Requiring Public Notice
W-281, Sub 9 (5-4-90)

Brown, E. S. - Order Suspending Refund Requirement Unitl Further Order of the Commission.
W-732, Sub 1 (4-16-90)

Coastal Plains Utility Company - Order Restricting Nonessential Water Use in Hamby Beach and Wilmington Beach Service Areas, New Hanover County, and Requiring Public Notice
W-215, Sub 10 (7-2-90)

Cowan Valley Water System - Notice to Customers/Users of the Cowan Valley Water System
W-829, Sub 3 (5-4-90)

Duke Power Company - Order Approving Revised Water Service Regulations
W-94, Sub 14 (8-6-90)

Edwards Water System - Order Discharging Emergency Operator and Cancelling Franchise
W-134, Sub 2 (7-5-90)

HorseShoe Sewer Company - Order Closing Docket
W-916, Sub 1 (9-4-90)

Hughes, Dr. C. B. and Walnut Cove Developers, Inc. - Recommended Order Declaring Dr. C. B. Hughes and Walnut Cove Developers, Inc., (Kingswood Place Subdivision Water System) to be Exempt from Regulation
W-970 (8-2-90)

Hydraulics, Ltd. - Order Closing Docket
W-218, Sub 56 (10-2-90)

Seven Lakes Utilities, Inc. - Order Cancelling Rate Case Proceeding and Closing Docket
W-955, Sub 1 (11-29-90)

Walnut Hills Water Systems - Order Appointing Emergency Operator for Walnut Hills Water System, Cabarrus County
W-985 (12-20-90)